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EVOLUTION WAY AND DEVELOPMENT HISTORY OF CRIMINAL PROCEDURE LAW IN AZERBAIJAN

The article discusses some of the issues of theoretical and practical problems constitutional legal investigation of criminal proceedings in the Azerbaijan Republic is characterized by a number of methodological characteristics. It is noted that, from the legislative point of view, the definition of criminal proceedings can'ot be considered complete. For this reason, the author, referring to the theoretical and legal literature, it considers it necessary to bring clarity to various concepts in criminal proceedings.

Key words: law, criminal procedure, constitutional law, theory, practice

Regarding the research of the history of criminal procedure law, M.Jafarguliyev denotes that undergoing a unique rich historical development way, the criminal procedure law has become the basis of the national legislature regulating implementation of the justice court at present time.

Economic and political liberalism typical for the XIX century was reflected in codification work and firstly it put forward determination of the general framework of the legal development and later, minimum state intervention to a particular law sphere. According to the opinion of the lawyers of the XIX century, the codes had exactly to determine the borders of the permitted and prohibited deeds (1).

The codification works begun in the XIX century in Europe influenced on Russia also. Codification of the valid law, arrangement in a chronological order of the law collected over a long period of time was the requirement of that time and objective necessity.

Codification of the law in Russia beginning from the Legislation Assembly of 1649 until the end of the XVIII century led to collection of a great number of legal materials and it had a negative impact on development of legislation. Among the legal acts collected for a long time there were a number of acts contradicting with each other. Neither official, nor non-official declaration of the collection of laws has been carried out. Many laws had not been published at all and were spread just by the way of copying. Therefore, it had become a necessity to codify the law. Besides it, social and economic condition of that period also demanded it. Capitalist relations developing at that period in Russia also put forward a necessity to revise and update the legislation.

In the middle of the XIX century Russian Empire still maintained the medieval feudal society. The state concentrated the main power in its hands; individual rights were nearly on a zero level. Challenges for reforms have already increased. These challenges had become more intensive after defeat of Russia by France, England and Ottoman Empire in Crimean war. Czar Alexander II preferred to carry out reforms by peaceful and compromise way, rather than a violent and revolution way.

In 1864 czar Alexander II adopted a new project called "Great Reforms" and stimulating acceleration of development of the empire. Within framework of this project economic, legal and political reforms began to be implemented. Earlier, different layers of the society, i.e. the clergy, nobles, peasants were under the guidance of the official bureaucracy of the empire. But at the result of the implemented reforms different layers were united under a single system (5).

While carrying out a court reform, there was given an order to give more attention to the civil and criminal procedure law, as well as to the civil and criminal law spheres. This reform was very important for the Russian society. A number of new institutions were established, others were restored.

The reform of 1864 was attributed not only to the territory of Russian Federation, but also to Poland, Finland, Ukraine, Belarus, Caucasian countries, including Azerbaijan and Baltic countries which are independent countries at present time. Alongside with Russia, the impact of France, Germany, Austria and Italy is evident in the roots of the adopted codex. Therefore, this historical reform is accepted as a continuation of European heritage. The character of the reform was so strong that continued its impact on Poland even after 22 years- until 1939. The adopted codex maintained its force in USSR period also; just the names of some parts were changed.

The project committee for implementation of judicial reforms was established yet ten years

earlier. At the begging of 1850s when this committee began to function well-known Russian lawyers were included to it. The first result of the work was adopted on September, 29, 1862 by Czar Alexander II and was published under the name "General provisions of juridical reforms". There were 446 proposals put forward by the judges and attorneys. But in the end, czar signed the final decision on November, 20, 1864 and 4 regulations were adopted. They were the followings: Regulations of Juridical Institutions, Criminal Procedure Code, Civil Procedure Code and Criminal Code. In these acts the famous Russian state figure Michail Speransky's influence was evident (6).

New Russian Juridical system was established on the following principles: independence of courts, adversarial principle, equality of everyone before the law, the jury for judgment on more serious crimes.

