

**Alamonova Shoira Ergash qizi**

*O'zbekiston Respublikasi Adliya vazirligi huzuridagi Huquqiy siyosat tadqiqot  
instituti katta maslahatchisi,  
Toshkent davlat yuridik universiteti magistranti*

**JINOYAT PROTSESSINI RAQAMLASHTIRISH SHAROITIDA  
TARAFLARNING TORTISHUVCHANLIK PRINSIPINI AMALGA  
OSHIRILISHI MASALALARI**

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**Alamonova Shoira Ergash kizi**

*Senior consultant of Research Institute of Legal Policy under  
the Ministry of Justice of the Republic of Uzbekistan,  
Master of Tashkent State University of Law*

**IMPLEMENTATION OF THE ADVERSARIAL PRINCIPLE OF THE  
PARTIES IN THE CONDITIONS OF DIGITALIZATION OF THE CRIMINAL  
PROCESS**

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**Аламонова Шоира Эргаш кизи**

*Старший консультант Исследовательский институт правовой политики  
при Министерстве юстиции Республики Узбекистан,  
Магистр Ташкентского государственного юридического университета*

**РЕАЛИЗАЦИЯ ПРИНЦИПА СОСТЯЗАТЕЛЬНОСТИ СТОРОН В  
УСЛОВИЯХ ЦИФРОВИЗАЦИИ УГОЛОВНОГО ПРОЦЕССА**

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**Implementation of the adversarial principle of the parties in the conditions of  
digitalization of the criminal process**

There are several principles ranging from legality, administration of justice only by court, independence of judges and their accountability to law only, mandatory initiation of criminal case, administration of justice on basis of equality before the law and court, respect for honor and dignity of individual, protection of human rights and freedoms, language of criminal proceedings, securing right of suspect, accused or

defendant to defense, right to bring complaint against procedural actions and adversarial principle of parties in the Code of Criminal Procedure of Uzbekistan.

The adversarial type of criminal proceedings is characterized by such features as the presence of antagonistic parties – the defense and the prosecution and their procedural equality, as well as the presence of an independent, impartial and separate court. Adversary as a principle of the criminal process is guaranteed by international legislation. This is enshrined in *Part 3 of Art. 14 of the International Covenant on Civil and Political Rights*. In this part, the following minimum guarantees which helps to ensure adversarial principle is introduced properly:

- To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it [1].

Because of recognizing the principles of international law, our national legislation has also the rule which provides individuals with assured legal assistance. According to *Art. 116 of the Constitution of the Republic of Uzbekistan*, an accused shall be ensured the right to defense [2].

In fact, legal assistance should be ensured all types of litigation ranging from civil, economical, administrative to criminal procedures so as to provide people with adversarial right in an appropriate way. Especially in criminal procedure, the essence of this principle is relatively high. Therefore, *Art. 25 of Code of Criminal Procedure of the Uzbekistan* is dedicated to Adversarial Proceeding at Court reflecting the following meaning:

Proceedings in court of first instance and in higher courts shall be conducted on the basis of parties' adversarial setting.

A prosecution, defense, and adjudication shall be separated from one another during proceedings, and may not be assigned to the same agency or official. The specialization of prosecution, defense, and adjudication causes to provide the fulfillment of not only adversary but also objectivity among them.

As per the next parts of the article, State and public accusers, defendant, legal representative of a juvenile defendant, defense counsel, public defender, as well as a victim, civic plaintiff, civic defendant, and representatives thereof, shall participate in proceedings as parties and enjoy equal rights to produce evidences, participate in their

examination, file motions, express their opinion on any matter being significant for the correct resolution.

Besides that, the court has responsibility to be brought out the adversarial principle by parties in criminal proceedings. So that, the court, being objective and impartial, shall provide necessary conditions to the parties to perform their procedural obligations and enjoy their rights without acting for the prosecution or the defense, and without representing their interests.

In general, *Art. 25* established that the functions of accusation, defense and resolution of a criminal case are separate from each other and cannot be assigned to the same body or the same official. The functional sign of competitiveness is important for determining the form (type) of the criminal process.

Without going into numerous scientific discussions regarding the specifics of the implementation of this principle in the domestic criminal process[3], it is necessary to pay attention to the issues of its further existence, taking into account the digitalization of criminal proceedings.

