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OBJECTIVES

OF THE CRIMINAL PROCEDURE AS A SECURITY OF HUMAN RIGHTS AND FREEDOMS

OBJETIVOS DEL PROCESO PENAL COMO GARANTÍA DE LOS DERECHOS HUMANOS Y LAS LIBERTADES

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ABSTRACT

The goal of this article is to discuss the place and role of the new Criminal Procedure Code of the Republic of Azerbaijan in the country's legislative system. For this, it should be defined in accordance with the goals of the criminal procedure. During the research the characteristics of the evidence have been and additionally, it as explained its place and role in the legislative system based on the goals of criminal proceedings. As the new document is a sectoral normative legal act of this field of law, it reflects the basics of criminal proceedings; so due to this feature, it can be said that it has a very important place within criminal procedural legislation. However, the role it plays in the general legislation of the country should be approached based on the goals of criminal justice. Our research suggests that these objectives of the criminal process are to ensure justice, protect human rights and individual liberties, guarantee a fair trial, prevent state abuses, promote procedural fairness, determine the truth, punish guilty parties proportionately, respect the presumption of innocence and ensure the active and transparent participation of all parties involved.

Keywords: Criminal-Procedural Code, Legislation System, Human Rights, Justice

RESUMEN

El objetivo de este artículo es discutir el lugar y el papel del nuevo Código de Procedimiento Penal de la República de Azerbaiyán en el sistema legislativo del país. Para ello, debe definirse de acuerdo con los fines del proceso penal. Durante la investigación se han señalado las características de la prueba y adicionalmente se ha explicado su lugar y función en el ordenamiento legislativo en función de los fines del proceso penal. Como el nuevo documento es un acto jurídico normativo sectorial de esta rama del derecho, refleja los fundamentos del proceso penal; por lo que por esta característica, se puede decir que ocupa un lugar muy importante dentro de la legislación procesal penal. Sin embargo, el papel que juega en la legislación general del país debe ser abordado con base en los fines de la justicia penal. Nuestra investigación sugiere que estos objetivos del proceso penal son asegurar la justicia, proteger los derechos humanos y las libertades individuales, garantizar un juicio justo, prevenir los abusos estatales, promover la equidad procesal, determinar la verdad, sancionar proporcionalmente a los culpables, respetar la presunción de inocencia y asegurar la participación activa y transparente de todas las partes involucradas.

Palabras clave: Código Procesal Penal, Sistema Legislativo, Derechos Humanos, Justicia

INTRODUCTION

Jescheck & Norton (2023) define criminal law as the body of law that establishes the definition of criminal offenses, governs the detention, accusation, trial of suspects, and specifies the punishments and forms of treatment that apply to those who are found guilty. According to the conventional view of criminal law, a crime is an action that is immoral, and threatens the good functioning of society. Then, criminal punishment was to be meted out proportionately to the guilt of the accused in order to make the offender pay for damages caused and atone for his moral guilt. However, since the application of the law must take into account the protection of fundamental rights of all parties involved in the penal process, including the rights of prisoners, more pragmatic and rational viewpoints are used in modern times (Gasser, 2009; Pinto, 2018).

In this regard, fundamental human rights are basic rights that are inherent to all human beings, regardless of their nationality, race, gender, or any other status. These rights are recognized and protected by international law, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Among them, we can highlight: the right to life, freedom and security of the person, the right to freedom of thought, conscience, and religion, the right to freedom of expression, work and education, and health and social security (United Nations, 1948). McCrudden (2008) indicates that the concept of human dignity plays an important role in the context of human rights, including judicial processes. Dignity has been invoked in a number of arenas, from the civil rights movement to the ethics of biomedical research. It has been used as a moral basis to attack global poverty and has been a central issue in discussions of reproductive rights and genetic manipulation, among other topics.

Volkov et al. (2021) suggest that contemporary criminal law is faced with challenging times. A new paradigm is needed to reflect the chaotic ways in which the criminal law has changed, creating new realities and policies (Simester, 2021). Today, it may be said that numerous criminal law revisions, the majority of which lack objective justification, have turned into a contemporary flaw in criminal law policy. No one contests the fact that the criminal code, as a codified regulatory instrument, should never become a rigid dogma and always calls for certain modifications. Any adjustments, though, ought to be brought about by measurable improvements in the standard of living as well as qualitative and quantitative shifts in crime rates. Furthermore, the analysis of highly critical phenomena, such as forced disappearances, conflictual

situations, and contentious politics, reveals enormous difficulties that inevitably lead criminal law to stretch its own boundaries while showing the need for solution models that cannot solely be reduced to punitive responses (Crespo et al., 2023).

