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EQUALITY

OF ARMS AND BALANCING BETWEEN RIGHTS AND DUTIES

IGUALDAD DE ARMAS Y EQUILIBRIO ENTRE DERECHOS Y DEBERES

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ABSTRACT

The objective of this paper is to analyze the principle of "equality of arms" during criminal proceedings, focusing mainly in the legal framework of Azerbaijan. Authors indicate this institution as one of the fundamental principles of criminal justice. In the article, for the first time in Azerbaijan and possibly for many other countries which are members of the roman-german law family, the principle of equality in the procedural sense (equality of arms) is distinguished and separated from the substantive sense (equality before law and court). Considering the example of Azerbaijan, the procedural aspects of the principle of equality were discovered, and exposed of the ideologized treatment of equality in his procedural understanding at the Soviet territories. Authors underline an idea on improving of guarantees of equality and of responsibilities, including criminal, for violation of it on all stages of criminal justice. Recommendations were made considering decisions of the European Court of Human Rights on criminal proceedings. Finally, the authors underline adjoining of equality principle to all spheres of state and social activity.

Keywords: Criminal process, justice, equality of arms, European Court of Human Rights.

RESUMEN

El objetivo de este artículo es analizar el principio de "igualdad de armas" durante el proceso penal, centrándose principalmente en el marco legal de Azerbaiyán. Los autores señalan esta institución como uno de los principios fundamentales de la justicia penal. En el artículo, por primera vez en Azerbaiyán y posiblemente en muchos otros países que son miembros de la familia del derecho romano-alemán, el principio de igualdad en el sentido procesal (igualdad de armas) se distingue y separa del sentido sustantivo (igualdad de armas). ante la ley y los tribunales). Considerando el ejemplo de Azerbaiyán, se descubrieron los aspectos procesales del principio de igualdad, y se expuso el tratamiento ideologizado de la igualdad en su comprensión procesal en los territorios soviéticos. Los autores subrayan una idea sobre la mejora de las garantías de igualdad y de las responsabilidades, incluso penales, por la violación de la misma en todas las etapas de la justicia penal. Se hicieron recomendaciones teniendo en cuenta las decisiones del Tribunal Europeo de Derechos Humanos sobre procesos penales. Finalmente, los autores subrayan la adscripción del principio de igualdad a todas las esferas de la actividad estatal y social.

Palabras clave: Proceso penal, justicia, igualdad de armas, Tribunal Europeo de Derechos Humanos.

INTRODUCTION

Criminal procedural law is notable for its importance in the realm of states' fight against crime, exposing offenders, and preserving society's safety. Looking at both theory of law and legislation of various states, we can identify provisions such as crime prevention, early identification of persons committed crime, and finally, the protection of society and the state from criminal intent as the key purposes. This is also found in the legislation of Azerbaijan. The idea we are discussing is stated in Article 8 of the Criminal Procedural Code of the Republic of Azerbaijan (hereinafter - CrPrC), titled "The aims of criminal proceedings", which came into legal effect in 2000 (Milli Majlis of the Republic of Azerbaijan, 1999).

The fact that the goal of criminal procedure is more than simply accusing someone, taking legal action against them, or punishing them should be highlighted. Another objective of criminal justice is to rehabilitate the innocent (CrPrC, art. 8.0.5). Everyone is presumed innocent unless proven guilty by a legally binding court decision, which is one of the most important principles of law (the presumption of innocence). Observing the concept of equality between the parties in the process from the institution of a criminal case to the issuance of a court decision is just as crucial as proving a person's guilt as established by a legally binding final court decision. Because failing to uphold the concept of equality between the parties to criminal proceedings makes it difficult to fulfill Article 8's requirement to fully, completely, and impartially examine all of the facts. We disagree partly with Bruno de Witte, who claimed that the equality principle is 'an empty principle' (Supeno, 2020, pp. 1715, 1717) because equality has become a recognized human value in society. Although the equality principle has drawbacks, it is incorrect to regard it as a 'totally empty principle'. Not accepting this idea is different from confirming the fact that the principle of equality is often violated. The fairness, impartiality, and objectivity of criminal justice are undermined when the equality principle is violated, we mean particularly the principle of procedural equality (equality of arms).

