**Suleymanov J.I.**♦

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# What to do if a judge is stupid?

**Abstract**: For unified interpretation and application of the law by all participants of criminal process its provisions should not contain ambiguity, alogisms, idioms, slogans, reservations and omissions.

In the first place it seems necessity an essential processing of the provisions of the third section of the Code of Criminal Code "Evidence and proof".

It is desirable to check acting judges and candidates to the judges on IQ.

**Keywords**: criminal process; judge; proofs; proving.

What to do if a judge is stupid and does not understand the assertions of a defence party?

According to explanatory dictionary of the Russian language, stupid in the forth meaning of the word is a person devoid of acute perception, slow-witted, and also testifying about barrenness of his/her mind [11, p. 708]. Synonyms of the word 'stupid' are determined by the Great Russian language the words 'blunt' and 'fool' [11, p. 115; 156].

Though, a stupid judge also does not understand the assertions of a prosecuting party, however for this case a labyrinth of justice has been equipped with commandments of the Judicial Legal Council. And with phantoms of the Judicial Legal Council the jokes are bad. For some two-three cases of corruption a judge might be sent in such wilderness, where sewerage is still lacking.

♦ **Suleymanov Javanshir Islam oglu –** lawyer, a member of the Bar Association of Azerbaijan Republic, a member of International Organization for Legal Researches (Azerbaijan). E-mail: mopi_sid@yahoo.com

Stupidity does not know the bounds. It is not associated with national and historical particularities, place of birth, party membership, relative ties, official position, and creed. In course of his work an author of these lines has faced to the judges of Europe and Asia, North and South America, Africa and Australia and after that he very often and quite sincere exclaimed that in comparison with them many Azerbaijani judges 'are worthy to participate as honorary guests at the wedding'. And therefore, you should not search the prototypes, they are everywhere.

In 2006 'Stupidest Man of the Year' prize was awarded to the Creek County District Court Judge Donald Thompson for that operating a powerful pump during court sessions he made a sacrifice to the second son of Judah. For this know-how in an area of proceedings Donald Thomson was sentenced to imprisonment and significant fine. However, this is out of an area of expenses of judge's work.

Though, at the same 2006 with Judge Donald Thomson for the prize contended a lawyer from Texas town Austin Harry Whittington who made apologies to the USA Vice-President Dick Cheney for caused inconvenience after that Dick Cheney's shotgun while on a quail hunting trip in Texas. It is true, somebody consider the lawyer's actions as a wisdom but not stupidity, and however, this is from an area of proofs' assessment.

In one of the courts on grave crimes a defence party submitted a petition on conducting of an experiment on a subject of capacity of the jacket pockets, where, according to assertion of prosecuting party, defendant had stored significant number of the boxes with psychotropic substances. Core of defence's assertions is that the defendant, who worked as a bus driver of the international passenger transportation, did not know about criminal nature of parcel contents that was given him and had kept it openly in bus salon. And the act on finding of 8 boxes in his pockets with psychotropic substances (medicaments) is falsified evidence as the boxes on capacity could not be placed in his pockets.

Court rejected the petition being stated in the ruling that a capacity of the jacket pockets does not matter as accused had had an opportunity to hide the boxes also in store facility!!??

All further objections about the fact that they are talking about the packets of the jackets, but not store facility, the court swept away with roar of a lion which caught other animal unit of male near its girlfriend.

Other sample. A judge of one of the Baltic countries, the residents of which are famed their speedy abilities, forbade an Azerbaijani lawyer to make audio record of the process, stating that it is used further for submission of the petitions which distracts him from legal proceedings. The ban was not concerned another defenders.

The same judge telephoned at 12.00 am in Baku and notified lawyer that process would be held at 14.00, and when the lawyer had objected that he should be notified earlier, the judge replied that he had still had two hours. It is possible that it was not be manifestation of stupidity, but it had been carried out stupid manner.

A judge of the Supreme Court referred in her judgement to a proof, which was absent in the case. When she was indicated in this circumstance, the distinguished lady said that she had based on inner voice which prompted her about existence of such evidence in nature, though not attached to the case???

