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Principles of pre-trial criminal proceedings: are there no rules without exceptions?

Abstract: The most significant criterion of principles are a character marked distinctly, since the role of principles is, through comparison with other norms, achievement of an opportunity for positive realization within the terms of complete accordance with principles.

Principles can be described by means of a group of signs containing both primary and secondary ones. In determining the most significant signs, which are also called criteria, and less significant ones, all the signs characterizing the principles as normative formations should be referred to the first group, while those that are derivative from the criteria and denote the signs of principles depending on their Appearance in external circumstances – to the second group.

The principles of criminal law proceedings must be based on active law in the form of norms and directions, which are confirmed through satisfying all requirements of legal norms.

It is provided a comparative analysis of CPC principles of Azerbaijan, Georgia, Russian Federation and Estonia. We have also some suggestions for improving law proceedings.

Keywords: principle; condition; criminal process; court proceedings; system of principles; legal requirement; stages of process; criteria; Constitution.

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The term principle (from Latin, principio-base, beginning) in general scientific sense was admitted as denoting the basic, starting point of any theory, teaching, a primary rule of activity (31, p.409).

The formulation of the given notion in relation to the sphere of criminal law-proceedings is one of the most important theoretical problems, that is, the principles of criminal procedure, which, according to the right statement of M.S. Strogovich, "are the basic regulations, determining the whole system of procedural relations" (36, p.206).

M.S. Strogovich, whose contribution to the formation of the notion of criminal law-proceedings principles is essentially great, marked that they should sum the important and essential legal principles, which the criminal procedure is based on (35, p. 124). Thus definition is completely conformable with the common scientific viewpoint and can be used as a starting point in further researches of the given category.

However, there is not a common opinion with regard to the definition of the principle of criminal law-proceedings. For instance, Y.A. Ivanov considers the principles to be a term, defining the reality of the rights of individuals in the criminal procedure (15, p.45).To the opinion of A.M. Larin, legal principles are found to have a socialized expression of legal norm, in addition, principles have a guiding aim in their realization and are bearers of a legal content (21, p.32). M.K. Aguldinov (2, p.30-31), I.F. Kutuzov (19, p.21-22), I.F. Kutyagin (20, p.18-19), P.S. Spulin (32, p.16-17) and others are of the analogical opinion.

Some others admit the principles of criminal procedure mostly as the idea of an organization of judicial system, which is embodied in active law-proceedings. For instance, I.L. Petrukhin considers every principle to be "… a judgment of the due given by legislator, that is, an authorizing idea" (26, p.160).

According to Y.O. Motovilovker, criminal-procedural principles are "... the starting points rooted in the law, which determine the basic outset of the activity of the organs, struggling against the crime, the rights and duties of the participants of the

whole criminal law-proceedings, and the social essence and the political orientation, and its most essential features and elements (23, p. 22).

The works of some other authors also contain definitions of criminal-procedural principles, essentially not differing from those mentioned above, however while interpreting the externally similar notions, scientists define their content in different ways.

For instance, Ch.S. Kasumov defines the criteria of criminal –procedural principles as follows :… principle – it is a fundamental start, determining the essence and content of the whole procedure denoting its typical features; principle must take its source from the task of judicial law-proceedings and contribute to their realization, express democracy of the criminal law-proceedings; principle must be rooted in the criminal-procedural law; principle must be realized in one or several procedural stages, but certainly in the stage of court examination; principle of criminal procedure must be closely connected with other principles, however, neither substituting them, no losing its own content (17, p 24).

Marking the undoubted importance of Ch.S. Kasumov's conclusions, we share the idea that principles take their source from the tasks of criminal law-proceedings. But we should also notify that tasks themselves must be formed taking into account the existing principles, and therefore formulating it as the conclusion of accordance between principles and task would be more precise. Universality must be a criterion of criminal-procedural principles; therefore it is not possible to agree with the author's opinion of the possibility of their realization only in one or several phases. Universality of principles takes its source from their analysis as a formation determining the content and orientation of the whole criminal law-proceedings.

To our opinion, a more significant criterion of principles is its distinct normative character, since in case of presenting the criminal law-proceedings conditionally as a system of decisions aimed at achieving the goal of the activity of this type, the role of principles is found out to be comparable with all other norms, that gains an opportunity of positive realization only in the condition of a complete accordance with the requirements of principles.