Cliquennois et al. (2021) point out that the penal process is a crucial aspect of constitutional democracy, and it is essential to uphold the rule of law, ensure accountability for decisions taken by administrative bodies, and protect fundamental rights. Criminal procedure refers to the manner in which an individual, charged with an offence, proceeds through the criminal justice system. This is composed by several stages which typically are: investigation and charge, classification of offences, conviction and sentencing and appeals (Thomas, 2023). Then, to secure justice and defend people's rights, it is essential that the right to a fair trial be guaranteed during the criminal justice process. Presumption of innocence, the right to legal representation, an impartial judge or jury, the right to cross-examine witnesses, the prohibition against self-incrimination, the prohibition against arbitrary arrest and detention, the right to a speedy trial, and the right to appeal are frequently put into place to prevent arbitrariness in the criminal process (Clooney & Webb, 2020; Harris, 1967).

Considering the above, the goal of this research is to discuss the role of the new Criminal Procedure Code of the Republic of Azerbaijan in the country's legislative system. For its preparation, various bibliographic sources were consulted, which allowed the discussion of relevant ideas on the research topic, whose application is the basis of an adequate criminal procedure.

DEVELOPMENT

Before examining the place of the new Criminal-Procedural Code of the Republic of Azerbaijan in the legislative system, it is necessary to clarify the issue of what the legislative system is. The legislative system consists of a set of all normative legal acts in force in the country, if it is possible to say so, a set of them state-registered in a specified manner (Askerov, 2011). According to Part I of Article 148 of the Constitution of the Republic of Azerbaijan, the legislative system consists of the following normative legal acts: 1) Constitution; 2) Acts adopted by referendum; 3) Laws; 4) Decrees; 5) Decisions of the Cabinet of Ministers of the Republic of Azerbaijan; 6) Normative acts of central executive authorities. In short, it can be noted that the legislative system of the Republic of Azerbaijan consists only of normative legal acts.

However, in Part II of that article, it is noted that the international agreements to which the Republic of Azerbaijan

is party, are an integral part of the legislative system of the Republic of Azerbaijan. Declaring such agreements as part of the legislative system is a new phenomenon in legislative practice. The adoption of this provision creates a wide opportunity for the application of international agreements, which are the main source of international law, by state authorities. Individuals and legal entities, as interested parties, can directly refer to the international agreements to which the Republic of Azerbaijan is a party, in resolving existing disputes between themselves or with state bodies, offices and organizations (Jafarov, 2013).

It should be noted that the concepts of legislative system and legal system do not coincide. The legislative system corresponds to the legal system and is a form of its manifestation. The element or unit of the legal system is the law. The element of the legal system is the legal norm. The *raison d'être* and main task of a legal state is to create and sustain a just and secure social structure based on human rights. Various means are needed to ensure this. One of these tools is the Criminal Procedure Code. In this sense, the new Criminal-Procedural Code of the Republic of Azerbaijan (hereafter CP), adopted in 1999, entered into force after the adoption of the Constitution as a normative legal act that establishes democratic values and international legal principles.

Gustav Radbruch in his "Philosophy of Law" tries to explain the essence of the goal in law and notes that although justice is a specific idea of law, this is enough for the development of the concept of law. However, the idea of law is not limited to justice alone; there is a dual reason that does not allow us to view justice as a single basis of legal norms relative to its content. Justice only determines the form of law. In order to explain the content of the right, it is necessary to use the concept of purposefulness. The question of justice should be raised and answered regardless of the expediency and, accordingly, the goals of the state. According to this approach, which made the state the subject of research for the first time within the framework of the issue of the goals of law, since law mainly expresses the will of the state, and the state is more of a legal institution, then the issue of the goals of the law and the goals of the state are inseparable (Radbruch, 2016). The logical conclusion from this approach is that the state creates its own legal system in order to realize its goals. The division of legal fields is the result of the realization of the goals of the state in various fields. Therefore, in order to understand the role of any normative legal act in the legislative system, it is necessary to analyze the essence of its goals.