When considered a cassation appeal on case about homicide, where accused noticed alibi, the same judge indicated that despite the reasons of a complainant are confirmed, however they contradict the position of prosecutor (???)

A judge one of the Courts of Appeal has refused to exclude from proceedings the testimonies obtained under torture, the fact of which was confirmed with judgement of the first instance court. He stated that torture had carried out before obtaining of the testimonies and not in course of interrogation.

A judge of Administrative Court refused to examine as proof a report of expert examination conducted on its initiative, being stated that it expected to obtain other results.

An official of the Supreme Court, simulating at the same time the work of a judge, three times has returned a defence's complaint on decision of a court of appeal that refused to make mandatory rule and present it to an accused person, being motivated his decision with absence of a copy of the rule in the enclosure to the complaint.

There are hundreds of such samples. However, there are more striking samples.

Unfortunately, judges are appointed not by intelligent, and on other criteria, main of which is a force in the eleventh meaning of this word [11, p. 662]. If a judge has a force then he needs no more. Therefore we will offer the projects on selection of judges or development their ability to think. The problem is how to adapt a stupid judge to the requirements of law in part of proofs evaluation or vice versa.

According to Article 145 of the Code of Criminal Procedure of Azerbaijan, judge shall assess the evidence according to his/her inner conviction based on a comprehensive, full and objective examination of its content, guided by the law and their conscience [15, p. 158].

Whether one needs intelligence for that – ability of human to think, basis of conscious, intelligent life [13, p. 722]? And how to be with conscience, when it is replaced with blunt inner voice coupled with force and indications of the Judicial Legal Council?

Parameters of human mental system are capacity of working memory, ability to forecasting, logics of instrumental activity. Here is also multilevel hierarchy of systemic selection of value information and conscience [16, p. 46-50].

However, stupid is not yet idiot and even not a moron in medical meaning of this term that imply pathologic mental retardation [14, p. 96]. Stupid judge has small capacity of working memory, but there is still some, and in some cases even very good. The same concerns an ability to forecasting, logics of activity, selection of value information; he is good ability in subtraction and relatively with division etc.

Anyway, a stupid judge will cope with designing of primitive chain of evidence, however it is actually impossible to make clear him logics of proving in more complex situations. Moreover, if during communication with representative of defence a judge uses vocabulary twice and even three times less than ever-memorable Ellochka Ludoedka, and under the guidance he understands unquestioning execution of staffs' instructions.

We will make a reservation that all stated concern the situations, when judge is a fool indeed, and he is not pretended to be such, what is doubly danger.

So, there are no intelligence and conscience, instead of inner conviction and objectivity – voices; assemblage associates with Chapter 20 of the Criminal Code, and completeness and comprehensiveness – with dream of blue childhood – with secretary.

It remains the law, though knowledge does not add mind and generate conscience. Nevertheless, law should be kept that are confirmed from tribunes by even the most hardened wrongdoers.

However, in order to keep law it should be unequivocally understood.

Consequently, law should be stipulated so that it would be equally understood and executed by the most stupid judges.

First stage of work on adaptation of stupid judge to requirements of law or vice versa, it seems necessary substantial revision of the provisions of Chapter Three of the Code of Criminal Procedures (hereinafter, the CCP) "Proofs and proving" beginning from Article 124 and finalizing Article 146 of the CCP, the

beginning of which should be exclusion from it provisos, ambiguities, slogans, alogisms, idioms and omissions.

As evidence a lawmaker determines the reliable data (messages, documents, items) received by a court or the parties of criminal process [15, p. 150].

According to Article 124.1.2 of the CCP, evidence should indicate whether or not the act was a criminal one, whether or not the act committed had the signs of a crime, whether or not the act was committed by the accused, whether or not he is guilty, and other circumstances essential to determining the charge correctly [15, p. 150-151].

Actual data cannot exist without their material carrier, in this connection Article 124.2 of the CCP says that as evidence are accepted the testimonies of a suspect, accused, victim, witness; an expert's opinion; material evidence; records of investigative and court procedures; other documents [15, p. 151].