Above mentioned idea firstly, shows up in a variety of circumstances. For instance, abuse of power byan authority, the influence of officials of higher authorities on achieving quick resolution of crimes,the fact that previously convicted persons are more likely to recommit a crime and, therefore, the law enforcement bodies are hesitant to exercise their duties, etc. Cases of unlawful influence of some law enforcement officers are still being observed currently. According to the court's annual report for 2011 (Council of Europe, 2013), a number of violations of law in recent years have prompted the case law to grow in those directions. The excessive use of police force is cited by the court as a violation of Article 2 of the European Convention on Human Rights (Economist Intelligence Unit, 2021).

Secondly, these situations oppose to the idea of a fair trial based on the equality principle in criminal proceedings. The root of the problem here is not just that evidence and testimony were obtained by breaching the law but at the same time, it is regrettable that the power structures engaged in unlawful behavior during the pretrial exerted physical and psychological pressure on the accused and others, and even coerced them into testifying in various ways. There is a crucial need to solve this problem (Council of Europe, 2013; Economist Intelligence Unit, 2021).

In addition, the presence of influential and rich people in the society leads to be in a more privileged position in the criminal justice system, which must be prevented. For instance, John Rawls soundly argues that although the concept of justice depends a bit on subjective elements, its two guiding-fundamental principles (first - everyone has rights corresponding to the freedoms of others; second - the environment of social and economic inequality should be such that it is in everyone's interest) are independent of socioeconomic circumstances when discussing the theoretical and ideal components of justice. The current situation should not only be suitable for one person or a certain set of individuals; rather, it should be suitable for everyone (Whitman, 2009).In an article criticizing the mentioned inequality, it would be appropriate to refer to the opinion of the authors: "Discrimination in law enforcement is an open secret in society. When poor people conflict with the law, the law looks so powerful. However, when officials rich people, the law looks blunt" (Fedorova, 2012, p. 61).

In the study of the principle of equality in the criminal process, the history of the formation of the population of a specific country, psychology, which of the historical forms of the criminal process exist are irreplaceable factors. Firstly, a state's governance system and democratic index indicate the value given to human and civil rights and freedoms and allow to clarify the authorities' commissioning power on the population in the criminal proceeding; and secondly, although various progressive norms are reflected in the criminal-procedural legislation, this does not mean the real situation. Additionally, the society's reaction to crime cases shows the extent to which the principle of equality is respected in relation to criminals.

In our view, courts should only operate as a neutral, impartial subject in order to avoid violating equality. From this perspective, it is important to expand their involvement to

produce favourable outcomes.It should not be forgotten that at the basis of equality:

- A procedural subject having state authority (guarantor-subject) must be autonomous (independent and subordinate to only the laws of a state).
- Notwithstanding the fact that there are de facto unlawful influence by other subjects, it should have the forced ability and reputation to balance them.
- Although the guarantor-subject should have a lot of authority, it shouldn't be at a point where it has the "misleading influence/effect of power". The existence of authorized officers in positions abled to further their own interests, the interests of individuals or groups close to them, as well as other unlawful goals is referred to as the "misleading influence/effect of power" in this context.
- The guarantor-subject must not necessarily be one of the parties in the process whose interests are conflicting or sufficiently different, and such a neutral subject's authorities should be expanded instead of empowering conflicting parties.

We think, if the listed conditions are fullfilled, it is possible to discuss the viability of the principle of the procedural equality (equality of arms). The securing of equality should be enforced not only during judicial proceedings but also throughout the pre-trial period. In this case, a contradictory point is revealed: in non-democratic regimes like North Korea, China, Iran, Syria, and others doubts about the fairness of justice appear along with interviewing the witness, collection of evidence, and the fate of accused, suspected, and other persons in such cases. On the one hand, the empowered structures given numerous of commissions by the laws of the country, on the other hand, the individuals who are 'weak'. To what extent is it possible to guarantee the freedom and rights of individuals, especially their health and freedom, in the event of the application of various pressure measures against them? There is no doubt that it is not appropriate to concentrate all authorities, including those that go beyond duties related to ***guarantor***, only in the courts. However, we believe that there is a crucial need to increase the role of courts on this direction. Considering the above, the objective of this paper is to analyze the principle of "equality of arms" from a theoretical and practical perspective, doing special emphasis on its application within the legal framework of the Republic of Azerbaijan.