The problem of singling out the criteria is directly connected with determination of the legal character of principles. In presenting separate individuals the principles are objective, not depending on their sense they express external processes taking place in the state and society. However, on the level of state and legislation principles act as subjective categories, completely depending on legal policy of the state as a specific super-individual formation. Therefore, the nature of principles of criminal law-proceedings can be divided either for being objective or subjective, that is to say, as objective in the sense of individuality or as subjective on the level of state activity. According to R.G. Stefanin, there are many historical facts to confirm it, as long as in any authoritarian state most democratic principles may not operate, and in accordance with its correspondence to legislation such a condition on individual conscience may look completely objective (34, p.256).

Principles as legal norms have consequently all the signs inherent in the criminal-procedural norms. In this connection the definition of P.S. Elkkind is appropriate, that "the criminal-procedural norms are general and commonly obligatory rules of behavior of the subjects of criminal-procedural rights and duties set by the state and are realized through the force of state and public influence, aimed at realization of criminal law-proceeding more efficiently" (43, p.105).

The hypothesis within norms-principles serves as a condition, necessitating the realization of a definite principle. Taking into account that, principles are common for all phases of the procedure, a universal hypothesis is found to be a condition for appearance of the criminal-procedural legal relations. Thus, the hypothesis should not be identified with the established frames of realization of the principles of criminal-procedure, that theoretically coincide in the terms of volume, but in view of imperfection of the legislation, the hypothesis may be unjustifiably diminished n relation to the sphere of realization of the principle.

When characterizing principles, it should be noted that like other legal phenomena, they may be described by means of several signs containing both primary and secondary. When determining more significant signs which are also called criteria we think it important to refer all the signs, characterizing the principles

as normative formations, to the first group, while those that are derivative from the criteria and demote the signs of principles depending on their appearance in external conditions- to the second group.

Considering the criteria of principles from this point of view, as Ch.S. Kasumov suggests, it is easy to observe that the principle is required to be rooted in the law, and determining the boundaries of realization of principles in relation to their characteristics serves as legal norms, but the opinion that principles denote democracy of criminal law-proceedings is a sign depending on external appearance in the course of activity of law application (17, p. 43).

The analogical regularity is also observed in the judgement of M.A. Jafarkuliyev, who describes the principles, taking into account both their primary and derivative signs (12, p. 45).

Thus, we can come to the conclusion, that the signs of principles in researches are not always divided into the primary, more essential and derivative ones, which sometimes causes the appearance of erosion in formulating the notion of principles itself. In addition, the list of the derivative signs may not be considered to be completed in any case, as long as the more deeply and widely the problem is researched, the more new qualities of principles are observed. However, when studying the procedural beginning as concrete legal principle, the sphere of criteria will be sufficiently narrow, as the main features of the signs essentially do not go beyond the limits of general theoretical characteristics of legal norms.

Some complications occur in describing the criminal procedure as leading legal norms and because of the absence of a common viewpoint in regard to the necessity of their normative expression. In this case some authors consider the principles to be basic, more common regulations, as leading ideas in one or another form not depending on their legislative assigning (10, p.136-138). Other scientists refer to the principles only the regulations which are assigned to criminal-procedural norms of larger character. According to another definition, principles are basic regulations, ideas assigned to the law not depending on methods and forms of their assignment,

and regulations that have not yet achieved a direct expression in the law, but take their source from some of its norm (13, p. 24-26).

Summing up our statement we should note that the principles of criminal law-proceedings must be assigned to the active legislation in the form of norms-instructions, which is confirmed by their full accordance with the requirements to legal norms. In the cases when it does not happen, there may emerge gaps in the legislation and letting the theoretical basis down these facts could hardly be considered reasonable. The only way for elimination of the given contradictions can be bringing the legislation to a complete conformity with the theoretical provisions of the teaching about the criminal-procedural bases.

Consequently, proceeding from the definition of the principles of the criminal procedure as normative formations of a higher juridical power, the system of their criteria should include principles, according to which they should represent the bases of formations of the whole system of the criminal-procedural law; be assigned to the active legislation in the form of legal instructions; express the content of the criminal-procedural legislation more completely; extend its application to all the phases of criminal procedure; be closely connected with the state politics in the sphere of criminal law-proceedings, taking into account the provisions of international acts on human rights; have protecting and regulating influence on all criminal-procedural norms.