According to Part VII of Article 125 of the Constitution, court proceedings must ensure the determination of the

truth. Of course, this requirement also applies to criminal proceedings. Various competent courts are guided by the rules established by the procedural norms when administering justice (Jafarov, 2013). It is clear from here that the criminal-procedural legislation, especially the new CP, has an important role in terms of meeting the requirements of the constitution.

In general, along with the emergence of the polarization of rulers and ruled in human societies, the idea of the state has also emerged. The ever-increasing population has brought with it conflicts and instability. People need a state institution to feel safe and secure and to ensure the protection of their rights. Thus, one of the most fundamental functions of a political institution called the state is to ensure stability and justice in society. For this reason, throughout history, states have created their own judicial mechanisms to ensure public order and thus maintain public trust in the state.

Criminal justice occupies, perhaps, the most important place in the judicial systems of states. Because a large part of the actions that form the basis of the debates about criminal justice are at a level that threatens public safety. For this reason, in our modern era, especially in continental Europe, the principle of publicness (statehood) of criminal cases regarding the opening of criminal cases is valid. According to this principle, as a rule, the prosecution, which is a state body, opens the criminal case and represents the prosecution on behalf of the state during the trial.

Criminal procedural law, like other areas of law, reflects the constitutional structure and general political situation in a country. In this field of judgment, the struggle of two people with opposing interests, who seem difficult to reconcile with each other, is a matter of controversy. One of them is individual benefit related to personal freedom, and the other is public benefit related to the general security of the state and society. From this point of view, modern criminal justice rules make an assessment between the interests of the parties involved in the process and based on constitutional principles, on the one hand, they give the prosecution the necessary opportunities to discover the material truth, and on the other hand, they ensure the minimum rights of the accused.

Determining the goals of the criminal process, which is so closely related to the lives of individuals and society, is of great importance in determining the nature of the criminal justice system in the country, as well as the place of the norms regulating this field of law in the country's legislative system. In modern criminal justice, it is aimed to give a correct and fair decision both from the point of view of

substantive law. Achieving the truth and giving the criminal the punishment, he deserves are two important goals of criminal justice. A functional criminal justice system is also needed so that the criminal can be punished with a fair punishment (Karakehya, 2007).

If in the ancient times of law, punishing the criminal was a duty of the victim or the group to which the victim belongs, in modern times, the duty of punishing the criminal belongs only to the state. Thus, the "idea" of power, which includes the power to punish, is one of the most important features of modern states and an indicator of power. If we look at the issue in another way, it is clear that any person who is harmed by a crime is not allowed to directly punish the perpetrator of this act, so punishing the criminal is not a defined right for the state, but a duty assigned to it.

When defining procedural norms in order to regulate criminal procedural activity, the legislator must protect the fundamental rights of the accused and other persons participating in the process, and on the other hand, create conditions for effective prosecution of the accused. For this reason, the use of the power of punishment in the hands of the state is an activity that must be balanced with the principle of the rule of law. In modern criminal proceedings, the accused person is innocent until the judgment becomes legally binding, and his rights can be limited only to the extent necessary for the implementation of criminal proceedings. In order for the state power to be implemented in the criminal process, the interference with the basic rights of the accused should always be in accordance with the principle of proportionality.

Due to the fact that the modern criminal justice, based on the mentioned principles, includes more than one purpose, it is somewhat difficult to definitively show the goals of this branch of justice. Thus, the whole formed by these goals has a mixed structure, and the goals can sometimes conflict with each other in an event. In cases where this struggle appears, a balance between goals should be ensured and one of these goals should be given up as necessary (Karakehya, 2007).

Analyzing the history of criminal justice development, it becomes clear that this field of law has mainly pursued 3 different goals during the historical period. Initially, to ensure stability in the society, no distinction was made between the accused and the guilty, and the guilt of the accused was assumed beforehand. Since the idea of protecting the society is at the center of this concept, the main purpose of the criminal trial was defined as revealing the guilt of the accused person. However, with the beginning of the Enlightenment period, this understanding also changed. The main idea at the heart of criminal justice at

this stage was to prevent the misuse of state power and to protect individuals against the arbitrariness of judges. For this reason, during the trial, the accused was accepted as innocent from the beginning. As a result of this understanding, the new purpose of the trial has also changed to reveal the innocence of the accused. Modern criminal justice has abandoned both concepts, as the first concept considers the goal of protecting the society as a whole, and the second as the goal of protecting the accused person as a whole.