The negative results of the reform were seemed from two aspects. Firstly, the reform was implemented only in main cities of the country. The peasants, who made the majority of the country, had just a little effect of it. 80% of the population was peasants. But this reform referred only to 20% urban population. Secondly, the code did not have an effective practice. Because, this code which had been systematized upon the practice of European countries, did not match the Russian society. Though it was successful in most of European countries, in Russia it failed. Many Russian and foreign scholars consider that the codes adopted in Europe at that period were not working in Russia appropriately.

Despite all the negative aspects, judicial reform in Russia, guided by the principles of openness and contention could be considered progressive. This reform has set a beginning of a newer Russian juridical history which lasts up to present days.

Different authors denoted different thoughts about the reform of 1864 in their articles. An article in the Russian journal "Law" published by the Ural State Law Academy located in Yekaterinburg in regard to the 150th year's anniversary of conduction of the reform can be reminded. The article says that the juridical reform of 1864 set foundation of the transition from inquisition court execution to adversarial proceedings.

The transition to adversarial proceedings played a great role in determination of the truth. Even this principle found its reflection in the provisions adopted in USSR period. Though in some courts objective processes lost their adversarial character during implementation, yet never came back to an inquisition form. The adversarial process was carried out on following principles: oral juridical execution in spite of written execution,

The dispute process was carried out on the following principles: oral legal proceedings instead of written proceedings, publicity instead of privacy, adversarial instead of inquisition (7).

Unlike the inquisition, the court offered the parties to be represented in court freely and actively. The role of the judge in collection of evidences was passive. The judge would only make a final decision on the basis of the collected evidences at the end.

In this case, the judge ensured an accurate implementation of the process of justice and allowed competition between the parties to reach a conclusion. The party providing with more sufficient evidences and proving his innocence within the framework of the legislation at the end was declared innocent by a court decision.

The typical characteristics of the judicial reform of 1864were the separation of the judicial power from the executive and legislative power, independence of judges, and transparency of the court proceedings.

For the first time the legal institution was established, the judicial system took its place as an independent system in the management of the empire. It also reflected equality of everyone before the law. In jury trial the jury consisting of 12 jurors was confirmed to give a verdict on guiltiness or innocence of the accused persons. The processes as overall conduct of the case, public hearings, provisions about qualitative legal assistance to the accused persons, research of the case on favorable terms and acceptance of applications appeared. As these reforms began to be applied in practice, there was a sharp increase in release of many innocent persons (5).

We have noted above that this Code was meant as the main legislation act not only in tsarist Russia, but also in other countries in its structure and as well as, in countries under its impact. One of these countries within the Empire was the Kingdom of Poland.

In January, 1863, after the revolution that took place in Poland, the country's separation from Russia from legal and political point of view became impossible. Therefore, the reform conducted in 1864 was attributed to Poland, too. So a jury trial was canceled here, selection of judges was replaced with appointment of judges, unchangeability of judges was strictly limited. The aim of conduction of the reform in Poland was not only unification of the judicial system of the country to Russia, but also it was an evident example of Russification policy. The Russian language was considered an official language in the courts and the judges were appointed by Russian lawyers (8).

But at the same time together with the limited aspects of this reform, there were progressive aspects of it also. A number of traditions remained from the feudalism period were eliminated. Transparency of the trial view, equality of parties and independence of the judiciary have been began to be applied in accordance with the Code. On the other hand it was the result of the powerful effect of the reform that these laws had kept their force in central and eastern parts of the country until the 30th years of the XX century. The reform that Russia conducted in Poland had been greatly influenced by sphere of laws applied in European countries. Because of Poland's location in the center of Europe laid ground for its being different from the remote countries with certain features. The code's preparation on the basis of the Napoleonic Code and the Civil Code which had been in force until that time in Poland, was a clear proof of it. One of the characteristics of the reform carried out here was the fact that administrative and criminal cases was carried out by separate authorities. The cases related with some right violations were put to consideration directly in Russia.