DEVELOPMENT

The analysis of the concept of the term 'equality' and the principle of equality.

Several approaches have been taken to the idea of equality throughout history. These distinctions were due to more than just individual worldviews, they were also a result of how different sciences were viewed as being equal. For instance, quantitative equality will be regarded in the absolute sense if we are discussing equality in mathematics. The concept of equality gradually transforms from a precise and positive value into a positive degree based on ratio when it is applied outside the realm of exact sciences. Several viewpoints, such as property of equality and formal equality, might show equality in the law. We are focusing on formal, legal equality.

Before examining each term, we consider it appropriate to focus on the accepted meaning of that expression. The concept of "equality" is explained by Black's Law Dictionary as follows:"The condition of possessing the same rights, privileges, and immunities,and being liable to the same duties" (Garner, 2009). Before moving on to the comparison, let's pay attention to the explanation of the concept of "equity" reflected in the same legal dictionary:"In its broadest and most general signification, this term denotes the spirit and the habit of fairness, justness" (Garner, 2009).

The Azerbaijani language does not have the full meaning of the word equity, fairness is the most common translation. This is the situation, when the distinction between equality and equity becomes clear. The second definition obviously has a broader meaning than the first. It is also conceivable to draw the following conclusion: If the standards of honesty, fairness, and equality have been met, then the assertion of equity has also been met. Contrarily, it makes little difference if honesty, equality, or fairness are upheld if the equity criterion is broken. In English, there are many words that can be used to describe justice, including fairness and justice. In our opinion, the word equity also stands out for its inertia and deep meaning.

Particularly in the twenty-first century, when the expression "equality" is brought up, people have a tendency to concentrate more on the disparity of previous eras. For instance, there were more instances of racial profiling in the previous century than nowadays. Due to this, we frequently audible statements like "People are equal regardless of factors such as ethnicity, religion, sex, etc ...", when discussing equality in the law context. Although we have nothing against this approach, we assume that focusing just on factors like ethnicity, religion, and social connection excludes procedural equality. We join Supeno's idea,

an Indonesian author, claims that the concept of "equality before the law" encompasses both the formulation of materialistic norms (in abstracto) and the administration of justice (in concreto). He points out that the injustice is resulting from an imbalance between the statuses of the parties and the legal norms means rejecting the development of ideal norms based on the pursuit of equality; as a result, the idea of equality and its fundamental values ought to be accepted in both senses (Donald et al., 2012, p. 72).

The right to equality is reaffirmed in Article 11 of the Criminal Procedural Code of Azerbaijan, which is a clear reference to Article 25 of the Constitution of the Republic of Azerbaijan (Milli Majlis of the Republic of Azerbaijan, 1995). "Authorities of the criminal process shall not discriminate against any of the persons involved in the criminal process, regardless of their citizenship, social, sexual, racial, national, political and religious affiliation, language, origin, property status, service position, or belief. It also does not give priority regardless of residence and location, and due to other considerations not justified by law", as stated in Article 11.2 of the CrPrC. The Republic of Azerbaijan's Criminal Code contains similar language patterns. Referring to Article 11 of the CrPrC, the emergent meaning jumps out as being more substantive than procedural, despite the fact that the norm is progressive.

We believe that this is where the first problem with the principle of equality in the procedural sense originates. If we seek equality only in the substantive sense, we will not be able to achieve the goal envisaged. At this point, it would be appropriate to make such a distinction - equality between persons belonging to the same category with the same legal status in the procedure and equality of subjects with different status belonging to different groups. Maria Fedorova calls such cases of equality formal (between subjects of the same status) and material (between 'the stronger' and 'the weaker') equality, respectively (Kübra, 2021, p. 11). According to Fedorova's classification, we can conclude that the first is what is envisioned by Article 11.2 of the CrPrC — the equality of people with the same status. The following example's analysis is suitable under certain conditions:

> A 60-year-oldmale, white, member of the Y party named A and a 34-year-old blackf emale, member of the X party named B were brought into investgation as suspects by the law enforcement agencies. They share the same status, as shown by the example, but are different in other categories (age, skin, political party and gender).

