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Few more words about the violation of the right of the accused to use the help of a lawyer

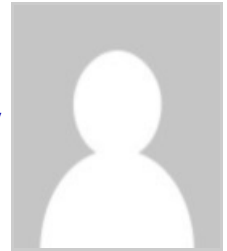
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Abstract: The article considers such a basis for the cancellation or modification of the sentence by the court of appeal as the consideration of a criminal case without the participation of a defender (lawyer), when his participation is mandatory in accordance with the the Code of Criminal Procedure, or with another violation of the right of the accused to use the help of a defender. This issue is investigated by the author in the context of the fact that paragraph 4 of Part 2 of Article 389.17 of the Code of Criminal Procedure of the Russian Federation includes two independent grounds for revoking the decision. The main focus is on the category of "other violations". Based on the study of judicial practice, the author notes the variety of cases that are considered by higher authorities as violations of paragraph 4, part 2 of Article 389.17 of the Code of Criminal Procedure of the Russian Federation and entail the cancellation of the decision of the court of first instance. The

article gives a critical assessment of the approach according to which the violation of the defendant's right to use the help of a defender can in certain cases be compensated by the court of appeal, therefore, the detection of such a violation should not always entail the return of the criminal case to a new trial in the court of first instance. It is noted that this approach is obviously incorrect, and this position is justified. When writing an article, the author uses such methods as analysis, synthesis, logical, comparative legal, formal legal. The author concludes that if the court of appeal, in violation of the defendant's right to use the help of a defender in the court of first instance, does not send the case to a new trial, but independently makes up for the violation, it thereby deprives the defendant of the opportunity to exercise proper protection in two judicial instances. The session of the court of appeal cannot fully replace the proceedings in the court of first instance, since the rules for examining evidence are established in the appellate instance, which differ from the rules of the court of first instance (in terms of the procedure for research). The author of the article considers the position of the courts to be correct, in which the courts recognize the violation of the defendant's right to use the help of a defender as an irreparable violation, which should entail the cancellation of the decision with the referral of the case to the court of first instance. The article presents the positions of process scientists on the problem under consideration.

Keywords:

criminal proceedings, lawyer, defense attorney, significant violation, absence of a defense attorney, the right to defense, court discretion, positions of the Constitutional Court, reversal of the sentence, judicial practice

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