Over time, a compromise on the issue of appointment of judges in Poland was allowed. Tsar's consent to selection of protectors of justice from the educated, as well as the owning a property public formed a confidence of the Polish community. But here also the empire insured itself. Because, the selected persons were evaluated because of the price of their property. This policy of the czarist government showed that it had a specific purpose for directly selection of those persons. To give priority to this layer of the population is the indication of their more faithfulness to the empire.

The situation in rural areas remained tenser than in the city. Here the judge managing an area combining in itself a few villages was elected by the people. Shortcoming was that although majority of the population lived in villages, only a small part of the reforms was being implemented in the villages (8).

Each of these adopted laws was projected by a Special Law Commission established in Warsaw. This body reported directly to the Committee of the Government of the Kingdom of Poland on the draft laws. The Commission was organized only from Russian lawyers. Many of them were young and inexperienced staff sent from the central provinces of Russia. The policy pursued by the members of this commission which had no relation with Poland and had no idea about the local traditions was the main obstacle for achieving results. Inclusion of no local lawyer to the commission organized by Nikolay Milutin was met with great discontent.

The adaptation of the reform to the local conditions continued throughout the years yet with difficulties. Ousting the Russian language in the courts, organization of the judicial system in the local language, creation of meeting rooms in the villages had been included in the list of factors formed over twenty years. Organization of courtrooms in the areas where formerly were only houses of the peasants was an evident proof of the development.

Generally speaking, it should be noted that the reforms conducted in Poland in the XIX century played an important role in the development of the country. As the impact of the French Code was great on Europe, it led all the European codes benefiting from it. In the case of Poland, once the country was united, all the shortcomings were done away with a new Code of Criminal Procedure adopted in 1928 and important steps were taken in the direction of the country's independence and in adoption of new laws.

In the middle of the XIX century, the judicial reform was carried out in one of the areas included to the Russian Empire, in Ukraine, in 1864. The authors believe that as a result of these reforms' extension to Ukraine, protection of the violated rights and legitimate interests in this period were resolved under guidance of the provisions of the reform. The judicial reform of 1864 had an impact on various aspects of the Code of Civil Procedure of Ukraine. Such important elements as the independence of the courts, the judicial process being of an adversarial character, openness and transparency, commitment and execution of decisions were the issues reflected in modern legislation (9).

In the eve of the reform, the Russian Empire, one of the world's largest empires in terms of the area and population, had in its structure the territories of such modern countries as Ukraine, Poland and Finland, as well as a number of other lands. The country the population of which was 180 million, the total sum of the Ukrainians was only 18%. At that time, the population of the city of Kiev was 250,000 people, thus it had the title of the 7th largest city.

Until the completion of the reform of 1864 in the territory of the empire, in different countries various acts reflecting feudal serf relations and undergoing changes very often was applied as the source of legislation. From this point of view, Ukraine was not exclusion. And application of these acts was focused to judgement of the persons of Russian origin

The reform made significant changes in the field of civil and criminal procedural law. In addition, the reorganization of the courts, regulation of the civil and criminal procedural law were the issues included in the reform.

The main goal of conduction of the reform of 1864 in Ukraine was the followings:

1) Elimination of the negative public opinion in the judicial system and organization of an independent judicial system based on election;

2) Doing away with non-systematical and sophisticated organization of processes and removal of long-term re-organization proceedings;

3) Consideration of the cases on the base of openness, transparency and adversarial principle, in accordance with the equality of the parties (10).

Before the reform there used to be 12-13 institutions, but after the reform they were eliminated and a single judicial system was established. It should be noted that before the reform, the same case was considered both in administrative bodies, and in juridical authorities. But after the reform, at the result of separation of the courts from the administrative bodies and their independent functioning, the cases were reviewed only in the court. Another factor showing development of the juridical institution was the fact that already an adversarial principal was applied and the parties could freely present their evidences up to the end of the process proving their rightness without the intervention of a judge. However, previously during presentation of the evidences, the judges and interested authorities used to violate the terms of the objectivity making decisions meeting their own interests.