In this example, it would be illegal to discriminate against A and B, who have the same status. For example, A is subjected to torture, illegal actions, etc., just because he belongs to party Y, which X is opposed to. However, the understanding of the concept of equality among persons of different status is relatively different. Is it worth talking about equality in the procedural sense if, on the one hand, law enforcement agencies are given broad powers, and on the other hand, the rights of the defense side are not adjusted to those powers? James Whitman points out that an official or a group of officials has a number of discretionary powers, which affect the fate of the individual. The abundance of such discretionary powers is a threat to equal treatment (Ilic, 2018, p. 122). One of the most important issues mentioned in theory of law is the balance of rights and duties. The fact that one side has broad powers, while the other side has rights and duties that depend on the will of the authorities, leads to the possibility of violation of the principle of equality of arms in practice.

The principle of equality of arms is closely related to the principle of adversarial between the parties. The absence of one of them means the absence of the other. From a logical point of view, the fact that the ability of one of the parties to present arguments and to defend itself depends on the other party means the ability of one of the parties to dictate their own opinions, which in this case shows the absence of such balance, that is the basis of the adversarial. The form in which the adversarial is held and the formation of the system of rights and duties are determined by the types of criminal procedure the state has. The differences underlying the historical forms of criminal processes express the approach to the participants of criminal proceedings.

It is shown in the literature that there are 4 historical forms of the criminal proceeding: accusatorial, inquisitorial, adversarial and hybrid types (Samandarov, 2015, p. 29). In West literature , the accusatorial form is accepting also as an adversarial form (Law, 2022; Thaman, 2023), but in Azerbaijan the approach is different. Among them, adversarial and inquisitorial forms stood in opposition to each other. Thus, the proper balance of rights and responsibilities can be seen between the parties in the adversarial form.In every case, the defence and accusatory sides are considered equal from the prism of the principle of equality of arms. Another form (inquisitorial) makes the legal defence virtually impossible. The state body that managed the criminal prosecution was seen as having delivered "justice". The search/inquisition form is undertaken during the pre-trial stage of the criminal procedure, and the principle of adversarial is implemented in court, despite the fact that the mixed form includes the characteristics of these two ones.

The criminal justice system of the Republic of Azerbaijan is thought to operate in a hybrid form (Samandarov, 2015, p. 31). This has ties to historical development. Although the union-member republics gained their independence, certain people's perceptions of the inquisitorial nature of the criminal procedure during the Soviet era are said still exist today (Purwadi et al., 2022, pp. 438–439). This condition may have been tolerable during the early years of independence, but to solve the issue, more effective theoretical and practical measures need to be done. The Soviet conceptions attempted to avoid the term "equality of arms", explaining the imbalance between the process parties under the guise of distinction, which reveals a negative attitude towards the principle of adversarial. The Soviet era demonstrated that it was impossible to implement the idea of equality of arms between the accusatory and defense sides because the procedural statuses of each party could not be balanced. We shouldn't lose sight of the fact that the Soviet/communist theory required excessive control over society. Therefore, the Soviet state security services and other persecutory organizations had a significant impact on society.

The role of the European practice, including the European Court of Human Rights, in understanding and applying the principles of procedural equality and conflict should be especially noted. For example, Article 6 of the European Convention on Human Rights, dedicated to the right to a fair trial, also includes procedural guarantees. It is interesting that the expression of the principle of equality of arms is not included here. Nonetheless, despite being absent from the Convention's language, the principle of equality of arms is emphasised in court decisions and is seen as an autonomous component of a fair trial, according to Fatbardha (2018, p. 97). The concepts of equality and conflict, as well as their significance and implications, are also reflected in the decisions of the ECtHR. Let's mention a few of them:

- In Neumeister vs. Austria, the court considers the principle of equality of arms as a component of independent and impartial judicial activity.
- In Koupila vs. Finland, the court stated that the provision of documents is likewise covered by equality of arms. Sending papers to one party while denying access to the other is unlawful.
- In Otto BV vs. Postnbank NV, the court demonstrates that the accused party's right to remain silent stems from the equality principle. Silence, however, is only permitted during criminal trials.
- In Kress vs. France case, the court considers that the prosecutor's joining and voicing his opinion while the judge is in the consultation room violates Article 6.1 of the Convention.