If we state the purpose of modern criminal proceedings in a general way, it is to reveal the material truth without harming the basic rights of the persons involved in the process and to achieve a resolution of the dispute in this regard. However, if we analyze the issue in some detail, we will see that there are 3 important basic goals of criminal justice:

1. to reveal truth.
2. ensure justice.
3. obtaining and maintaining a legal settlement.

There are different limits to the goal of achieving material truth. The judgment that will be given as a result of the judicial proceedings must be in accordance with both the procedural legal norms and the material truth. Based on the idea that a decision made not only in accordance with the material truth, but also in accordance with the procedural rules can be fair, it was stated that the purpose of criminal proceedings is to ensure justice as a result of a trial according to the rule of law (Çer, 2019). We agree with this idea. The objective of ensuring justice is interrelated with the objective of uncovering the material truth. However, the discovery of the material truth by any means does not mean that justice is ensured. The judgment that will be given as a result of the trial must be both true and fair. Although the material truth was revealed as a result of judicial activity in which the rights of the suspect or the accused were not expected, and procedural norms were ignored, it is certain that this result does not serve to ensure justice.

In the criminal proceedings, first of all, the material truth must be discovered, and all the important features from the point of view of material criminal law must be proved separately. Material truth is the state of an event that happened in the past that has been revealed today with the help of means that represent it, i.e., evidence (Karakehya, 2007). Evidence means any means of proof that allows the judge to come to a conclusion about whether an action, legal event or action that is the subject of a dispute in a crime, and allows the use of procedural legal norms (Karabulut, 2015).

In criminal proceedings, the judge makes a decision based on his inner conviction. The term “internal belief” refers to the opinion of the body authorized to resolve the dispute, guided by its judgment as a result of the judgment performed at the meeting, and within the rules required by the law, which does not leave room for any doubt in its thinking about the nature of the occurrence of the material event. Obtaining definitive information means discovering the absolute truth. An absolute truth is a truth whose opposite cannot be accepted in any way, and any different possibility is denied. From this point of view, since it is not possible to definitively destroy every imaginable doubt, the internal belief of the court not necessarily will be formed in relation to the material truth. Material truth can only be discovered with the help of evidence that reflects it. Since it is not possible to go back in time, the only way to find out how the event, which is of interest to the criminal law and therefore the criminal process, took place is to benefit from the help of the traces left from the event, like documents and witnesses related to the event.

The third section of the new CP is entirely devoted to evidence and proof. The definition, types of evidence, their acquisition, verification, evaluation, possibility, etc., in short, the reflection of procedural norms related to evidence in the new CP indicates that the CP occupies an important place in the country's legal system. Evidence, by its very nature, has a certain form and content as information that reflects certain circumstances. The form of evidence is the information of this or that person, change of objects, traces on objects, etc., it reflects the means of availability of information about individual cases of work. The form of evidence is the legally prescribed sources of information about the facts relevant to the case (Huseynova, 2008).

There are several signs of evidence that help us re-describe an event that happened in the past:

1. the evidence must be genuine. What can be proved must form part of the truth and thus be learned by our 5 senses. Evidence such as statements and documents have this feature.
2. Evidence must be logical. But evidence may be that which may reasonably express the truth. Therefore, it is imperative that what can be evidence is rational and scientifically acceptable.
3. However, the evidence related to the features that need to be proved is important from the point of view of proof. There is no need to examine useless evidence.
4. The evidence must be of a nature that can represent the event. The purpose here is that any means to be used as evidence is a part of the event and (or) reflects the event. Evidence of something that does not represent a part of the event is irrelevant. The first condition

for representation is that the evidence is reliable. This is determined by the judge. Even if it represents the event, the evidence that does not correspond to reason, science, truth and law cannot be considered as a means of proof.

5. Evidence must be legal. This is the most important feature that a proof must have. Even evidence with the above-mentioned features must be legally obtained in order for it to be significant in terms of criminal proceedings. Therefore, it is necessary that the means of proof used to prove an event are legally acceptable. In other words, the “principle of freedom of evidence” in criminal procedural law is not unlimited (Koca, 2006).

