The American Journal of Political Science Law and Criminology
ISSN 2693-0803 | Open Access

TYPE Original Research
PAGE NO. 23-28
DOI 10.37547/tajpslc/Volume07Issue08-03

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Accused as a procedural action ensuring the right to "know what he is accused of"

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OPEN ACCESS

SUBMITED 16 June 2025
ACCEPTED 12 July 2025
PUBLISHED 14 August 2025
VOLUME Vol.07 Issue08 2025

CITATION

Kushaev Nurali Makhmudovich. (2025). Accused as a procedural action ensuring the right to "know what he is accused of". The American Journal of Political Science Law and Criminology, 7(8), 23–28.
https://doi.org/10.37547/tajpslc/Volume07Issue08-03

Abstract: This article explores the fundamental legal principle of the right to be informed of the charges against an individual in criminal proceedings. It examines how this right serves as a safeguard against arbitrary prosecution and is essential for ensuring a fair trial. The article analyzes various legal frameworks and case law that highlight the importance of transparency in the accusatory process, discussing the implications for defendants' rights and the overall integrity of the judicial system. Through critical evaluation, it emphasizes the necessity of clear communication of accusations as a procedural action that upholds justice and protects individual liberties.

Keywords: Right to know, accused, procedural action, fair trial, criminal proceedings, legal framework, transparency, defendants' rights, judicial integrity, case law.

Introduction: Human rights play an important role in the socio-economic, political and spiritual life of each country, and their provision is the main criterion for the level of democratic development of society, a kind of "barometer" determining the humanity of public affairs. That is why in each country human rights and the relations associated with them are the most important issue, located at the center of all socio-economic, political and spiritual realities. It can be said without exaggeration that any society begins its development with the formation of an attitude towards ensuring human rights. One of the areas where human rights are violated most often and where a thorough approach to the issue of ensuring human rights is required is the area of criminal proceedings. In particular, there are situations when, during the implementation of criminal proceedings, the rights of an individual are violated, requiring special attention to the observance of human

rights, which is reflected in national legislation. The filing of charges as a procedural act is a form of procedural relations arising at the initial stage of the investigation of a criminal case between the accused and state bodies and officials carrying out criminal prosecution. The filing of charges is a formal statement of the crime of which a person is accused. The filing of charges against a person, that is, the indication of what the accused is accused of, is considered necessary from the point of view of the right to defense. Although the procedural act of filing charges is interpreted as one of the practical manifestations of the prosecutor's function, it serves as a program indicating what the person should be protected from.

The Criminal Procedure Code of the Republic of Uzbekistan (hereinafter referred to as the CPC) does not provide for a separate rule governing the procedure for filing charges. Only Article 111 of this Code describes the actions that must be taken before the first interrogation, and paragraph 4 of Part One of this Article states that “the suspect is notified of the decision to involve him in the case as an accused and is explained the essence of the charge.” This rule is not sufficient to determine the procedure for filing charges. The period for filing charges after the decision to involve a person in criminal proceedings as an accused is also of great importance. The correct, fair and impartial resolution of the case is influenced not only by involving a person in a crime as an accused, but also by the timely and unhurried filing of charges. Theoretically, the main trends with respect to this period are that it should be as short as possible or measures should be taken to ensure that the person is notified of what he is accused of immediately after the decision is made. If we turn to foreign practice, the criminal procedure legislation of a number of countries establishes the time limits for filing charges. For example, the criminal procedure legislation of the Russian Federation, Belarus, Kyrgyzstan and the Republic of Kazakhstan provides for a period of no later than three days from the moment of the decision to bring a person as an accused. In the Republics of Moldova, Ukraine, Estonia and Armenia, this period can be from 48 hours to two days.

If we turn to history, Article 126 of the Criminal Procedure Code of Uzbekistan, adopted on May 21, 1959, stated: "The charge must be filed no later than two days from the moment of the decision to bring a person as an accused, and in any case - on the day of the appearance or delivery of the accused".

Setting a specific time limit for bringing charges is necessary so that the accused knows what he is accused of and serves as a means of more quickly correcting errors made by the investigator when bringing charges [1].