Potential solutions for the problem

It should be emphasised that, both the violation of the equality principle and others cannot be resolved at the same time, because they did not appear suddenly. The Baltic states as well as the post-Soviet countries that later joined the movement and decided to take the path of Europeanization, such as Georgia and Moldova, are operating to comprehend the root causes of the issues and, as a result, to identify potential solutions in order to improve their legal systems. Azerbaijan, which has chosen its own route for development, is taking the necessary precautions to ensure that the values of equality and adversarial resolution are upheld throughout the criminal justice system.The possible remedy itself entails modifications in both theory and practice. Our opinion is that the following order would be appropriate:

1. Continuing the process of democratization in the state.

The higher the democratic values, the more people's understanding of the current situation and the development of legal thinking are freed from obstacles. It would be appropriate to draw attention to the fact that in Soviet or other socialist states where the democracy index was very low, it is not worth talking about the actual existence of the principle of adversarial (de Witte, 2010, pp. 32–35). Because one of the criteria taken into account when calculating the democracy index is the rights and freedoms of civils (de Witte, 2010, p. 10). The fact that rights and freedoms remain only on paper is what lowers the index.

Many rights and duties of the defense side are reflected in the Criminal Procedural Code of the Republic of Azerbaijan. For example, article 90 of the CrPrC states that a suspect has the right to know what he is suspected of (90.7.1). However, in some cases, this right of a person is not declared thoroughly and fully, and he does not actually know the grounds of suspicion in totality. Also, even if it is not known in the case of a specific norm, in this direction (why they suspect it), the existence of cases where the questions are sometimes not answered at the necessary level by the appropriate authorities, causing that the principle of equality of arms not to be fully satisfied, and in the end, the democracy index decreases, including for similar reasons.

2. Focusing more on the term "law/legal" than "statute/legislation".

We think that this theoretical problem still is actual, because a number of authors in most of post-Soviet countries, including Azerbaijan, often use expressions such as

"reflected in the statute/legislation" and "statutory" when they give different explanations or try to give a definition. There is no doubt that criminal procedural laws are important, they provide for the course of the criminal process in one form or another, and the resulting relationships. However, in our opinion, it is not correct to focus only on the expression "statute". Here we have to touch on the ratio of law and legislation. A legislation act/statute that is not based on the principles of law and has no enforcement mechanism is nothing more than a slogan. From such a theoretical and practical point of view, it is not enough to base slogans that do not have a guaranteed mechanism of realization. With the development of social relations in society, the laws should be evaluated by the members of the society, especially the lawyers, through learning their positive and negative aspects and should be improved from the point of application. Here we face the distinction between natural law and positivist law. We believe that parallel to the positivist approach, fundamental values of law and accepted theoretical concepts should not be ignored.

3. Balance of the authority of one party with the possibility of legal protection of the other party.

The fact that law enforcement agencies have broad powers and are practically free to accept/reject the evidence and any application of the defense side, constitutes of the basis for both current and future problems. In Czechoslovakia (now the Czech Republic and Slovakia), Hungary, and some of post-soviet countries, where law enforcement agencies once had a strong position, the replacement of the previous era by the new era did not reduce the authority and influence of law enforcement agencies to the community. On the contrary, in the renewed legal system, their role, duties, and standards of activity are improving, and their influence is maintaining itself (Abbasova, 2015, p. 13).