In accordance with these, the principles of the criminal procedure should be determined as the bases of establishment and orientation of the whole system of corresponding legal branch, which express the content of the criminal-procedural legislation more completely, are closely tied with the state politics in the sphere of criminal law-proceeding , are common for all phases of the procedure, and have protective and regulating influence on all criminal-procedural norms as normative formations of higher juridical power.

The theory of principles is not only of a theoretical, but also of some practical importance. In the course of law-proceedings on criminal cases, officials and citizens are often confronted with some difficulties in the application of the provisions of

principles, not knowing in essence what can lead the significance of principles to underestimation and cause increase the number of criminal-procedural breach.

Principles are not isolated from one another, but are closely tied giving rise to a particular legal formation- the system of principles of the criminal law-proceeding. It should be noted, that the given system owns all the features common for the system, simultaneously having a number of specifities, which appear in all cases of application of the provisions of the systems analysis in the description of criminal-procedural activity.

As I.N. Yastrebov notes, the systems approach to investigation of principles is not end in itself, it is necessary for more exact and total description of the procedure, taking place in the course of realization of principles; explaining and predicting the quality and functioning of the system of principles ; determining the influence on the system of a separate principle depending on the concrete content it encloses; being assigned to the content of principles in the law, in which the whole system optimally functions (44, p.11-13).

The question concerning the unification of the principles in the system was often raised by scientists-investigators of procedure. A great number of problematic questions connected with the system of criminal-procedural principles were mentioned by N.N. Polyanski (29, p.81-87), and were considered in a collective work by N.S Alexeyev, V.G. Daev and L.D. Kokorev (3, p.37-48).

Marking the undoubted value of the provided researches, we can support the thesis that in the course of unification of the system there appears qualitatively a new formation, the constituents of which, being in constant interrelation, pass to one another a part of their qualities, hereby creating a mutually-conditioned integral basis for normal regulation of all procedural legal relations. At the same time each of principles has its own content differentiating it from others. In this, connection, A.M. Larin's and Y.I. Stetskovski's opinion is well-founded. They write, that admission of the interconnection of principles "does not mean, that the content of one principle is not the same as the content of the other", and the "… qualitative definiteness of each of them is one of the conditions of systematic of principles (33, p.42).

Having analyzed the systems features of the bases, I.L. Petrukhin marks, that all principles must answer the requirements of interconnection, mutual conditioning, qualitative definiteness, as well as non-similarity to one another (27, p.80).

The given judgement completely confirms the preceding one, and undoubtedly it is worthy of attention. However, it should be noted, that the notion of "the qualitative definiteness of the principle", among others, and its specificity and non-similarity in relation to other elements, must join in. As it occurs, the description of the system of principles as a particular criminal-procedural formation permits to have a clear view of the realization machinery of each of its structural elements and of the system as a whole in the course of adoption and implementation of decisions on criminal cases.

Proceeding from this statement, we can confirm, that the system of criminal-procedural principles may be marked as structurally a well-regulated unity of complex of normative instructions of higher juridical power, having a relative independence, stability, autonomy of functioning and a possibility of interaction with other elements inside the system and with other legal systems aimed at the most successful regulation of the questions emerging in connection with raising, investigating, examining and solving the criminal cases.

The researches permitted to establish, that in determining the character of interaction of separate criminal-procedural principles within their unified system, different authors distinguish correlative interdependencies (2, p.52-53). In these cases, evidently, any sequence in characterizing the principles can be admitted reasonable, that is to say, the description of the system of interdependent principles can take place in any orientation depending on which problem is the focus of researches. It should be noted that, principles together with their specific contents included in a unified system, are so closely interacted with one another, that it is hardly to speak about a more or less degree of such an integration among separate elements.

As T. Vamdel and S. Ladva mark, the realization of the system of criminal-procedural principles consists of an abstract system of principles with a concrete content by halves in each separate case of raising, investigating and solving a

criminal case (6, p.21-22). Consequently, the combination of legal relation, emerging in the execution of a case serves as a space for realization of the system of principles, but the interim frames are determined from the starting phase of raising a criminal case up to the end of all legal relations between the subjects.

