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## **PRESENTATION OF THE PRINCIPLE OF THE PRINCIPLES OF THE CONSTITUTION OF THE REPUBLIC OF AZERBAIJAN REPUBLIC OF THE REPUBLIC OF AZERBAIJAN**

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**Abstract:** It is known that in parallel with the change of social life, the values formed in humans change the essence of social relations. This, in turn, leads to certain changes in the form and nature of the criminal proceedings. Thus, opinions on the necessity of changing the legal norms ensuring the legal regulation of newly-arranged and modified issues are voiced. In this article, in this respect, the main advantage of being a legal-legal act is that it is operative, reacting immediately to the changes. The article analyzes the main trends of the constitutional-legal regulation of the criminal proceedings and sets out specific ideas for improving the legislation in this area. Criminal procedural law contains the legal norms regulating criminal-procedural legal relations. According to the theory of law, criminal-procedural legal relations can be viewed in two ways: broad and narrow. In the broader meaning of the legal relationship, the form of special social interaction is understood to have occurred objectively before the law. In a narrow sense, the word "legal relationship" is understood to be one of the types of social relationships that the law norms set.

**Keywords:** criminal procedure, judicial proceedings, justice, personality rights, procedural sanctions, procedural form, constitutional principles.

### **INTRODUCTION**

The principles of criminal procedure are significant and leading provisions that are reflected in the legal norms of criminal procedure law. In general, it should be noted that the principles of the criminal process - in contrast to other criminal procedural norms, a crime of a general and defining nature - are procedural norms, they acquire concreteness, accuracy of various institutions of the criminal process and more special

procedural norms related to its various stages. The principles of criminal procedure are important determinants for all procedural forms and institutions and reflect more significant features and aspects of criminal procedure. Based on the fundamental law of the state - the Constitutional basis and enshrined as the guiding rules of the criminal process, the principles of criminal proceedings, giving a special order to the existence of procedural relations, at the same time also dictate the main elements of the procedural legal status of the individual, in unity with other legal means express it in a clear form; First of all, it should be noted that during the definition of the principles of the criminal process, attention should be directed not only to the forced subjects of the criminal process - the settlement of legal relations between persons representing the bodies carrying out criminal prosecution, but also to the defense. Strategic regulation of procedural relations between senior officials and persons (citizens), regardless of their will, for one reason or another, involved in the sphere of criminal proceedings is also important. In this sense, the principles of the criminal process, first of all, should reflect on the basis of what rules or in what form the "appeal" is carried out by the state body carrying out criminal prosecution with the subject of the defense (4, p.21).

### **Criminal Procedure Law**

Criminal procedural legislation defines common for all subjects of criminal proceedings and specific rights and obligations for an individual subject. In the Criminal Procedure Code of the Republic of Azerbaijan, the status of all participants in the process, including the rights and obligations, are defined by their named separate articles. Almost all participants use the same method: their rights and obligations are listed point by point and the rights and obligations are not listed in these points, as defined in other provisions of the Criminal Procedure Code. The latter are reflected in the norms defining the principles of criminal proceedings and the provisions governing the individual stages of the process. But in general, as noted, the inaccurate number and environment of the principles prevents the creation of same-sexuality in the definition of the rights and obligations of the participants in the process. Thus, they are either indicated directly or expressed in another specific form, or proceed from the significance of the norms governing various procedures, investigative actions with the participation of the subject, etc. Now let us pay attention to the characteristics of certain principles of criminal justice. These are the principle of respect for the honor and dignity of the individual, the principle of ensuring the right to inviolability of a person's private life, the principle of the presumption of innocence, the principle of objectivity, impartiality and fairness of criminal proceedings, the principle of ensuring the rights and freedoms of man and citizen enshrined in the Constitution, a comprehensive, full and objective investigation of the circumstances of the case and principles of transparency in criminal proceedings.

