administrative or pecuniary penalty may be imposed, will be effected if made solely with the purpose of protecting the legal right violated by the offence, shall not constitute a threat (Article 115 § 12 PC).

22. M. Filar, Przestępstwo zgwałcenia w polskim prawie karnym, Warszawa – Poznań 1974, p. 105.

23. L. Peiper, Komentarz, p. 425.

24. M. Mozgawa in: Kodeks, p. 659.

25. LEX no. 1482486

26. LEX no. 486551

27. O. Górniok in: O. Górniok, S. Hoc, M. Kalitowski, S. M. Przyjemski, Z. Sienkiewicz, J. Szumski, L. Tyszkiewicz, A. Wąsek, Kodeks karny. Komentarz, vol. II, Gdańsk 2005, p. 216.

28. P. Kozłowska-Kalisz, K. Nazar-Gutowska, Doprowadzenie, p. 111.

29. As proposed, among others, by M. Berent, M. Filar in: Kodeks karny. Komentarz, ed. M. Filar, Warszawa 2016, p. 1265; M. Mozgawa in: Kodeks, p. 681; J. Warylewski in: System, p. 935.

30. As stated by, abong others: P. Kozłowska-Kalisz, K. Nazar-Gutowska, Doprowadzenie, p. 111, M. Budyn-Kulik, M. Kulik in: Kodeks, p. 800; S. Hypś in: Kodeks, p. 1088.

31. M. Budyn-Kulik, M. Kulik in: Kodeks, p. 800; M. Mozgawa in: Kodeks, p. 682.

32. M. Mozgawa in: Kodeks, p. 682.

33. Where the perpetrator subjects another person to practice prostitution, by taking advantage of the critical situation that may be a result of dissemination of a naked image of this person or an image taken during a sexual activity of that person. Cf. P. Kozłowska-Kalisz, K. Nazar-Gutowska, Doprowadzenie, p. 112.

34. As proposed by e.g. M.Mozgawa in: Kodeks, p. 682; a different view is presented by J. Warylewski in: System, p. 935.

35. In recent years, also the number of ascertained crimes is small: in 2013 – 17, in 2014-30, in 2015 – 22, in 2016 – 25, in 2017 – 28. http://statystyka. policja.pl/st/kodeks-karny/przestepstwa-przeciwko-6/63504,Zmuszanie-do-prostytucji-art-203.html

36. M. Marczewski, Przestępstwa związane z prostytucja w świetl statystyki policyjnej i sądowej, in: Prostytucja, ed. M. Mozgawa, Warszawa 2014, pp. 308-310.

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PROCEDURAL ASPECTS OF CHANGE OF ACCUSATION IN COURT PROCEEDING

After making a decision on the appointment of a judicial review, the nature of the charge laid down by the general conditions for the exercise of judicial

review is examined. In this case, the general terms of the trial must be adhered in such a manner that the prosecution can be considered in court. These terms of judicial review are generally applicable to independent court proceedings where any decision made without their observance is invalid [1, p. 154]. One of the general conditions for judicial review is that the limits of judicial review are about changing the accusation in the courtroom. Issues of changing the judgment in the courtroom are an important part of the judicial review threshold. Under the basic requirement of Article 318 of the Criminal Procedure Code of the Republic of Azerbaijan, which determines the limits of legal proceedings, the court considers a criminal case, simplified pre-trial proceedings, or a complaint of special indictment exclusively on the basis of the accusation provided against the person or against the prosecution. We need to note that this provision is one of the main requirements that determines the content of the powers to change accusation in court proceedings. Thus, the requirement that the trial be considered only within the alleged charge eliminates the possibility for the court to independently alter its aggravating circumstances. However, as a result of a court hearing, the defendant has the right to describe the actions of the accused to a less serious crime, as well as to exclude separate clauses from the accusation against him.

As it is known, the change of accusation in the criminal procedure is mainly defined in three forms: 1) aggravating prosecution; 2) mitigating and 3) substantially different from previous accusation for actual circumstances.