The realization of any principle may have a positive or negative character in the course of application of law. If legal norms are included in the content of a definite principle is used correctly, it has positive realization, if the requirements of a principle are breached, and it calls forth a negative realization. However, the breach of the whole system does not take place in any case; that is to say, the act of functioning of the abstract system does not depend on its practical realization in a concrete criminal case.

During negative realization all system procedures take place in the same way as in the first case with the only difference, that the law proceedings in this case does not reach its goal.

As I.T. Galyumov marks, the system principles of a criminal procedure exert a regulating and a guarding influence on other norms to be used in the execution on a concrete case (7, p. 29).

The regulating influence of the system principles lies in that, in formulating a decision the person, who carries out the execution on a case, chooses from the active legislation the combination of norms, necessary for positive regulation in the give situation, and determines the correspondence of the adopted decision to the requirements of the system principles.

To our opinion, the guarding influence of the system means, that when there emerges a discrepancy between the requirements of principles and the decision taken initially, that decision is cancelled and the criminal law-proceedings must start just from the legal norms that were breached (11, p. 36).

Thus, the proper operation of the system of criminal-procedural principles requires a continual supervision on all other legal systems. Therefore, as S.A. Alpert marks, both the whole system and each separate principle must ensure a positive

realization of all legal norms at any discrete moment within the application of law, and determining the character of all other procedural rules (4, p.50).

Scientist procedures have long debated over the possibility of the classification of principles on the basis of constitutional assignment. The opponents of such a classification such as I.V Tyrichev and I.V.Vinokuzova argued that "… all the principles of the criminal law-proceedings are essentially the principles of constitutional significance (37, p. 83). On the contrary, N.N. Polyanski, considered the assignment of principles to constitution as the absence of such a more significant basis not only for classification of principles, but also for establishment of their systems (28, p.87-107).

However, the constitutionality of principles in these situations seem to be exaggerated at the expense of the others: in the first case- as a result of striving "to bring up" all principles to a constitutional rank, in the second case-as a result of attacking a particular "higher" status to principles, the content of which was assigned to the Constitution as norms-instructions.

If we value this problem based on present-day's standpoint, who considered it impossible to classify principles on their assignment to normative acts. The most reliable judgement on the question was passed by V.N. Bibilo, who acknowledged equality of principles not depending on their legislative assignment that is to say; their observance is ensured by the power of the state equally (5, p. 9).

A.M. Larin, when speaking about the equivalence of principles not depending on the level of their legislative assignment, presents a detailed list of the objective and subjective factors, influencing the way of expression of principles in the text of a normative act. He refers to them: the character of the adopted act, legal traditions, the level of the theoretical working up of corresponding juristically problems, the level of the legislative technique, predominance of supporters of a definite scientific conception among the participants of the legislative work, etc (22, p.20-23).

Developing this thesis, it may be concluded, that the principles of criminal procedure, assigned as legal requirements, must have equal state defense from infringement. Naturally, the level of legislation assignment of principles must be

higher as much as possible. However, the possibility of their assignment on constitutional level depends mostly on the type of constitution, but determination of principles in other normative acts in no case diminishes their significance, as it does not influence the content of separate principles and their whole system.

Besides, we think it is necessary to take into account the historical ground during the discussion. Bringing all the principles together with the content of this document before adoption of a new Constitution would strain the law, then at present an overwhelming majority of the bases of the criminal procedure have actually found its normative expression just on the constitutional level (42, p.129-139).

Proceeding from the aforesaid we can draw the following conclusions: 1) the content and the legal power of principles depends on the level of their assignment; 2) the legislator must aim at assigning the principles on higher level (desirably-on constitutional) level; 3) at present the assignment of most principles of criminal procedure on the constitutional level can be considered to be an undoubtable achievement of the legislator.

The next problem arising from classification of principles is a question about the presence of the principles referring to separate phases, having a direct relation to our research.