4. Independent and powerful court system.

When comparing the continental system and the Anglo-Saxon system, it becomes clear that the role of courts and judges is different. First, in the continental system, they do not have law-making competence, except for the Constitutional Court, in countries of the romano-germanic system, such as Azerbaijan, Russia, Germany, and Turkey. Secondly, the role of the court in all types of cases in Anglo-Saxon countries differs significantly from that order existing in the continental system. Excluding the stage of the court hearing, the judge becomes "an active referee" in addition to considering the claims of the accusatory and defense sides (Favarel-Garrigues & Shukan, 2019, p. 25). In Anglo-Saxon countries, it is observed that judges remain as "passive referees" in these matters, contenting themselves only with the evidence of the parties.

Regardless of which legal system it belongs to, an independent and strong judiciary acts as an effective factor in combating violations of the principle of equality. Despite the fact that the court is a neutral body, its powers should be clearly increased at the pre-trial stage. Because it is possible to regulate the serious and obvious procedural superiority of law enforcement agencies at the pre-trial stage by expanding the powers of the court as a neutral subject. For this purpose, it is appropriate to make changes in the criminal procedural law. Changes, for example, can be related to the application of procedural coercive measures. For example, the Criminal Procedure Code of the Republic of Azerbaijan does not consider detention as a restraint measure. However, in essence, the detention is too similar to a restraints measure, because it contains all its signs and features. We can see that the condition, which is mentioned in the Article 7.0.38 of the CrPrC is also suitable for detention.

From this point of view, we do not consider such separation reflected in the law as successful. On the other hand, in contrast to restraint measures, law enforcement agencies are more autonomous and have wider powers. In this part, we believe that increasing the role of the court would be the right step, and we think that it is appropriate to apply the detention to court supervision. Simply, the authority of the judiciary should be raised to the necessary level in this field so that it can fight the problems we have mentioned. This position can be unambiguously applied to the problems of the ratio of powers and duties of criminal prosecution bodies to the stage of judicial review.

One of the issues that is important to emphasize is the responsibility for violation of the principle of equality of arms. Thus, although Article 154 of the Criminal Code of the Republic of Azerbaijan is called "Violation of the right to equality", it is clear from the disposition of the article that we are talking about the right to equality in the material sense. The article states: *"154.1.Violation of a person's right to equality by harming the rights and legal interests of a person, depending on his/her race, nationality, religion, language, gender, origin, property status, service position, belief, affiliation to political parties, trade unions and other public associations - in the amount of one thousand to two thousand manats shall be punished by a fine or correctional work for up to one year"*.

There is no provision and sanction for the violation of the right to equality in the procedural sense envisaged in this legal norm. It can be thought that relevant norms are reflected in the "Crimes against administration of justice" chapter, which includes articles 286-307 of the Criminal Code regarding the violation of the right to procedural equality. However, if we look at that chapter, public relations arising

from justice as the main object of crimes, and preliminary investigation relations, life and health of the witness etc., depending on the nature of the crime, perform as an additional object. It appears that the right and/or principle of equality of arms is not an object of these crimes.

It is necessary to determine the generic and type of the object of the deed that violates the right to procedural equality and is considered a crime. Thus, the generic object is same-genetic public relations due to its economic and socio-political content, and is protected by complex of criminal law norms in interaction with each other (Fatbardha, 2018, pp. 142–143). The type of object is in communication with the generic object. The relationship between them is the basis of division for the chapters of the special part of the criminal code in force (Fatbardha, 2018, p. 143), being related to the relationship between the concrete and the general.

The type objects of crimes reflected in the chapter that includes Article 154 (violation of the right to equality) is the relationship arising from the implementation of the rights and freedoms reflected in the Constitution. Therefore, the main object of the crime in Article 154 is its relationship with the implementation of the right to equality reflected in the Constitution. The Commentary of the Criminal Code states that the object of this crime is related to the right to equality reflected in Article 25 of the Constitution [8, p. 538]. As we emphasized above, Article 25 is the establishment of the right to equality in the sense of material law.

The type of object of crimes against justice are the relations at the sphere of the administration of the justice. Although the principles of justice are regulated by the Constitution of the Republic of Azerbaijan, the main difference from the chapter on crimes against constitutional rights and freedoms lies in the object. When looking at what was written about the object of these crimes in the commentary, none of them included the principle of equality in the procedural sense (equality of arms) (Samandarov, 2018).