Paragraph 8 of the December 27, 1996 decision of the Plenum of the Supreme Court of the Republic of Azerbaijan on changing the accusation, states that any alteration of the accusation in the court should be justified in the description of the sentence. The court also has the right to change the accusation or to describe certain episodes of the crime which had not been informed to the accused person. However, this approach, which is not reflected in the requirements of the current criminal procedural legislation, but which seems to be commendable from the point of human rights and freedoms, is reflected in the fact that "such a change in the description of the offense is permissible only when such actions of the prosecution is: b) to take into account his / her guilt at trial (if no change in the actual part of the case – the auth.), b) the new charge does not contain signs of a more serious offense and does not significantly differ from the defendant’s charge. c) do not aggravate and violate person’s right to defense.

When mitigating or aggravating the allegation in the court, it cannot be overlooked that the court and the parties may obtain additional evidence in the course of the trial, which could undoubtedly affect the nature of the prosecution and result in its alignment. In our view, it would not be logical for a court to have the power to alleviate the charge, such as the actions described in the Supreme Court’s decision as being "taken into account in the prosecution." In our view, this should be regarded not as a limiting interpretation of the relevant

powers of the court, but rather as the creation of a new norm. It is clear that the Supreme Court's decision was historically adopted before the CPC, and there may be differences between these acts, and in legal terms, the law stands far above the Supreme Court's decision. However, it should not be forgotten that in each country the judicial practice is formed by a higher court, which is at the head of the judicial system, and that the Supreme Court's decision on this issue in the Republic of Azerbaijan is currently in force. This decision should be enforced and adapted to the CPM. At the same time, it should be noted that the actions recommended in mitigating the charge are not logical in the criminal procedural law. It is well known that the parties to the trial may submit their evidence to the court, which may be relevant to the case in accordance with the principle of dispute, request solicitation of additional evidence, or the court may collect evidence at their own initiative, which may be a mitigating recommendation. If this is the case, then this means that those actions are actually generally known at the trial stage. Therefore, it would be illogical to make such a claim in relation to these recommended actions, which must have been taken into account in court proceedings.

The decision also shows the signs of a more serious charge: the criminal law will apply the article (part, item, paragraph) of a more severe punishment; the indictment includes additional facts (episodes) that are not declared to the accused, which may lead to the commission of the offense in a more severe punishment law, or even if it does not change the legal value of the action. Different from the factual charge, it is intended to alter the content of the charge in such a way that the defendant violates the defendant's right to defense (new charges for content and substance, new charges for intentional misconduct, and new charges.

We believe that the actions of the accused from the charge lodged with the court, according to the factual circumstances "signs of a more serious offense" because it does not change on its own initiative, the court does not eliminate the possibility of chaing accusation on its own initiative. Although the first two cases are considered to be aggravated by the prosecution, the third case referred to in the relevant decision of the Supreme Court cannot be regarded as aggravating change and it is inadmissible to limit the powers of the court. In this case, it is necessary to approach the issue in the context of the collection of new evidence in court proceedings. It is difficult to determine the exact list of allegations of alteration of accusations. This is due to the fact that the law is not derived from the facts and that the facts are too different. However, there have been attempts to summarize cases in the scientific literature that need to change accusation in court proceedings. In this regard, the authors F.N. Fatkullin cite various cases here, stating that certain facts in the prosecution may change in the court proceeding. We believe that the facts and their interpretation may vary under different circumstances, and that the identification of these cases may be taken separately at different times.

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ПРАВОВОЙ СТАТУС ЛИЦА, ЗАДЕРЖАННОГО ПО НЕПОСРЕДСТВЕННО ВОЗНИКШЕМУ ПОДОЗРЕНИЮ В СОВЕРШЕНИИ ПРЕСТУПЛЕНИЯ (ПО ЗАКОНОДАТЕЛЬСТВУ РЕСПУБЛИКИ БЕЛАРУСЬ)

Представляется очевидным, что некорректное формулирование и толкование юридических понятий и наименований, терминологические несоответствия, встречающиеся в ряде нормативных правовых актов, создают угрозу эффективности правоприменения, так как приводят к усложнению понимания взаимосвязи соответствующих норм и их практической реализации, а в конечном итоге – к возникновению коллизий и неквалифицированным разрешениям возникающих споров. Особенно это чувствительно в правовой сфере, где на первый план выходит необходимость в поиске баланса между удовлетворением публичных и частных интересов, а также соблюдением прав, свобод и законных интересов граждан [1, с. 58].

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