As noted, the first of these principles is the principle of respect for the honor and dignity of the individual; this principle, like some principles, has a constitutional basis. Thus, in the 46th article of the Constitution of the Republic of Azerbaijan it is noted that everyone has the right to defend their honor and the dignity of the individual is protected by the state. Nothing can serve as a basis for humiliating a person's dignity. At the same time, in the third paragraph of this article it is noted that no one can be subjected to torture and torture. No one can be subjected to treatment or punishment that degrades human dignity (1). The noted principle is recognized as the natural rights of people. The honor and dignity of a person is considered the highest human value of law. In accordance

with the "Universal Declaration of Human Rights" of the United Nations of December 10, 1948 and the International Covenant "On Civil and Political Rights" of December 16, 1966, at the same time identified by the European Convention "On protection of human rights and fundamental freedoms", the right to respect personal and family life, it is noted that everyone has the right to protection of honor and dignity, nothing can serve as a pretext for humiliating the dignity of an individual. In criminal law, the object of a crime is directly the honor, dignity and business reputation of another person. Honor is a public assessment of a person, as a member of society, determined by moral, spiritual, cultural qualities, for the attitude towards other individuals, the state and society. Honor is a public assessment of a citizen, as a member of society about its social aspects, moral qualities. Thus, it became clear once again that the concept of honor is associated with the assessment of a person by society in terms of his spiritual qualities.

Even in the Plenary Resolution of the Supreme Court of the Republic of Azerbaijan "On the practice of application by courts of legislation on the protection of honor and dignity" dated May 14, 1999, it is noted that based on the fact that the right to protection of honor and dignity is a constitutional right to explain to the courts that interested persons, in order to protect their honor and dignity, can initiate a claim directly in court without first applying for a refutation in the media (7). It goes without saying that this principle must be ensured not only by the courts, but also by the authorities of the primary investigation. moral qualities. Thus, it became clear once again that the concept of honor is associated with the assessment of a person by society in terms of his spiritual qualities. Even in the Plenary Resolution of the Supreme Court of the Republic of Azerbaijan "On the practice of application by courts of legislation on the protection of honor and dignity" dated May 14, 1999, it is noted that based on the fact that the right to protection of honor and dignity is a constitutional right to explain to the courts that interested persons, in order to protect their honor and dignity, can initiate a claim directly in court without first applying for a refutation in the media (7).

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Another principle is to ensure the right to privacy. In connection with the significance of this principle, it should be noted that in the cases considered by the European Court of Human Rights against Azerbaijan, the violations revealed mainly come from non-compliance with the requirements of national legislation on the application of an arrest warrant in judicial practice, incorrect - on the basis of modern standards of interpretation of criminal procedural rules, and in some cases gaps and contradictions in the regulation of the application of an arrest warrant. The 1st paragraph of the 5th Article of the European Convention requires that any deprivation of liberty must comply with the purpose of the 5th Article, that is, it must comply with the purpose of the principle of protecting persons from arbitrariness. In this case, a significant issue is not only the "right of freedom" of the individual, but also the "right to immunity". A person "in respect of whom measures of deportation or extradition have been applied" and arrest falling under Article 1 (f) paragraph 5 in the case of Garayev v. Azerbaijan, the Court noted that in the absence of clear legal norms in the national legislation determining the imposition of a sentence of arrest, the terms of detention and the extension of this term "for the purpose of extradition", the deprivation of liberty of Garayev did not meet the standards of "quality of law" required by the Convention and, accordingly, this deprivation was considered a violation of paragraph 1 (f) of Article 5 (8). It follows from the above case

that the national legal system was unable to protect the applicant from unreasonable imprisonment, because there was no legal norm governing the procedure for detention before extradition, foreseeing the consequences in advance (6, p. 5).

### **Presumption of innocence**

The presumption of innocence is one of the important principles of criminal proceedings and it should be noted that this principle is also reflected in our Constitution. The importance of the presumption of innocence for the authorities carrying out the primary investigation - the investigator, the prosecutor, etc. lies in the fact that one of the requirements of the "presumption of innocence" during the conduct of a criminal case before the trial is a comprehensive and thorough investigation of the circumstances of the case. At the same time, attention should be paid to one issue that this principle provides broad rights of self-defense of the accused and the violation of this provision by the investigator or prosecutor, that is, the requirement to prove innocence from the accused contradicts the essence of this principle (for example, the requirement to provide an alibi. With regard to the presumption of innocence, the European Court of Human Rights on the existing issue has determined that members of the court, in the exercise of their powers, should not act from the position that the accused is guilty of the crime of which he is accused. In this regard, the right of the last word belongs to the court verdict. Due to the presumption of innocence, M.S. Strogovich notes that the significance of the presumption of innocence as an objective legal position is that innocent persons are protected from unfounded accusations and not be convicted without a complete, indisputable and without bias confirmation of guilt (2, p. 396).