Justice is administered in accordance with the principles of equality and adversarial, as stated in Article 127 of the Constitution of the Republic of Azerbaijan. We believe it is more accurate to interpret the phrase equality in the norm "Justice is administered on the basis of equality of citizens before the law and the court" (Milli Majlis of the Republic of Azerbaijan, 1995) stated in Part IV of Article 127 as a unity of procedural and material senses.If we return to the article of the Indonesian author, equality before the law and its values are a set of contents in abstracto and in concreto (Donald et al., 2012, p. 72). Therefore, the Constitution establishes the existence of the right to equality of arms.

However, a parallel analysis of the Constitution and CrPrC reveals a number of interesting points. So that:

- Article 125 of the Constitution uses the phrase "criminal justice" or "criminal proceeding at court"(in original '*cinayət məhkəmə icraatı*').
- Article 127 of the Constitution establishes that "court proceedings are based on the principle of adversarial".
- In the text of the Criminal Procedural Code, the term "criminal proceedings" (in original '*cinayət mühakimə icraatı*') is used, in particular, the goals mentioned in Article 8 are called "tasks of criminal proceedings".

From the fact that the Constitution and the CrPrC use similar but different expressions, it can be concluded that "criminal court proceeding" include only the trial, while "criminal proceeding" also includes the preliminary examination, investigation and etc. The content of Article 8 of CrPrC also gives us a chance to assert this issue. On the other hand, the application of the principle of adversarial in Article 127 to court proceedings does not prohibit providing this principle on the stage of pretrial. It is our intention to maintain and balance the balance between the parties at the preliminary examination stage, therefore it is important to apply the principles of adversarial and equality of arms at that stage. Here, in our opinion, it would be appropriate to refer to the decision of the Constitutional Court of Turkey dated May 25th, 2017, as these two principles are the active participation of the parties in the entire justice process, the ability to voice their opinions, and 'not to be weak' compared to the other party (weak in the sense that legal opportunities are insufficient - ed. from the authors) is so important (Samandarov, 2018). Apparently, the Constitutional Court of Turkey, following the position of the European Court of Human Rights, evaluates justice as a "whole process" and does not divide it into stages such as pre-trial and/or trial. Taking this position into account the Constitutional Court of Turkey, among these legal guarantees is also included to be acquinted with the evidences under protection and research it by the defense side (Constitutional Court of Turkey, 2017, p. 300).

Considering the four abovementioned court cases and the need to prevent the violation of the two principles, we believe that the intentional violation of that principles should be criminalized. We consider it acceptable to make such an addition to Article 154 of the Criminal Code of Azerbaijan:

- "154.1-1. Deliberate violation of the principle of adversarial justice and the right to equality before the law and the court not causes serious consequences is punishable by a fine of one thousand to five thousand manats or imprisonment for a term of up to 3 years.

- 154.1-2. If the deliberate violation of the principle of adversarial justice and the right to equality before the law and the court causes serious consequences, it is punishable by a fine of five thousand to twelve thousand manats or imprisonment for a term of 3 to 6 years".

CONCLUSIONS

Ensuring the principle of equality in the criminal process is necessary to spread the fairness on the whole stages of criminal proceseding. It is also clear from the experience of the European Court of Human Rights that the ECtHR considers different aspects of the process separately, but considers it as a whole continuous activity. As a logical continuation of such an approach, we can conclude that the principle of equality is an integral part of the principle of justice in the criminal process. We should stress that our research yields a single result. Hence, we value enhancing the judiciary's authority and involvement in the preliminary inquiry phase, advancing the state's democratization-focused reforms, and assessing what we have said as a potential remedy for the current issue. In particular, the proposed amendment to the Criminal Code is required to maintain fairness of justice.

Violation of the principle of equality can lead to primary consequences, such as not solving the case correctly and achieving objective truth, as well as it can lead to secondary consequences in societies where law enforcement agencies have a special weight. Also, the point repeatedly emphasized in the article is that the principle of equality is not limited to material meaning only. Our ideas regarding the broader interpretation of the raised problem and the improvement of the law will be substantiated in next studies.

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