Thus, a lawmaker, in our opinion, determines evidence as insufficiently clear balanced and formulated construction in the frames of criminal process, through of which should be resolved a task of cognition and achievement of reliable knowledge in the stages of crimes' detection, preliminary investigation and achievement of the truth during resolution of a case in court.

Meaning of admissibility is that through its establishing are excluded from the system of criminal proceedings the evidence, reliability of which difficult or impossible to define. Consequently, as S.J. Shiraliyeva notes, admissibility plays a role of barrier impeding to penetration in the system of proving the data, which are not evidence in procedural meaning of the word [18, p. 126].

The law (Article 125 of the CCP) in common features gives notion and discloses a content of admissibility being pointed that messages, documents and other items might be accepted as evidence if there is no doubts in their accuracy, source of origin and circumstances of obtaining [15, p. 151].

However, in our standpoint, some provisions of the Article 125 of the CCP of Azerbaijan Republic are not a barrier, and they are insurmountable obstacle, artificially and mainly, unnecessarily complicating the process of proving. So, according to Article 125.2.2 of the CCP, it is inadmissible to accept as evidence on criminal case the facts, documents and items received through the use of violence, threats, deceit, torture or other cruel, inhuman or degrading acts [15, p. 144].

Concerning the torture and other 'cruel, inhuman or degrading acts' the law's provisions are clear and are not objected in principle. It is more complex with problems of the ban of violence and deceit, as in our standpoint, until now they have not found logic substantiation in the law.

History of criminalistical tactics, especially in soviet period, is characterised with unsuccessful attempts to find moral substantiation of lie and deception, or camouflaging synonyms, which anyhow was failed, as it was in a vicious circle of interconnected Jesuit concepts and provisions [5, p. 20-26].

The studies of existing and proposed elements of criminalistical tactics made in recent years have shown that they all based on deception and lie, and contrary are not such, what determines necessity of appropriate alterations in the CCP [12, p. 58-65].

According to Article 125.1.1 of the CCP of Azerbaijan Republic, information, documents and other items shall not be accepted as evidence in a criminal case if they are obtained through violation of constitutional human and civil rights and liberties of the participants of criminal proceedings or other requirements of the CCP, which through deprivation or restriction of their lawful rights is or might be affected on reliability of these proofs.

In our point of view, this assertion is imprecise, vague and contradictory, in this connection might not be considered as principle, moreover that in the

following paragraphs of Article 125.2 of the CCP is itemized the violations of the rights of process' participant. In addition, some doubts call the provision on inadmissibility in case of possible influence of violation in quality of evidence. In this case, taking into account necessity to evaluate evidence in their totality and comparison, it will be always absent a chain, consisting of good-quality chain-links, and rather, as result the chain will not be. It seems that collocation 'could influence' in the text of the law (Article 125.2.1 of the CCP) is superfluous as it as it puts provision categoricalness under doubt. A similar view is held by other authors who also consider that common phrase in the matter on admissibility of the proofs in practice are impracticable, interpreted ambiguously [3, p. 126; 4, p. 96; 7, p. 111; 9, p. 91].

Declared in Article 125.2.3 of the CCP of Azerbaijan Republic the violation of the defence rights of a suspect or accused person is a very wide concept and until now there is no unified opinion concerning its content. So, violation the right to use a language and interpreter assistance also is the violation the right to defence, but it distinguished as an independent circumstance. For example, defender of the suspected or accused has the right to participate in course of production of some investigative actions (inspection, search, seizure etc.). If a defender is not timely notified of the forthcoming investigative action in result of search are detected drugs or weapon then a record of the search and seizure should be considered as inadmissible evidence. In principle this is correct, but in our point of view, in order to avoid ambiguous interpretations in the law, the concept of the right to defence should be clearly defined and stipulated that all violations of the right to defense made at obtaining evidence make the latter inadmissible.