Courts in court proceedings are obliged to consider court cases and materials related to criminal prosecution only on the basis of facts corresponding to legal procedures reflected in the appropriate form in the Criminal Procedure Code of the Republic of Azerbaijan, impartially and fairly. Naturally, we are talking about the principle of objectivity, impartiality and fairness of criminal proceedings. The criminal process is conducted in such a way that here at each current stage there is an opportunity to check the decisions made and the actions taken at the previous stage. This is an important condition for ensuring the interests of law and law. But the structure of the process or the stage structure does not answer the question of what and how exactly the interests of law and law are ensured. The fact is that every action and decision taken in the process can be appealed by the participants in the process, and it is the duty of the prosecutor or the court, in the presence of such a complaint or absence, to verify that the case has been comprehensively, fully and impartially investigated. It is this fulfillment of duty that characterizes the provision of this principle. It should also be noted that the rights and obligations inherent in the court allow for effective quality control of the primary investigation. In addition, we note that the impartiality of the court requires refraining from taking sides; impartiality, being subjective and objective, is divided into two categories - subjective impartiality is the personal impartiality of a judge, in such cases, the law provides for an "objection against the judge" mechanism. But the judge's biased attitude must be proven. Otherwise, the judge's attitude is considered impartial. And objective impartiality requires that there are no objective cases, facts that cause the judge's biased attitude. If such cases are present, then it is possible to consider the judge's objective bias in that case. For example, if the defendant has specific connections with the judge in charge of the case, then there is an objective bias. In national law and for such

cases, the opposition mechanism is used. The non-provision of an objection mechanism in national legislation for the European Court is a violation of fair judicial law (5, p. 140). the judge's bias must be proven. Otherwise, the judge's attitude is considered impartial. And objective impartiality requires that there are no objective cases, facts that cause the judge's biased attitude. If such cases are present, then it is possible to consider the judge's objective bias in that case. For example, if the defendant has specific connections with the judge in charge of the case, then there is an objective bias. In national law and for such cases, the opposition mechanism is used. The non-provision of an objection mechanism in national legislation for the European Court is a violation of fair judicial law (5, p. 140). the judge's bias must be proven. Otherwise, the judge's attitude is considered impartial. And objective impartiality requires that there are no objective cases, facts that cause the judge's biased attitude. If such cases are present, then it is possible to consider the judge's objective bias in that case. For example, if the defendant has specific connections with the judge in charge of the case, then there is an objective bias. In national law and for such cases, the opposition mechanism is used. The non-provision of an objection mechanism in national legislation for the European Court is a violation of fair judicial law (5, p. 140). facts causing the judge's bias. If such cases are present, then it is possible to consider the judge's objective bias in that case. For example, if the defendant has specific connections with the judge in charge of the case, then there is an objective bias. In national law and for such cases, the opposition mechanism is used. The non-provision of an objection mechanism in national legislation for the European Court is a violation of fair judicial law (5, p. 140). facts causing the judge's bias. If such cases are present, then it is possible to consider the judge's objective bias in that case. For example, if the defendant has specific connections with the judge in charge of the case, then there is an objective bias. In national law and for such cases, the opposition mechanism is used. The non-provision of the objection mechanism in the national legislation for the European Court is a violation of fair judicial law (5, p. 140).

Scientist M.A. Jafarkuliev believes that the principle of a comprehensive, complete and objective investigation of cases of a case combines three significant provisions of the criminal process.

A) Completeness - identification of all cases that are significant for the correct solution of the case;

C) Comprehensiveness - the creation and verification of all possible assumptions related to the case, verification of all cases and exposing and exonerating the accused, facilitating and aggravating his responsibility, crime - significant from the point of view of law, determining the incident under investigation as it really was, etc.