Postponing the presentation of charges for a certain period of time is contrary to international law. According to the principle of international law, a person must be informed promptly after the presentation of charges. Article 14 of the International Covenant on Civil and Political Rights establishes that everyone has the right to be informed promptly and in detail in a language which he understands of the nature and cause of the accusation against him [2].

The question arises: why should a two-three-day period be set aside for announcing a detention order after it has been issued? Sometimes, when filing charges, investigators are not concerned with ensuring the defendant's right to defense, but with the proper conduct of the investigation and their own professional interests. An immediate announcement of a detention order (without a specific time limit) is justified, since it gives the defendant the opportunity to prepare for defense [3].

In practice, establishing specific time limits after the decision to summon the accused has been made may lead to a biased interpretation of this rule. A negative aspect is the lack of information on the grounds for the decision to summon the accused to court within a certain period of time. This negative situation is especially evident in cases where the accused is in custody. Taking this into account, the legislation would establish that the decision to summon the accused must be announced immediately after the decision to summon the accused has been made. There are also circumstances that prevent the immediate filing of charges. These include: the absence of the accused and the persons participating in the filing of charges for good reason; the impossibility of summoning the accused due to failure to establish the place of residence of the accused; illness of the accused; placement of the accused in a medical institution as a compulsory measure. The legislator must also take these circumstances into account when establishing the rules related to the filing of charges. The specifics of filing charges is associated with the circle of persons participating in it. The persons participating in the filing of charges can be divided into three groups: 1) the person filing the charges; 2) the person who is charged; 3) persons defending the interests of the accused and assisting in bringing charges.

The person bringing charges is usually the person who issued the decision to bring the person as an accused. The right to bring a person to criminal liability is the responsibility of the investigator and inquiry officer who investigated the criminal case and issued the decision to bring the person as an accused. The Criminal Procedure

Code also allows for the filing of charges in the same criminal case by a person who is not investigating the crime. According to Article 347 of the Criminal Procedure Code, each investigator has the right to delegate the performance of any investigative action on a criminal case under his/her jurisdiction, anywhere in the Republic of Uzbekistan, to another investigator or inquiry officer.

The prosecutor is also authorized to bring charges. According to Part 3 of Article 382 of the Criminal Procedure Code, the prosecutor participates in the inquiry, preliminary investigation and, if necessary, personally carries out individual investigative actions on the case or carries out the investigation in full. When the prosecutor carries out the investigation in full, he brings charges together with all procedural actions. The prosecutor carrying out the preliminary investigation of a criminal case or supervising it may bring charges in the form of carrying out individual investigative actions. In some foreign countries, this issue is resolved differently. For example, in the Republic of Moldova, the issue of issuing a resolution on bringing a person to criminal responsibility, its publication and explanation of the rights to bring to criminal responsibility falls exclusively within the competence of the prosecutor. This is certainly due to the attention and importance attached by the legislator to this procedural document. However, we do not support the procedure that provides for the preparation and publication of a resolution on bringing a person to criminal responsibility only by the prosecutor. The performance of the duties of an investigator and inquiry officer by another investigator, prosecutor or inquiry officer is a situation that excludes the principle of direct and oral examination of evidence. Moreover, the transfer of the investigative action to another person may contradict the rules on the controllability of the investigation. Of course, the transfer of the production of a certain investigative action to another investigator or inquiry officer is important for avoiding unjustified expenses and saving time. However, this rule does not mean that the production of any investigative action can be transferred to another person. The investigator or inquiry officer is obliged to personally perform investigative and procedural actions related to the adoption of decisions determining the direction of the investigation, as well as actions that are important for the formation of the position of the parties. They cannot be assigned to another person or their implementation by another person is inappropriate. Such actions also include the filing of charges and the interrogation of the accused. The direct participation of the investigator or inquiry officer in the filing of charges and the interrogation of the accused contributes to the formation of internal confidence in the assessment of the testimony of the accused and the development of investigative versions. A person who has only read the act of bringing charges and the protocol of interrogation of the accused will know more about the circumstances of the case than the person who personally conducted them. Tactically, in order to correctly and promptly decide the fate of the preliminary investigation, it is advisable for the bringing of charges and interrogation of the accused to be carried out by the person conducting the investigation, who has directly studied the circumstances of the case, as well as by the person who brought forward (drafted) the charges - the investigator or inquirer. The direct participation of the accused in bringing charges is mandatory. In civil proceedings, a claim may be brought through a representative of the defendant. However, in criminal proceedings, charges are not brought against the accused through his representative. In order to ensure the timely bringing of charges, the inquirer or investigator must take measures to ensure the appearance of the accused. For this purpose, the accused is immediately summoned by subpoena or, if there are grounds, is brought forcibly.