The provision according to which it is inadmissible to accept as evidence the messages, documents and items where the rights and duties of a party to the criminal proceedings are not explained, or not explained fully and accurately and, as a result, he exercises them wrongly (Article 125.2.4 of the CCP), in our

standpoint is a conglomerate from the provisions on the right to defence and inadmissibility of deception. In addition, the matter of incompleteness of explanation again rests on criminalistical recommendations. So, will the clarification the right to keep silence be incomplete at its simple mentioning or necessary to explain an interrogated person in the details his preferences depending on specific investigative situation? The question is rhetorical, as it clear that in the second case an investigation might be stopped or its process will be significantly hampered. In our standpoint, being touched this point A.V. Zemtsov justly points that clarification the right should not be interfered in criminalistical recommendations as it is a problem of a defender, but an investigator [6, p. 111-112].

An issue on carrying out of production on criminal prosecution, conducting an investigative and other procedural actions by a person who has no the right to do so (Article 125.2.5 of the CCP) also contains a number of complexities and ambiguously perceived assertions.

According to Article 47.1 of the CCP, criminal prosecution shall be conducted by the prosecuting authority. Responsibility for this shall lie with the preliminary investigator, investigator, prosecutor or court in charge of the criminal case file, the file on the simplified pre-trial proceedings or the file on the private prosecution [15, p. 37]. According to Article 7.0.5 of the CCP, the prosecuting authority are the bodies of inquiry, investigation and prosecutor's offices and courts dealing with criminal cases and other prosecution material [15, p. 8].

However, interception of conversations held by telephone and other devices and of information sent by communication media and other technical means or other messages (Article 259 of the CCP) is carried out by other persons, but not the representatives of agencies carrying out criminal process.

Certain interest might be presented with provision of the law (Article 125.2.7 of the CCP), finding inadmissible acceptance as evidence information, documents

and other items where the rules governing investigative or other procedures are seriously violated [15, p. 145]. The law says nothing concerning the notion of serious violation the rule of conducting an investigative (procedural) action. The lawmaker does not divide the violations into the serious and 'simple', which is fraught with ambiguous interpretation. Obviously, a 'serious violation' is such one, which might be reflected into the results of an investigative action, the rights and interests of its participant, the right to defense. It is possible small flaws in the activities of any investigator or other representative of the body that carries out the criminal process, even the most experienced and qualified. At the same time, law is the law and an order to conduct investigative (procedural) actions, which determined by it, should be observed. Consequently, we may assert that in such kind of activity like criminal proceedings, where fates of people are resolved, should not be flaws and provisions of the law must be observed unconditionally. It is another matter that in a number of cases the provisions of the law regarding the production of investigative (procedural) actions are incomplete and contradictory nature; contradict logically correct criminalistical recommendations, which calls into question the legality of their implementation.

In our standpoint, the provisions of Article 125.2.8 of the CCP are not specific, according to which it is inadmissible to accept as evidence the messages, documents and items, which are taken from a person unable to recognise it or who cannot confirm its accuracy, its source and the circumstances of its acquisition. It is one thing when a person submits in a pre-trial proceeding or in court any item or document and is silent. Here the document (item), and sort out yourselves! Other thing if he submits document (item) and says that he found it in a street (received by mail etc.), he cannot confirm an authenticity and source of origin; he may identify only in the foreshortening and scope 'found, received by mail'.

It turns out that in this case even an instrument of crime will have no an evidentiary value, since the item of proof that he received, did not bother him or he

was not able to establish the belonging of the item (document) to the subject of proving on the case. And if a person's fate depends on this? Adversarial nature – agree, but adversarial in criminal process is not a game, where wins those who has more strength, knowledge and opportunities.

Similar situation, when evidence is taken from a person unknown at the trial or from an unknown source (Article 125.2.9 of the CCP). It turns out that somebody sent letter to a court with documents, which are significant for arrested person's fate, but forgot to indicate return address, and on this reason a court considers received documents worthless, even not being tried to understand their content. Do we exaggerate? Possible, but a core of the law does not change of that.

The provision regarding methods, which contradict modern scientific concepts (Article 125.2.9 of the CCP) is retrograde, since science has particularity to develop, and only the History, but not our personage, can be a judge in this matter.

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