Thus, according to a viewpoint, the phases of the criminal procedure do not have their own principles, there only occur common procedural elements in them (25, p.37-38).As G.N. Ageeva and I.P. Urazov consider, the terms of the phases serve as the rules of the execution, serving as principles with the account of immediate tasks and features of these phases (1, p. 21-24; 41, p. 19-20). In other words, as Ts.M. Kaz writes, "… the features of the phases of the criminal procedure are a particular aspect of procedural principles for concrete phases" (16, p.109-111). And what is more, as S.A Alpert marks, "… the close tie and interdependence of the phases of the criminal procedural are first of all ensured by their having common principles, merging them into a unified whole system" (4, p. 49-52).

The authors adhering to a different position on the given question consider that in addition to the common principles, it is necessary to distinguish the principles of

separate phases. For instance, M.S. Strogovich speaks of the principles of preliminary investigation, while N.A. Gromov distinguishes an independent system of principles, which act in the phase of renewing the case under altered circumstances (8, p.5-8). Rejecting this, T.N. Dobrovolskaya writes, that neither of such circumstances "… is characteristic of only the preliminary investigation, but for the content it is not any element existing separately from the common principles of the criminal procedure" (13, p. 38-40).

To our opinion, the solution of this old argument is not possible without application the provisions of systems analysis. Actually the systems of principles, like any other compound systems, are hierarchical formations with several levels. A.P. Gulyayev, sharing T.N. Dovrovolskaya's opinion, considers that in the phase of the preliminary investigation parallel with common procedural principles there exists a special system of principles, each being specific for only this phase, and that the requirement of completeness and objectiveness of the investigation are only the constituent of the common procedural principle of all-round, complete and objective investigation of the facts of the case (9, p.46-48).

Here enough precisely does he describe the procedures, taking place in the system of principles with the only difference, that the provisions, characterizing a separate phase of the procedure, can actually split up not parallel, but as a system of lower manner, in hierarchical subordination with regard to the whole system. These provisions will just be the constituents of common procedural principles. However, according to M.G. Dkhvanishvili, when A.P. Gulyayev states, that the specific principles of phases form in total s system of common procedural principles, he determines such a feature of their system indistinctly, as a hierarchy (14, p. 27-28).

The term "totality" can only be applied in the situation when the constituents of the quantity are homogeneous phenomena, but in our case the common principles act as normative formations of higher level of integration than those normative formations, which are called the principles of phases by the author. Y.O. Motovilovker, who adheres to a different position, offers not to include the given

categories in the general system of criminal-procedural elements, although he uses the notion of the "principle of procedural phase" (23, p. 18-20).

A question comes up; if the provisions do not correspond to the criteria of principles can they be called principles? Evidently, the components of a total system of principles are also systems, and the legislator acts according to his own judgement on a definite level, considering the components, corresponding to this level as elementary blocks of the system. It is natural that when learning the common system of the criminal-procedural bases of other levels the parts of other levels cannot express the structure of the given system equally. We can sum up the results proceeding from V.N. Bibilo's opinion: "As Long as principles are more profound objects and refer to the category of normative generalizations, they form the essence, the basis of the criminal procedure" (5, p. 22-24). Actually, it is possible to mark the significance of one or on other regulation, acting in separate phases; however calling them as principles from the standpoint of systems analysis is not possible.

Summing up our account we can conclude, that principles integrated into a unified system are equivalents, they are subordinated under a single aim of execution on a criminal case, having a similar legal nature. They are so closely interconnected, that there are no grounds for classifying them.

However, when the content of principles is analyzed, it is easily guessed that they have insignificant features depending on which the prior addressee, assigned to the principles of regulation is. In addition, these differences are enough conditional and cannot be admitted as being the bases for the classification of principles. Therefore, it is possible to offer only a group of principles on requirements, ensuring the realization of human rights and freedoms – who are the participants of the execution on the criminal case.

In juridical literature the content of principles of criminal procedure is divided into two groups: a) those that ensure the appropriate criminal procedure, and b) that ensure the observance of right and freedoms of the participants of the criminal procedure (13, p. 21-27).

To the principles ensuring the appropriate criminal procedure are referred: legality judicial defence of human and civil rights and freedoms; independence of officials acting within their competence; multilateral, complete and objective investigation of the case; evolution of proofs by means of self-persuasion and publicity.

