



**Suleymanov J.I.♦**

DOI: 10.25108/2304-1730-1749.iolr.2017.52.274-290

**Conflicts of criminal procedural legislation of  
Azerbaijan Republic in part of objectives, principles  
and conditions of criminal proceedings**

**Abstract:** Code of Criminal Procedures of Azerbaijan Republic contains many imperfections and contradictions that excludes its optimal functioning; status of many persons who participate in criminal process in the CCP is not defined at all, a number of provisions of criminal proceedings in part of production of investigative actions contradicts the recommendations of criminalistics and vice-versa; there has been unsolved many issues of evidences and proving, application of the measures of criminal procedural coercion, ensuring the rights of an individual, fundamental concepts and moral basis of pre-trial production, content of the main principles and conditions of proceedings has a declarative character and others.

**Keywords:** criminal procedural legislation; principles; conditions; objectives; proceedings; human rights.

One of the most important stages of judicial reform in Azerbaijan was development and adoption in 1 September 2000 of new Code of Criminal Procedure (furthermore, the CCP) that reflected the changes occurred in the country and became relative obstacle for arbitrariness, lawlessness, violations of human rights and freedoms.

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♦ **Suleymanov Javanshir Islam oglu** – Doctor of Juridical Sciences, Professor, Chief of Department of the Institute for Law and Human Rights of the National Academy of Sciences of Azerbaijan Republic (Azerbaijan). E-mail: mopi\_sid@yahoo.com



In addition, in our standpoint, many of the new CCP provisions have not entirely thoughtful nature, do not take into account the realities and needs of Azerbaijani society. In this connection a practice of their application in combination with criminalistical developments is associated with considerable difficulties, and in some cases, fully excluded.

Haste and incompleteness of criminal proceedings reforming do not assist a solution of the issues of practical interaction between its institutions and participants that requires a need of comprehensive scientific research of their appearance and designing of science based approaches to their resolution [1, p. 5].

Cosmetic measures in form of supplements and alterations of criminal procedure legislation cannot solve in the root the challenges, which consist not in separate flaws, but in absence of the system of fundamental scientific concepts – the concept of Azerbaijani criminal proceedings in its correlation with procedural and criminalistical aspects [4, p. 11].

According Article 8 of the CCP of Azerbaijan Republic, the objectives of criminal proceedings are: protection of individual, society and state against criminal trespasses; protection of individual against abuse of power; detection offences as early as possible, investigation all the circumstances thoroughly, completely and objectively; prosecution and incrimination those who have committed crimes; administration of justice to punish those who committed crimes and to acquit those who are not guilty [9, p. 12].

Despite obvious repetitions, listed objectives of criminal proceedings might be considered as general tasks of all its stages, however, in our point of view, the issues of administration of justice, establishing of guilt and rehabilitation of innocents are not related to them, since they touch only court proceedings. Thus, it turns that protection from unfounded accusations is beyond the objectives of court production. In addition, defence of rights and interests of process' participants,



application proper legal procedures to them, prevention of crimes, enhancing the legitimacy, respect the law were out of general tasks of proceedings [6, p. 91].

Criminal production not always begins from examination of an obvious fact of crime. As rule, in certain situations the beginnings of it is reception and registration of message (information) on committed or prepared crime, checking its compliance to reality. Not every event is a crime's event like not every event, if unordinary, not always contains signs of crime. Therefore establishing of presence or absence of crime's event and its signs are equivalent objectives of the stage of criminal proceedings. It seems that this is a main task all proceedings, from results of decisions of which follow other ones. It concerns also the stage of urgent institution of criminal case (Art. 209 of the CCP), even when finding an unidentified human corpse, signs of contamination or poisoning of people, firearms, ammunitions, explosive substances, explosive devices, at explosions or fires in public places, buildings of state enterprises, institutions etc. In these cases a primary task is not a quick disclosure of crimes, on presence or absence of which to assert prematurely, and establishing their events and presence corpus delicti in the events. One can speak on disclosure of crimes only after establishing their events, i.e. after establishing a crime's fact. This is a main objective of the stage of pre-trial and entire proceedings [2, p. 111-112].

It seems that foregoing is determined also with object of proving (Art. 139 of the CCP), the first clause of which is to establish of a fact of criminal incident.

If to emphasize a disclosure of crimes as mandatory objective of criminal proceedings then in case of absence their event and corpus delicti and further refusal in institution of criminal case or its dismissal, declared aim remains unreached [3, p. 66].

We believe that ensuring of compensation of the material and other damages caused with crime, and establishing its reasons and conditions, their elimination.



These tasks can and must be solved also in further stages of proceedings, but effectiveness of this is impossible without their solution in pre-trial production.

The CCP of Azerbaijan Republic does not contain a compensation of damage caused with crime as an objective of proceedings, and a duty to establish and eliminate the circumstances that facilitate crimes' commission attributed to general conditions of preliminary investigation.

According to Article 221 of the CCP of Azerbaijan Republic, during conduct of preliminary investigation an investigator is obliged to clarify the circumstances (reasons and conditions), facilitating a commission of crime. Being clarified these circumstances, investigator, when necessary, sends a presentation to appropriate legal entities and officials on taking of measures to eliminate the circumstances that facilitate a crime's commission. The presentation of investigator on taking the measures to eliminate the circumstances facilitating a crime commission is subjected to obligatory consideration, and the results of the consideration in one month term should be in written form reported to investigator [9, p. 232].

It seems that foregoing provisions have a declarative nature and not provided with other norms of the CCP. If investigator found circumstances (reasons and conditions) that facilitate crime commission then introducing a presentation to eliminate them must be a duty but not an alternative right. Therefore, the words 'where required' should be excluded from the wording of Article 221.1 of the CCP, and as circumstances subjecting to prove the Article 139 of the CCP should be supplemented with the words clarifying of reasons and conditions facilitating commission of crime.