All these features once again prove the progressive aspects of the judicial reform carried out in the XX century. While making modern researches, the scholars refer to criminal proceedings of 1864. Because fundamentals of the most of the codes adopted later are consistent with this act.

However, the Ukrainian judicial system is not ideal, but it acts as a system far away with the most of the violations has occurred in the past. Development of different institutions is still in the process and it is an indicator of sustainable development of the judicial system. Therefore, the importance of the laws in the sector of a modern legislation is undeniable. In ensuring the welfare of society and quality of life of the population as all the organs of the state, the judiciary also has its own role.

Lithuania was one of the countries included to the territory of the empire. At that time, the reforms of 1864 were extended to Lithuania also. As the territory of the Baltic States was under the rule of the tsarist Russia, all of the changes taking place here and all the laws adopted here referred to these countries also.

The lawyers took part in the conference held for the 150th anniversary of the reforms of 1864 tried to research the legal and historical results of the various acts adopted at that time.

The effective application of this Charter had been carried out in Lithuania since 1883. Although after the collapse of the empire in 1918, Lithuania withdrew from the structure of the empire and declared its independence, the impact of the reform of 1864 was evidently seemed in legislation acts of the later periods. The legislative act of 1864 was the contemporary legislature statute and the impact of the Western countries, especially France, was clearly felt on its text, (11).

After the reform a number of new problems occurred in the newly established courts of Lithuania. Lack of qualified specialists, the difficulties arising while translation of the charter from Russian into the Lithuanian language, disagreements between different Russian and Lithuanian bodies, especially the disputes with the Senate put obstacles on the way of conduction of the reforms. However, despite of all these, the reform was implemented successfully and remained in force until 1940. This means that no procedural codes were accepted in Lithuania until 1940. A charter of 1864was studied once again in 1990 when Lithuania gained its independence and the certain items of the charter were added to newly adopted Code (1).

Unlike other countries, in Lithuania adaptation to changes was a bit difficult. As the Russian language was the dominant language, there occurred very serious problems in the courts. As the majority of the judges, parties and lawyers did not know the language, the review of the processes used to take a long time. The lack of local experts in Lithuania and migration of most of them to Russia was one of the issues affecting the local environment. Most of the Lithuanian lawyers studied in the central provinces and then remained there and began to work at the local authorities. It also led to the country's lack of a lawyer. Incomplete understanding of the text of the Charter led to incorrect application of most of the provisions contained therein. However, after some time the Russian lawyers began to render their support to the Russian translation of the charter. Their learning Lithuanian language and translation of the provisions put away with the misunderstandings. As in other colonies, here also the same principles were applied. The independence of the courts, establishment of the jury, transparency of the court proceedings, the parties' equality before the law and the courts, application of the adversarial principle referred to Lithuania also. Reflection of these provisions should be considered as a great success. Now removal of the feudal-serf relations and adaptation to the European system played a significant role in development of the Baltic States. This charter's being in force as an official act even 22 years later after

it was referred to Lithuania and its being on the basis of the provisions adopted after it in different times indicates the level of its importance.

Reflection of the charter adopted in the XX century in the main provisions standing on the basis of the development of the Lithuanian of legislation and juridical system is a great success indeed. It is a really great honor for the authorities who were in charge of the implementation of these reforms the 150th anniversary of which is celebrated. Of course, the reforms had a certain shortcomings due to that time, but in general they can be considered progressive. The practice coming from the legal system of the developed countries of Europe is also a proof of it.

In general, the criminal proceedings of 1864 were again examined and referenced in the acts adopted after the World War II, during revision of the Civil Procedure Code in 1990, and during the preparations for adoption of the Civil Procedural Code in Lithuania in 2002.