If the appearance of the accused in a criminal case is impossible due to failure to establish his whereabouts, a search is declared. Even if the place of residence of the accused is established, it may not be possible to ensure his appearance. In such cases, the case is considered in absentia. The circumstances under which a case is considered in absentia are not sufficiently regulated by law. Article 410 of the Criminal Procedure Code establishes that a trial may be held without the appearance of the accused who is outside the Republic of Uzbekistan and has evaded appearing in court or has been removed from the courtroom. However, there are no rules regarding what charges should be brought if the appearance of the accused during the preliminary investigation is impossible. Among practicing lawyers, there is a concept of "charge in absentia", which is one of the elements of proceedings in absentia. Sh. K. Kusainov dwelt in more detail on the content of the charge in absentia, the circumstances of its admission and the procedure for its presentation [4].

The democratic foundations of criminal proceedings serve as a "warning" against the possibility of criminal cases being tried in absentia, prosecution measures being taken against the accused without his knowledge or finding him guilty. They must be taken into account when deciding the issue of guilt without the appearance of a person. In cases where the appearance of the accused to bring charges is impossible, it must be established that this happened with the purpose of

hiding from the investigation or under objective circumstances.

The Criminal Procedure Code of the Republic of Kazakhstan contains positive rules on bringing charges in absentia. Article 209 of the Criminal Procedure Code of the Republic of Kazakhstan establishes that in cases where the accused is outside the Republic of Kazakhstan or refuses to appear before the investigative authorities, in the presence of the defense counsel, the defense counsel must confirm in the ruling that the accused cannot be found guilty due to the specified circumstances. If the place of residence of the accused is known to the investigative authorities, a copy of the ruling on bringing him as an accused is sent by means of communication, including by mail. In necessary cases, the preliminary investigation body has the right to organize the publication of a notice of the accused's prosecution in the national mass media, in the mass media at the place of residence of the accused, as well as in public telecommunications networks.

Of course, these actions should be taken only after measures to ensure the appearance of the accused and his forced delivery have not yielded results.

Similar rules governing the filing of charges in absentia should also be reflected in the Criminal Procedure Code of the Republic of Uzbekistan. After all, the possibility of filing charges against a person, even if he is hiding from the investigation, and the procedure for ensuring the right to know what he is accused of is an unusual phenomenon for many. The establishment by law of filing charges in absentia, on the one hand, is considered as giving legality to the activities of investigators or inquiry officers in filing charges against the accused even in his absence, and on the other hand, as preventing many misunderstandings. The third category of persons participating in the indictment consists of persons defending the interests of the accused and assisting him in filing charges. These include a defense attorney, legal representative, translator, teacher and specialists.

The participation of a defense attorney in the presentation of charges is a requirement of the principle of ensuring the right of the accused to defense. According to the content of this principle, the inquiry officer, investigator, prosecutor and court are obliged to take measures aimed at explaining to the accused his rights and providing him with a real opportunity to use all means and methods of defense against the charge provided by law (Article 24 of the Criminal Procedure Code). Thus, with the participation of a defense attorney for the accused in the process of presenting charges, if he does not yet have a defense attorney, he wishes to have one or does not refuse one, the inquiry officer and investigator are obliged to ensure the participation of a defense attorney.

