

YOU HAVE THE RIGHT TO KEEP SILENT: ON FINDING YOURSELF INCARCERATED; ADVOCATES' INTERVIEW TO "HETK"

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An interview to "Hetk" media

Probably, the minority of our citizens are informed that, don't let it be, but on getting incarcerated they have the right to keep silent.

We can often hear in American films the following sentence: "You can keep silent, as what you say can be used against you at the Court". The right of keeping silent or Miranda's rule is one of the foundation-stones of fair trial, when the citizen, deprived of freedom, can give no information about himself or his relatives.

The denomination of Miranda's rule appeared in 1966 in the USA, concerning "Miranda against Arizona" case, when the American Court had defined: any kind of information that had been obtained from the one incarcerated can't be considered as admit able evidence unless to the incarcerated one had been explained his rights. This right doesn't restraint the person simply informing him about his right, but is to clarify that what the person is going to say can be used against him in the Court. After this case different countries worldwide one after the other affirmed by the help of the law the right of the citizen to keep silent.

The purpose of this right is the exclusion of possibilities of repression or obligation of the incarcerated citizen, one of the basic foundations of the presumption of innocence, for the person is not obliged to prove his innocence, but the government is to prove that the latter is guilty.

In the practice of European Court of Human Rights the right of not giving evidences against the accused is reviewed as one of the components of the right of fair trial and presumption of innocence (the 1-st and 2-nd parts of the 6-th article).

According to the former Constitution of our country, the 22-nd article assigned: nobody is obliged to make a deposition against himself, his spouse or nearest relatives. Anyhow, according to the constitutional amendments from the 5-th of December 2015, in addition to other human rights the right of keeping silence had also been constrained. The 65-th article of the Constitution reads as follows: "Nobody is obliged to make a deposition against himself, his spouse or nearest relatives if it is reasonably supposed that in future it can be used against him or them".

The question remains who and how is to measure the borders of reasonability. On waiting to find the answers to some questions concerning the constraint of the right of keeping silent and its consequences I turned to advocates.

According to the opinion of the member of the Chamber of Advocates of RA, public defender Armine Fanyan, the border of reasonability should be estimated by the one making use of the immunity of making no depositions, as in other circumstances that right would be illusory. "It turns out to be that the body realizing the proceedings anyhow had to listen to that deposition, to line the border of reasonability," - noticed advocate Fanyan, noting that the body that is realizing the proceedings won't find in any case the mechanism that would provide the realization of that right's limitation, as he won't know the content of the anticipated deposition.

One of the advocates Ervand Varosyan told "Hetk", that the issue of Silence right limitation had been also arisen by the advocates during the discussions of the Constitution scheme, when many advocates publicly spoke out against the scheme. After the change of this norm, Varosyan has already twice come across criminal cases; criminal cases had been prosecuted for the refusal of making deposition, though the cases had been breached, as there were transparent facts, that the persons who had refused from making deposition had been actual suspects in those very cases.

One of the members of the Chamber of Advocates of RA announced to "Hetk" that he hasn't yet got in touch with such issues. Lately concerning one case the person refused to make depositions reasoning it that to his mind making a deposition could be used against him as he had been present at the case location. They accepted it adequately.

Advocate Norayr Norikyan told in his turn, that he never had such a precedent, but anyhow couldn't imagine how such a constitutional limitation could work.

Advocate Varosyan finds that this limitation can have a display of selective jurisdiction: «Solemnly, as in case of this indefinite formulation so in others will function the presumption of responsibility and the juridical governmental bodies will use it like a truncheon, calling to responsibility selectively those ones whom they wish to».

Liporit Simonyan explained that according to the 20-th

article of the Legal Criminal Codex, no one is obliged to make depositions against himself, his spouse or nearest relatives.

That is the person has the right to make no deposition concerning any circumstances of his own, beginning from his name and surname and ending to the things he has seen or heard", - tells Liporit Simonyan.

According to Lusine Sahakyan, the person to make judicious or any kind of assumptions, is to be acquainted with the case. "Without being acquainted, having no start point facts, how is one to make assumptions?"

What refers to the changed of 65-th article of the Constitution, advocate Simonyan has cares: how can an ordinary citizen predict "what kind of his actions or not actions reasonably or don't know how can be or not be used against him. Before being interrogated he has to get a legal education, take a diploma, for at least two years work as prosecutor, to foresee reasonably. Let them wait for at least 8 years and afterwards interrogate", - notices advocate Simonyan.

The advocates emphasized that they could show hundreds of records, when the rights of citizens hadn't been properly reasoned. Often a form had been put before the citizen and he was told where to sign. Unfortunately, there is also the problem of low legal consciousness of the citizens, what is often used by law enforcement representatives.

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