As mentioned above, in 1864 the reform was carried out in all the lands the empire covered. As in European territory of Russia, the implementation of reforms in the South Caucasus region also took place on particular conditions. Due to the different traditions, strictness of the religious and local laws and rules, the reforms were carried out with certain limits. Local environment was to a certain extent taken into consideration not only in the reforms of the juridical field, but also in urban, political and economic spheres. In the European literature, the word Azerbaijan is not used, generally the concept of the Caucasus is used. It also shows that with the name of the Caucasus was meant all the nations of this region.

The history of the current system of criminal procedure law of Azerbaijan was accepted to calculate from the XIX century, to be more precisely, since the annexation of Northern Azerbaijan into the czarist Russia. Until the contracts of Gulistan dated October,12, 1813 and Turkmenchay dated on February,10, 1828 when the territory of modern Azerbaijan Republic was included to Russia, Azerbaijani khanates were governed by Sharia law, and criminal, civil, family and other disputes were handled by the confessors in the sharia courts. The period until the first part of the XX century, according to the historical typology, criminal proceedings referred to accusation type, however, was characterized by the humanist values of the beginnings of some contention of sharia law.

After becoming the administrative part of the Russia, criminal law and criminal procedure law of the tsarist Russia began to be applied in Azerbaijan, too. However, the new management system could not oppress Sharia law to a full range, it seems that the imperial power preferred to apply Russian laws to this territory step-by-step taking into consideration totally different environment of this country from the point of view of the language, religion, national mentality and so on. Thus, the tsarist regime kept the confessor courts, they were authorized to judge and punish for the acts which were not considered crimes in the criminal law of Russia, but were against the laws of Sharia.

Proceedings applied during the studied period were fully of inquisition character and served only for identification of the "truth". Review and verification of the verdicts of criminal cases passed through numerous instances causing difficulties; on one hand the relevant instances were overloaded with the work, on another hand it led to an excessive restriction of the time of the persons involved to judgement (2).

All this, and most importantly, the emergence of new already tested procedures in western countries forced the czar government to make drastic changes in the judicial system. The Charter of the Criminal Proceedings adopted in 1864 opened a new phase in the history of the proceedings. In January, 1, 1868, this act began to be applied in Azerbaijan, too, in accordance with the Charter dated on November, 22, 1866 and the Law on implementation of the juridical regulations in the South Caucasus dated on December, 9, 1867.

The Charter on Criminal Proceedings of 1864 had a key and decisive role in bringing of the western adversarial criminal proceedings to legal system of Russia and, accordingly, of Azerbaijan. Thus, this act strictly separated the administrative authorities prosecuting crimes from the courts. Prosecution was re-established, and was released from general control function and was concentrated on the work of the court.

For the first time, the institute of forensic investigators operating in advocacy organizations, as well as in the district courts and not depending on the police and prosecutors was established. Investigation of the criminal cases began to be conducted in open court hearings. The famous principle of the Ancient Roman juridical law "the other side also should be heard" came into force. The concept of formal evidences was eliminated. The rules on determination of the strength of the evidences contained in the Charter of Criminal Proceedings had to act as guidance for the judges' internal belief for determination of guilty conscience. With the verdict the guilt of the accused could be confirmed, or he could be justified. The accused persons could not be restrained as suspects. (2).

But of course, there were shortcomings of the reform, too. Regulations of the Court, including the Charter of the Proceedings were applied in Azerbaijan with significant exceptions.

Judgment proceedings in conciliation courts were implemented not by means of elections, the judges were appointed by administrative management. The local population almost was not represented in the composition of the judges. Corruption kept on rising in the judicial system, people's rights were violated and local traditions were not taken into account. The hearings were conducted in the Russian language, circumstances of the case were not entirely clear to the participants of the court.