The defense attorney chosen by the accused or appointed by the state must be postponed until his arrival at the place of presentation of charges. In investigative practice, in some cases, after the first summons of the accused, the investigator announces the provision of a defense attorney in order to ensure the fulfillment of his duties stipulated by Article 24 of the Criminal Procedure Code, or, if necessary, considers the issue of his appointment by the state. Upon the arrival of the defense attorney, the accused is again summoned to present the charges in his presence. In such cases, the defense attorney may be removed due to negligence, indifference, or apathy.

To ensure the defense attorney's real participation in the arraignment and to prevent unnecessary delays, the defendant should be advised of his or her right to counsel during the arraignment. The right to counsel and the use of counsel during the arraignment should also be stated in the summons for arraignment.

According to Article 552 of the Criminal Procedure Code, when bringing charges against a minor, his legal representative has the right to participate in addition to the defense attorney. The petition of the legal representatives to participate in such a procedural action must be satisfied by the inquiry officer and the investigator.

If the accused does not speak the language in which the case is being heard, or speaks it insufficiently, an interpreter participates in the process. In addition to oral translation during the presentation of charges, the interpreter is obliged to translate the text of the resolution on bringing the accused as an accused into the native language of the accused or a language that he speaks. The translated copy of the resolution is not only given to the accused, but is also kept in the investigation materials.

The participation of the defense attorney, legal representative and interpreter in the presentation of charges is beneficial not only to the accused, but also to the inquiry officer and the investigator, since they confirm the fact of the presentation of charges and the procedure for their implementation. Since the Criminal Procedure Code does not establish the procedure for filing charges, investigators and inquirers carry out this activity based on their practical experience and traditions of investigative activity.

After the appearance of persons required to participate in the case, their identity is established. After their involvement in the case is established, the process of filing charges begins.

The filing of charges consists of: a) familiarization with the content of the resolution on bringing a person as an accused; b) explanation of the essence of the charges; c) explanation of the accused's rights and obligations; d) recording of the specified circumstances in the resolution; d) issuance of a copy of the resolution.

Familiarization with the content of the resolution on bringing a person as an accused is usually carried out by the inquirer and investigator by reading the resolution out loud. The resolution may be read out by the defense attorney and legal representative participating in the filing of charges, as well as by the accused himself. Before familiarizing the accused with the content of the ruling on the appeal as an accused, the investigator or inquiry officer has the right to explain to the accused the meaning of this ruling. After familiarizing the accused with the content of the ruling, the investigator or inquiry officer explains to him the essence of the charges brought. In doing so, the investigator explains what act the accused committed, the form of the charge, the norm of the Criminal Code by which it is qualified, the meaning of the legal terms contained in the charge, the possible punishment or other measures of influence. Answers to questions asked about the essence of the charges brought are mandatory. The person is explained the rights and obligations arising for him in connection with the notification of involvement as an accused. When explaining rights and obligations, the investigator or inquiry officer is limited to the list specified in Article 46 of the Criminal Procedure Code. There is no information that procedural liability can be applied in the event of failure to fulfill obligations, and that assigning the status of an accused to a person deprives him of other rights and gives rise to other obligations. Including the right to conclude a plea agreement, and also, according to Article 42 of the Law "On Citizenship of the Republic of Uzbekistan", if a person is brought to criminal liability as an accused, convicted and serving a sentence, this may be grounds for terminating the consideration of materials on issues of citizenship of the Republic of Uzbekistan.