The CCP of Azerbaijan Republic distinguishes the principles and conditions of criminal proceedings, which according to Art. 9 of the CCP: define the rules that constitute a base of carrying out of criminal prosecution; provide a protection of man and citizen of cases of illegal restrictions his/her rights and freedoms; establish lawfulness and reasonableness of every criminal prosecution.



According to Article 9.2 of the CCP, violation of the principles or conditions governing criminal proceedings may render the completed criminal proceedings invalid, cause the decisions taken during them to be annulled and deprive the evidence collected of its value [9, p. 12].

It seems that the conditions are constituent part of the principles of criminal process, unjustifiably separated from them as independent provisions. In addition, a content of the Chapter 2 of the CCP does not contain a clear line between principles and conditions of criminal proceedings. In this connection, a user needs himself to determine what provision related by a law maker to the principles, and what to the conditions of criminal proceedings.

As for the principles of criminal proceedings, then it should note that in range of those a lawmaker has put an ensuring of number of the principles and other generally accepted principles of criminal process, when considering as independent ones.

So, as the principles (or conditions) of criminal proceedings are listed an ensuring of enshrined by the Constitution the rights and freedoms of individual and citizen (Art. 12 of the CCP), ensuring the right to freedom (Art. 14 of the CCP), ensuring of the right to immunity of a person (Art. 15 of the CCP), ensuring the principle of inviolability of privacy (Art. 16 of the CCP), ensuring the right to inviolability of home (Art. 17 of the CCP), ensuring the right to property (Art. 18 of the CCP), ensuring of the right to legal aid and right to conduct one's defence (Art. 19 of the CCP), ensuring of the right to a court hearing (Art. 22 of the CCP), ensuring of the right to re-apply to a court (Art. 35 of the CCP) and ensuring of the right to restoration of violated rights of an acquitted person (Art. 36 of the CCP).

As independent principles (conditions) of criminal proceedings indicated (Art. 10 of the CCP), equality of everybody before law and court (Art. 11 of the CCP), freedom of incrimination of a suspect and his relatives (Art. 20 of the CCP), presumption of innocence (Art. 21 of the CCP), carrying out criminal trial with



participation of representatives of the people (Art. 24 of the CCP), independence of judges and jurors (Art. 25 of the CCP), language used in criminal proceedings (Art. 26 of the CCP), public nature of criminal proceedings (Art. 27 of the CCP), objectivity, impartiality and justice of criminal proceedings (Art. 28 of the CCP), examination by appropriate court (Art. 29 of the CCP), restriction of judge's participation in criminal proceedings (Art. 30 of the CCP), inadmissibility of non-procedural relations in criminal proceedings (Art. 30 of the CCP), adversarial nature of criminal proceedings (Art. 32 of the CCP), assessment of evidence (Art. 33 of the CCP) and inadmissibility to be convicted for the same offence twice (Art. 34 of the CCP).

Constitution of Azerbaijan Republic relates to the main rights and freedoms of a man and citizen the right to equality, protection the right to freedom, right to life, right to freedom, right to property, right to personal immunity, right to inviolability of home, right to use native language, right to protection of honour and dignity, judicial guarantee of the right and freedoms, right to legal aid, avoidance of changes in court jurisdiction, presumption of innocence, inadmissibility to be convicted for the same offence twice, the right to re-apply to a court, inadmissibility to force testifying against relatives, protection the rights and freedoms of man and citizen and other [7, p. 8-18].

Thus, it turns that number of constitutional rights and freedoms of person indicated in the CCP as independent principles (conditions) of criminal proceedings, and their ensuring (Art. 12 of the CCP) indicated as a separate principle (condition).

Along with foregoing, a content of a number of the principles (conditions) of criminal proceedings in light of its main concepts is presented to be wrong. So, according to Article 7.0.8 of the CCP, criminal proceedings means the proceedings conducted in pre-trial and in a court of first instance, court of appeal and Supreme Court. In connection with foregoing, it seems to be wrong the principle (condition)



of carrying out of criminal proceedings only by a court since in this case it is excluded pre-trial production. It seems that to ensuring is subjected not right to demand, and the right to conduct fair and open court proceeding in connection with brought charge or applied measure of procedural coercion (Art. 22 of the CCP). Limitation of a judge's participation in criminal proceedings (Art. 30 of the CCP), is, in actually, one of the grounds to reject that provided by Article 109 of the CCP.

Together the right to defence, one of the main principles of criminal process is presumption of innocence (Art. 21 of the CCP), according to which any accused in committing of crime is recognized as innocent unless his/her guilt will be proved in order that provided by the CCP, and will not be a court's sentence that comes into a force. Person who charged in committing of crime is not obliged to prove his/her innocence. Burden of proof of accusation, refutation of the grounds that brought in defence of accused person lies on the prosecution party.

However, according to Article 141.3 of the CCP, the following facts shall be regarded as established without reference to the prosecution file: persons' knowledge of the law, persons' knowledge of their professional duties and staff rules, lack of specialised training and education, if the person does not present documents certifying his specialised training and education or does not give the name of the institution or other organisation providing the specialised training and education [9, p. 156].

There is a violation of principle of innocence and inconsistency of the provisions. Assertion of the fact that everybody should know the laws is a fairly like that ignorance of the law does not exempt a person from responsibility. However, it does not mean that everybody knows the laws, and it makes no difference whether a person knows law or no. Ignorance of a law does not exempt from responsibility, but it impact on punishment. In this connection, this circumstance is an integral part of a proof subject and without materials using of production on criminal prosecution should not be recognized as established.



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