C) Objectivity - investigation of the actions of the case, how it was in fact impartial and accurate, and making a decision fully consistent with the revealed objective facts (3, p. 156-157).

We can conclude that, reduced to individual legal spheres, concretized and the conditions for the implementation of all fundamental human rights and freedoms determined by the Constitution, are also defined in the sphere of criminal procedure. The main features of these rights in the field of criminal procedure are that they are not directly exercised by the persons themselves by the participants in the criminal process; this requires the actions of the bodies carrying out the process provided for by law. Therefore, ensuring the rights of individuals in the field of criminal proceedings to a greater extent depends not on the personal initiative of the participants in the process, but on the activities of the bodies leading the process. In this regard, adherence to the

fundamentals of the application of procedural mandatory actions is the main condition for ensuring the rights of the individual. These foundations are provided for in Article 147, which defines the application of detention in criminal proceedings, coercive measures used for the production of procedural actions, as well as individual articles defining specific conditions for a coercive procedural action of the Criminal Procedure Code. From the point of view of ensuring the legal and legitimate interests of the persons participating in the criminal process, strict adherence to the procedures of the law when applying specific coercive actions is of particular importance. Following such procedures, on the one hand, if it leads to the desired result, on the other hand, does not exclude coercion, provides coercion to the extent that it serves the duties of criminal proceedings. Compliance with the law of procedural coercive actions applied against a suspect or an accused directly depends on the legality and validity of the suspicion or accusation brought against a particular person. The groundlessness of suspicions or accusations automatically makes procedural coercive actions unreasonable. Therefore, the procedural bodies should pay serious attention to the conduct of detention or arrest, which are characterized by special severity, otherwise there can be no talk of the principles of ensuring the rights and freedoms of man and citizen. Let's expand this idea a little, the principle of ensuring the rights and freedoms of man and citizen, reflected in the Criminal Procedure Code, is also the leading idea that ensures the fundamental right as a person - to be subjected to torture and ill-treatment, subject to inhuman punishment or punishment of those who degrade their dignity. Even based on the significance of this principle in *Aksoy v. Turkey* (18 December 1996).

## CONCLUSIONS

The openness of criminal proceedings proceeds from the Constitution of the Republic of Azerbaijan, expressed from the V part of Article 127. In accordance with the requirements of the article, the proceedings must be open in all courts. Consideration of a case in a closed session may be allowed only if the allegedly open court proceedings may cause disclosure of state, professional and commercial secrets, or if it is determined by the need to preserve the secrecy of the personal or family life of citizens. But one point needs to be noted here. As reflected in the Law on Courts and Judges, the provision "In all cases, the decisions of the courts must be publicly announced", in our opinion, contradicts the requirements of the principle of openness. We want to explain this question with a simple example. Suppose that the rape case was heard in closed court and a decision was made on the case. Naturally, there is nothing illegal here, but if we take into account what and how it was indicated above, there is a provision in the legislation "the decision of the courts is openly announced" reflecting the essence of the principle of openness, in this case we want to emphasize one nuance. If persons have the opportunity to familiarize themselves with at least part of the result of the decision taken by the court (in practice, there are even cases of full announcement of the decision), the question arises, if the case is considered closed, why is the result publicly announced? in the legislation there is a provision "the decision of the courts is openly announced" reflecting the essence of the principle of openness, in this case we want to emphasize one nuance. If persons have the opportunity to familiarize themselves with at least part of the result of the decision taken by the court (in practice, there are even cases of full announcement of the decision), the question arises, if the case is considered closed, then why is the result openly announced? in the legislation there is a provision "the decision of the courts is openly announced"

reflecting the essence of the principle of openness, in this case we want to emphasize one nuance. If persons have the opportunity to familiarize themselves with at least part of the result of the decision taken by the court (in practice, there are even cases of full announcement of the decision), the question arises, if the case is considered closed, then why is the result openly announced? If the goal is to keep a secret connected with personal or family life, we consider it expedient to provide for the legislation so that only persons of the closed circle have the opportunity to familiarize themselves with the decision of the court on the held closed session.

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