In practice, one of the most common violations of the rules related to the announcement of charges is the explanation of the rights and obligations of the accused only formally. It is no secret that sometimes the inquirer or investigator does not fully indicate them in the decision to bring the accused to justice, and if he does indicate them, then only provides them for review. Since the law requires an explanation of rights and obligations, each of them must be explained in a form accessible to the level of legal consciousness of the accused. For most defendants, the announcement of charges affects the psyche and mood, distracting attention. The main thoughts and attention of the accused are focused on what acts he is accused of, how to speak during interrogation and what questions to ask. He may not remember the listed or explained rights and obligations. The level of knowledge, life experience, psychological and intellectual characteristics, worldview of a person also affect the ability to remember and apply rights and obligations in practice. Tactically, it is more correct to exercise the rights and obligations of the accused before familiarizing yourself with the content of the decision to bring him as an accused. In confirmation that the contents of the resolution have been read and the essence of the charges explained to the accused, the resolution is signed at the end by the inquiry officer or investigator, the accused and other persons who participated in the presentation of charges. In some cases, the accused refuses to sign the resolution. In such cases, the inquiry officer or investigator must explain that the signature of the accused is not an admission of guilt, but a confirmation of the presentation of charges. If the accused still refuses to sign the resolution, the inquiry officer or investigator makes a note of this in the resolution and confirms it with his or her signature. Theoretically, it is sometimes argued that the refusal to sign must be certified in the presence of attesting witnesses. However, it is not possible to ensure the presence of two witnesses to confirm the refusal of the accused during the presentation of charges. In addition, the accused is not obliged to listen to the investigator's explanations about the contents of the detention order and the nature of the charges brought, or to sign it. After the charges are presented, the accused has the right to receive a copy of the resolution. The abovementioned word "presents" in paragraph four of part two of Article 111 of the Criminal Procedure Code is in practice in some cases interpreted as a temporary provision of a detention order for familiarization. It is probably advisable for the investigator or inquiry officers to interpret this rule in this way. After all, in legal norms, the words "present" or "deliver" do not always mean provision with the condition of non-return. For example, in part one of Article 376 of the Criminal Procedure Code, which states: "The investigator presents the case materials for familiarization in a bound and numbered form with an inventory of documents in each volume," the word "presents" means temporary use with subsequent return.

In our opinion, it is necessary to develop rules obliging the accused to receive a copy of the decision to bring him to criminal responsibility without any conditions, and the inquiry officer or investigator to ensure this. To do this, it is necessary to introduce a rule determining the procedure for presenting the indictment and to

imperatively indicate the need to provide a copy of the decision to bring a person as an accused. A copy of the decision to bring a person as an accused must be provided not only to the accused, but also to all members of the defense team. In order to ensure sufficient time and the opportunity to prepare for the defense, a copy of the decision to bring a person as an accused may be provided or sent before the indictment is presented [5]. In case of postponement of the filing of charges, a copy of the resolution must be sent (to the defense attorney and the accused, whose place of residence is known).

It should be noted that in accordance with paragraph 4 of part two of article 111 of the Criminal Procedure Code, the resolution on bringing the accused to participate in the case as an accused must be handed to the suspect. This contradicts the rules for filing charges at the preliminary investigation stage. A copy of the resolution on bringing the accused is handed to the accused, not the suspect. In fact, this rule should establish that the suspect and the accused, respectively, must be provided with a copy of the resolution on their involvement, and the essence of the suspicion or accusation set out in the resolution must be explained.

Based on the above, the definition of the procedure for filing charges by a legal norm prevents many misunderstandings in practice, and also serves as a basis for the assertion of complete regulation of the activities of investigators related to the filing of charges. For this purpose, it is proposed to introduce a new article into the Criminal Procedure Code:

Article 3611. Procedure for bringing charges

The decision to bring charges must be announced immediately. The decision to bring charges is read to the accused or presented to the accused for reading.

After the charges are announced, the essence of the charges, the rights and obligations of the accused and the consequences of failure to comply with them are explained. This is recorded at the end of the decision and signed by the persons who participated in the announcement of the charges. A copy of the decision is given to the accused.

If the accused is outside the territory of the Republic of Uzbekistan and evades appearing before the investigative authorities, the decision to bring charges shall indicate that the accused cannot be charged due to the specified circumstances. This can be confirmed by the defense attorney participating in the case. If the place of residence of the accused is known to the investigative authorities, a copy of the decision to bring charges is sent by means of communication, including by mail. In necessary cases, the preliminary investigation bodies may notify about bringing a person to justice as an accused through the mass media of the Republic of Uzbekistan or at the place of residence of the accused or through publicly available telecommunications networks.

In addition, it is proposed to set out paragraph 4 of part 2 of article 111 of the Criminal Procedure Code as follows: “The suspect and the accused are given a copy of the decision to bring them to criminal responsibility, the decision shall set out the essence of the suspicion or accusation”.

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