To the principles ensuring the observance of right and freedoms of the participants of the criminal procedure are referred: respect for the honour and dignity; of personality; inviolability of personality; protection of rights and freedoms of citizens in the process of execution on criminal case; inviolability of dwelling; inviolability of individual life, privacy of correspondence, telephone conversation, post, telegraph and other communications, presumption of innocence; realization of law-proceedings on competitive and equal basis of the sides; the language of the execution on criminal cases and freedom of appeal against procedural acts and verdicts.

CPC of Azerbaijan Republic distinguishes the principles and conditions of criminal law-proceedings, which in accordance with p. 9 of CPC: determines regulations, forming the basis of realizing indictable offence; ensures people and citizens from the cases of illegal restriction of rights and freedoms; establishes legality and validity of every indictable offence.

In accordance with p. 9.2. of CPC, breach of principles or conditions of criminal procedure, in the cases determined by CPC, may cause drawing a conclusion about invalidity of the execution of an indictable offence, revocation of resolutions adopted in the course of the execution, the conclusion about the absence of a conclusive force of the collected materials (38, p.13).

According to S.I. Ozhegov, the condition is a) the circumstance which something may depend on; b) making of demands by one of the sides coming to an agreement; c) oral or written agreement on something, understanding; d) regulations established in any sphere of life and activity; e) situation calling forth happening of something; f) the cats and requirements which are needed to proceed from (24, p.729).

Conditions occur to be a constituent of principles of the criminal procedure, separated from them as independent provisions without any ground. In addition, the content of chapter two of CPC does not include a distinct border between principles and conditions of criminal law-proceedings, in this connection the user has to determine independently which provision is referred by a legislator to principles, and which- to the conditions of criminal law-proceedings.

As for the principles of criminal law-proceedings, it is necessary to note, that to their rank were referred by the legislator ensuring of a number of principles, recorded as independent generally accepted other principles of criminal procedure.

For instance, as principles (or conditions) of criminal law-proceedings are mentioned ensuring human and civil rights and freedoms assigned by the Constitution (p. 12 of CPC), ensuring the right of freedom (p.14 21 of CPC), ensuring the principles of inviolability of personal freedom (p.15 of CPC), ensuring inviolability of personal life (p.16 of CPC), ensuring inviolability of dwelling (p.17 of CPC), ensuring property rights (p.18 of CPC), ensuring the right for requiring to have a (p.35 CPC) and ensuring the rehabilitation of breached rights (p.36 CPC).

As independent principles (conditions) of criminal law –proceedings were stated legality (p.10 CPC), equality of everyone before law and court (p.11 CPC), freedom for self-accusation, and accusation of relatives (p. 20 of CPC), presumption of innocence (p. 21 CPC), realization of criminal law-proceedings exclusively by court (p. 23 of CPC), realization of criminal law-proceedings with the participation of people's representatives (p. 24 of CPC), independence of judges and jury (p. 25 of CPC), language of criminal law-proceedings (p.26, of CPC), publicity (p.27 of CPC) , objectiveness, impartiality and justice of criminal law-proceedings (p.28 of CPC), observance of jurisdiction of cases (p.29 of CPC), restriction of judge's participation in the course of law-proceedings (p.30 of CPC), inadmissibility of non-procedural treatments during criminal law-proceedings (p.31, of CPC), competitiveness of the sides (p. 32 of CPC), valuation of material evidence (p. 33 of CPC), and inadmissibility of retrial for the same act (p. 34 of CPC).

By the constitution of Azerbaijan Republic the right of equality, defence of rights and freedoms, right of life, right of freedom, right of property, right of personal integrity, inviolability of dwelling, right to use the native language , right to for defence of honor and dignity, judicial guaranty of right and freedoms, the right for getting a legal support, inadmissibility of changing court jurisdiction, presumption of innocence, inadmissibility of retrial for the same crime, the right of re appealing to the court, inadmissibility of giving evidence under constraint against relatives, defence of human and civil right and freedoms, etc. are referred to basic human and civil rights (18, p. 9-18).

Thus, it turns out, that some constitutional rights and freedoms of persons were stated in CPC as independent principles (conditions) of criminal law-proceedings, while their realization (p.12 of CPC) was stated as an independent principle (condition).

At the same time, the content of some principles (conditions) of criminal law-proceedings occur to be incorrect in the light of its basic notions.