Under criminal procedural law, there cannot be a conviction without evidence; there is a principle of “freedom of evidence” in criminal procedural law. This principle means that anything can be evidence in a criminal trial that examines the material truth. On the other hand, the judge, based on his inner conviction, freely determines whether the things presented as evidence will be evidence, that is, their value as a means of proof. This is called the principle of “free evaluation of evidence”. The court can use only “reliable” and “legally obtained” evidence when passing a sentence (Yenisey, 2007). The purpose of legally obtaining evidence is that it was obtained by observing the conditions established by law (Demiragh, 2007).

If the judge was able to dispel the doubt about the dispute with the help of evidence, he reached inner conviction and thereby discovered the material truth. Therefore, if the accused person has committed the act for which he was accused, the court will determine which article of the criminal law the act violates, and the accused person will be punished with the punishment stipulated in the sanction of that article. If the accused person did not commit the act for which he was accused, he is acquitted. But in some cases, even after the evidence examined during the hearing, the judge may not form any inner conviction. However, in such cases, according to the principle of “benefit of the doubt”, all doubts should be interpreted in favor of the accused.

In modern criminal proceedings, a collective action is taken between the prosecution, the defense and the court in trying to achieve the material truth. The method of collective judgment is a contradiction method, which means that the people who will participate in the process can express their thoughts mutually, so that the subjects can learn each other's thoughts and think together. But this kind of contradiction reminds of an “exchange of ideas” (Karakehya, 2007). It is important to note that the main goal of criminal procedural law and the law constituting its

external expression is to achieve the truth without violating human rights. Another important goal of criminal proceedings is to ensure justice, and in the most general sense, justice can be expressed as the realization of rights.

Modern criminal justice based on the principle of the rule of law should investigate the material truth within the boundaries defined by the law, and after discovering the material truth, it should resolve the issue in the form provided by the law. From this point of view, the goal of ensuring justice of the modern criminal trial means both the legal execution of the trial period and the resolution of the issue in accordance with the existing legal rules at the end of the trial. A fair decision at the end of the trial depends on conducting the trial in accordance with the norms. Thus, it is impossible to investigate the material truth, regardless of the consequences, and to accept every way to reach it.

Because mechanisms for the prosecution of criminals interfere with people's lives and rights, people need effective protection from disproportionate and unnecessary interference. In response to this need, the minimum guarantees of the rights provided by the Constitution are regulated comprehensively in the country's criminal procedural legislation and the forms of realization are determined. This way, for example, according to Article 1 of the Criminal Procedure Law of Latvia, the purpose of the Law is to determine the rules for the effective application of the norms of the Criminal Law and the fair regulation of criminal proceedings without unreasonable interference in the life of a person. On the other hand, Article 1 in Criminal Procedure Code of Georgia states that the purpose of the code is to determine the rules of criminal prosecution, investigation of crimes and justice.

Several authors have noted that the criminal process is clearly part of the state's response strategy to crimes. The state's crime-fighting strategy has many preventive measures, including since education to police custody. From this point of view, the criminal process is used in a narrower sense. Thus, it is simply a mechanism that allows the state to apply criminal law to its citizens (Ashworth, 2010). It follows from here that the criminal process and the legal acts regulating it act as the basis of the fight against crime in the legislative system of the state, in the implementation of the state strategy, as a guarantor of the protection of public safety and are of great importance for the stability of the state.

CONCLUSIONS

Article 1 of the Criminal-Procedural Code of the Republic of Azerbaijan defines the criminal-procedural legislation of the Republic of Azerbaijan. When we analyse the

directions of the criminal procedural legislation, we understand the importance of the role played by the criminal procedural legislation to ensure the highest goal of the state. In order to protect the rights and freedoms of people and citizens in a democratic society, state authorities must work reliably at the maximum level. As can be seen from the purpose of the legislation, it aims to protect people from violation of their rights.

The purpose of criminal procedural law is not merely to protect the rights of suspects or accused persons. Indeed, the main strategy prevailing in modern criminal procedural law is to establish a balance between the preservation of social stability and respect for the basic rights and freedoms of individuals, to discover the truth and to judge and apply fair sanctions in accordance with the principle of fair trial. The real goal of the mentioned strategy is to bring out the truth, but it is also an important condition to bring out the truth while observing the right to a fair trial. The criminal justice system should be built on this balance. Today, the main safeguards that will ensure balance in the country are not only in the Criminal-Procedural Code of the Republic of Azerbaijan, but also in the Constitution and international legal documents.

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