The instance of reconciliation was not established in Azerbaijan. In Russia the serious crimes were conducted in a district court. But in Azerbaijan, neither the district court, nor the district instance was established. The courts of the first instance reviewed all the work as reconciliation. The reconciliation congress was to be established, however it did not happen, either. The district courts as the second-instance were operating in Tbilisi. In addition, no institution of the jurors and the institute of forensic investigators were established in Azerbaijan. Deputy Judge of the reconciliation court was fulfilling the work of these bodies.

All these constraints did not allow full implementation of the reform. Both the Russian attitude toward Azerbaijan, as well as partial implementation of certain provisions of the reform here was a key factor. The local people could not enjoy all the features of the reform which they had expected from a successful policy.

If we compare the reform carried out in Azerbaijan with the above-mentioned countries, we will witness some similar and different aspects. It should be noted that the most of the states which are independent countries now, but at that time were joined to the empire underwent the same difficulties as the language issue, the lack of local specialists and appointment of inexperienced Russian lawyers. The differences are that in comparison with other countries the implementation of the reform in Azerbaijan had a limited nature. The reason of it was Azerbaijan's location in the outskirts of Russia, religious differences, as well as a difference in the local traditions. Ukraine, Lithuania and Poland's location in the European part of Russia and the religion factor inevitably led to diversity in the reforms conducted there and in Azerbaijan.

Generally, the reform stands out with its advanced features. Therefore, in 2014, on the occasion of the 150th anniversary of the reform, the lawyers of the countries which used to be the part of the empire, but are independent country now, expressed their thoughts about the reform and acknowledged that the basis of the criminal legislation of their countries derives from this charter.

Until the middle of 1917, Azerbaijan procedural law covered mainly the acts that had been adopted in the previous period, especially the Juridical Charters of 1864. At the beginning of the century, the growth of the national liberation movement and the war situation, the process conducted in the military district and military field courts were exclusions. These courts were required to be completed within two days and the cases were reviewed closed to public. The judgment took effect immediately and directed to the execution within a day. These courts did not include the participation of defense in the courts. Cases of torture and cruel treatment were not exclusion. It was impossible to complain from the composition of the court and its judgments (3, p. 396).

During the reign of the Baku Council, the organization and activity of judicial and investigating authorities in Baku were regulated according to the charter "About revolutionary tribunals" dated on January 31, 1918, the decrees of Baku NCC "About Court" dated on May 29, 1918, "About people's court" dated June 6, 1918, as well as, "About temporary tribunals under the labor commissariat of the council of Baku workers, soldiers and sailor deputies" dated on June, 30,1918 and other legal acts (3, p. 397).

While looking at criminal matters both in Russia and the Caucasus the laws issued by the previous governments were used. The legal proceedings were conducted in accordance with the Charter of 1864. The work was considered collegially. Local people's court consisted of a permanent judge and two alternating juries which were called from the list in each session (3, p. 397).

Democratic institutions – conduction of the criminal proceedings in the national language, the right of defense, orality and directness of criminal proceedings have been reflected in RSFSR's Decree № 2 dated on February, 22, 1918 (4, p. 60).

On June 23, 1918, in relation with the military situation, the serious criminal cases such as speeches against the government, treason, extortion by threats, murder, robbery, armed resistance against the authorities, abduction and rape of women, burning residential constructions and grain, damaging of railways, telegraph and telephone lines were extracted from general court jurisdiction and the persons suspected of having committed the above mentioned criminal acts were determined to be accused by applying the laws of the military period. On June 11, 1919 the same step was taken and besides the serious crimes listed above, as well as attempt on the life of the heads and members of the parliament and the government, attacks to the military units, murder of the officials during implementation of their work were also given to the disposal of the military courts.

In accordance with the "Provisional Regulations on the structure of the Military Court of the Republic of Azerbaijan" military investigators started the case in the following cases: 1) the information of the military government; 2) The proposal of the military prosecutor; 3) the knowledge of the judicial and administrative officials; 4) The complaints and applications of the military servants and private persons; 5) voluntary advent (3, p. 446).