Thus, in accordance with p.7.0.8 of CPC, criminal law-proceedings is presented as pre-judicial execution, as well as the execution in the court of the first, appeals and cassation instances. In connection with this statement the principle (condition) of executing the criminal law-proceeding only by court occurs to be incorrect, as in court occurs to be incorrect, as in this case pre-judicial execution is excluded.

Not the right of making demands, but the right of ensuring a just and open trial connected with accusation or application of procedural constraint measure is liable to execution (p.22 of CPC).

The restriction of the judge's participation in criminal law-proceedings (p.30 of CPC0 is in fact, one of the challenging elements stipulated on p.109 of CPC.

As the provided analysis show, the basic principles and conditions stated in chapter 2 are entirely referred to pre-judicial execution, but they have specificity of application.

So, p.10.5 of CPC states that procedural actions executed with breach of requirements and the act rulings accepted with analogical breach, are not valid.

Meanwhile, on p.10 “Legality” of CPC states the necessity of observing the provisions of the Constitution, CPC and other acts of Azerbaijan Republic, as well as the international contracts, which Azerbaijan Republic is a participant of.

Consequently the principle of legality acquires a declarative character, as long as even insignificant declining from the requirements of the law, conditioned in a number of cases with the existing collisions, may cross out the whole pre-judicial execution according to formal motives.

A person in kept in custody only on the act of court, examining judge and investigator do not have right to free a person, as it was stated on p.14.5 of CPC, if he is not kept arbitrarily.

In accordance with p.19.3 of CPC, the body that realizes the criminal procedure has not right prohibit lawyer, invited as a representative for participation in the interrogatory either by witness or injured. However, in accordance with p.105 of CPC, any person can be invited as representative of the witness in case the reference of the lawyer is thought to be unsteady. The principle of publicity, fixed on page 27 of CPC, has restrictions conditioned by the necessity of keeping the secrecy of the investigation.

And other principles (conditions) of law-proceedings of pre-judicial investigation have peculiarities resulting from the specific nature of the given phase of criminal procedure.

At the same time, the comparison of some principles of the provisions of the CPC of Azerbaijan Republic with the CPC of Estonia, Georgia and the Russian Federation evidences of existence of a number of progressive points in our law, which do not exist in the CPC of the compared countries.

For instance, the CPC of Estonia contains the principle of obligation of criminal procedure (p.6), presumption of innocence (p.7), security of the rights of participants legal proceedings (p.8), security of individual freedoms and respect to human dignity (p.9), the language in which criminal-proceedings is carried out (p.10), publicity of trial (p.11), competitiveness in law-proceedings (p.14), spontaneity and oral character of court examination (p.15), continuity and instance of trial (p.15-1).

As the analysis shows, the overwhelming majority of the provisions of Estonian CPC are some principles are declarative are discrepant for their content and are in collision with other parts of the Code.

Thus, on page 7 of CPC nothing is stated about the burden of proving, but in part 3, on p.10 of the CPC it is stated, that all the documents, filing of which to a criminal case is petitioned about, must be filed in the Estonian language or translated into that language (40, p. 9). Meanwhile, in the conditions of keeping under arrest that is excluded. Consequently the right of defence and other connected principles turn into fiction.

The provisions on p.143-1 of CPC, solving absolute prohibition of meeting, correspondence and telephone us (40, p.73), regarded by international organizations defending human rights as a torture, contradict the prohibitions, declared in p.3, on p.9 of CPC (30, p.112).

Neither of the principles of criminal procedure of Estonia is secured, in accordance with CPC, its breach does not bring forth any consequence.

Thus, in accordance with p.11 of Estonian CPC, during an open court any person without any restriction has right of providing sound recording if it does not hinder the sitting of the court (40, p.10-11). However, during the consideration of a trial on accusation of R. Vashenko, A. Zeynalov and others, a judge of Kharyu district court of the city Tallinn prohibited the representative of a defendant to make sound recording and passed a written resolution by the motivation that sound recording was used for lodging of numerous complaints (!! ??).

In spite of complaints, similar despotism of higher courts was not abandoned and breach of the principle continued till the end of the procedure in the district court.

At the same time our attention is deserved by the correct provisions on p.7 of CPC of Georgia, stating, that breach of the Constitution and criminal procedure of the legislation calls forth a responsibility stipulated by law and repeal of illegal procedural acts, but the evidences about the breach of law is not valid.

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