The bill "About establishment of the court jury of Azerbaijan" prepared on February, 20,1919 by the auxiliary commission of the Ministry of Justice on "Involvement of the public to participate in the administration of justice" intended the participation of the jury not only for determination of the defendant's guilt, but also in resolution of the punishment issues. The bill "On organization of a special court for juveniles who committed crimes" prepared in March of 1920 and the others were directed on improving the judicial system and legal proceedings (3, p. 447).

The first Criminal Procedure Code of Azerbaijan SSR was adopted on June 16, 1923 by the 3rd session of Azerbaijan SSR. M. Jafarguliyev evaluated adoption of this Code of Criminal Procedure as an important step in development way of the legislation of the Republic and said that the new and first Code establishes a perfect system of procedural norms regulating investigation and resolution of judicial authorities (4, p . 60).

The Azerbaijan Constitution of 1937 confirmed a number of procedural principles like reviewing the cases in court openly, conduction of proceedings in the national language, provision of the right of the defendant to use his own native language and the defendant's right to defense. Alongside the detailed notes on the duties and regulations of the justice court, a number of procedural provisions were also reflected in the Charter "About Judicial system" adopted in 1938 (3, p. 448).

The Code of 1923 had been in force until the March,1, 1961. The Code of Criminal Procedure of 1961 was prepared on the basis of the RSFSR Code and consisted of 6 sections, 32 chapters and 453 articles. In 1969-1971 years during development of the criminal procedure law the following documents were adopted: "About application of labor law reform of USSR and union republics", "About confirmation of the charter on detention" and "About addition and amendments in the basis of the criminal law of the USSR and the union republics," and so on. (4, p. 67).

Both before and after the Independence Constitution of 1995, the changes were made to the Code of Criminal Procedure, the provisions as the judicial protection of rights and freedoms, the right to legal assistance, presumption of innocence, avoidance of the change of jurisdiction, avoidance of repeated conviction for a crime, not to make a person to testify against relations, the right to claim damages have been added.

A new Code of Criminal Procedure on July 14, 2000, besides reflecting the needs of the period, also was an important step in improving the criminal procedure law.

The valid CCP consists of two parts - General and Special units, and consists of 521 articles.

In the literature of the law as the main distinguishing feature of the Code is shown determination of criminals by new criminal proceedings and provision of all the rights and freedoms of all participants of the criminal procedure indicated in the Constitution, (3, p. 703).

The laws "On compensation of the damage caused to the individuals at the result of the unlawful acts of the inquiry, investigation, prosecution and judicial authorities", "About complaint to the court against the decisions and actions that violate the rights and freedoms of citizens" provide compensation right of the violated rights of everyone. Recognizing adversarial principle of the parties and principle of equality the new Code of lifted the imbalance between the prosecution and defense sides (3, p. 703).

In accordance with Article 1.1 of the CPC of RA, criminal procedure law of Azerbaijan Republic determines whether the deeds with criminal signs are considered a crime or not, whether the accused is guilty of committing an offense or not and also determines the procedures of pursue and defense of the accused or the suspected person.

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У статті розглядаються деякі питання теоретичних і практичних проблем конституційно-правового дослідження кримінального процесу в Азербайджанській Республіці, характеризуються деякі методологічні особливості. Відзначається, що із законодавчої точки зору дефініцію кримінального процесу не можна вважати повною. З цієї причини автор, звертаючись до теоретично-правової літератури, вважає за необхідне з'ясувати різні поняття в кримінальному процесі.

Ключові слова: право, кримінальний процес, конституційне право, теорія, практика.

В статье рассматриваются некоторые вопросы теоретических и практических проблем конституционно-правового исследования уголовного процесса в Азербайджанской Республике, характеризуются некоторые методологические особенности. Отмечается, что с законодательной точки зрения дефиницию уголовного процесса нельзя считать полной. По этой причине автор, обращаясь к теоретически-правовой литературе, считает необходимым придать ясности различным понятиям в уголовном процессе.

Ключевые слова: право, уголовный процесс, конституционное право, теория, практика.