As per the Professor V.A. Sementsov, “modern digital reality necessitates a significant modernization of various areas of social life, including law enforcement”[4]. It is difficult to disagree in this part with the categorical opinion of prominent process scientists that digitalization, which means the transition to a digital method of communication, recording and data transmission using digital devices, should be considered as the most optimal regulator of most modern social and legal relations[5]. The German scientist I. Richter emphasizes that it is the Internet which occupies a central position as a new information carrier, and from this point of view, the digitalization of legal proceedings can be perceived as the spread of the Internet and access to legal proceedings through the World Wide Web.

Further digitalization of modern domestic criminal justice is inevitable. However, a logical question arises, which is how the development of digitalization of this industry can influence the observance of the principle of adversarial character of the parties?

In particular, due to implementing digitalization in the criminal courts, it is obtained the reduction of excessive criminal procedures in office work and elimination of redundant steps. As a result, it enables the parties to focus on the main issue and dispute in this scope.

Furthermore, adversarial principle is also provided if petition, statement, complaint, presentation are filed with a court in the form of an electronic document.

In the experience of foreign countries, this practice is well established. For example, Federal Law No. 220-FZ dated June 23, 2016 amended the Code of Criminal Procedure of the Russian Federation, supplemented by a new article 474.1 “Procedure for the use of electronic documents in criminal proceedings”, according to which a petition, statement, complaint, presentation can be filed with a court in in the manner and terms established by

the Code of Criminal Procedure of the Russian Federation, in the form of an electronic document[6]. These procedural documents differ not only in name, but also in sources.

In particular, the presentation is an act of the prosecutor's reaction, i.e., its author is always the prosecutor representing the prosecution. The author of the petition can be a representative of both the prosecution (prosecutor, investigator, victim, etc.) and the defense (the accused, the defense counsel, the civil defendant, etc.), which allows us to speak about the equality of the parties in exercising the right to refer to the court proceeding from them documents.

Although petition, statement, complaint, presentation have not been filed yet, several reforms aimed at implementing digitalization the judiciary are being implemented in Uzbekistan step by step.

As per *the Resolution of the President of the Republic of Uzbekistan of May 14, 2018 No. PP-3723 "On measures to radically improve the system of criminal and criminal procedure legislation"* a new task which directed into the introduction of "electronic criminal case" by ensuring the effective use of information and communication technologies was introduced. The resolution stipulates that the following tasks will be performed within the framework of the project "Electronic criminal case":

- to make integration of a protected system, including information systems and databases, which enables the exchange of information with the prosecutor's office, courts and penitentiaries, as well as other organizations during the conduct of criminal proceedings in electronic form and procedural actions; introduction of automation of statistics on criminal cases;

- to ensure the exchange of information via the Internet with individuals and legal entities, inquiry bodies, courts, prosecutor's offices, taking into account the introduction of a single identifier of the document;

- to develop a single electronic form of criminal procedure documents in the practice of inquiry into criminal cases;

- optimize criminal proceeding by reducing the number of procedures in electronic criminal proceedings and eliminating redundant steps;

- to simplify procedures for the implementation of procedural actions, including through the receipt of sanctions in electronic form, the collection of evidence, examinations, court proceedings and the execution of court decisions.

The resolution provides for the implementation of a pilot project "Electronic criminal case" in Yakkasaray and Mirabad districts of Tashkent, the simultaneous use of paper and electronic forms of documents, equipment of workplaces, the creation of internal local area networks.

This reforms will cause to further provide parties with adversarial principle in the criminal courts in near future.

As a conclusion, the usage of digital technologies in criminal proceedings is the next round of the evolutionary development of the criminal process and the criminal procedure policy should be built taking into account the need to increase the share of digitalization and the introduction of such technologies in the criminal process. As a result, the digitalization of the criminal process due to such elements as simplifying the procedure for filing and bringing petitions, complaints and representations, digital recording of the time of their statement, making a decision based on the results of their consideration, will entail a qualitatively new level of implementation the principle of competitiveness of the parties in criminal proceedings. Since it will deprive the court of the opportunity to give preference to the point of view of any of the parties during the procedural procedure for considering the documents received and making a decision on them.

#### References:

- [1] <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- [2] [https://constitution.uz/uploads/constitution\\_en.pdf](https://constitution.uz/uploads/constitution_en.pdf)
- [3]. Леонова Т.В., Костенко Р.В. Роль и полномочия суда в доказывании на стадии судебного разбирательства в условиях состязательности // Общество и право. 2009. № 2 (24). С. 188-191
- [4]. Семенцов В.А. Цифровизация правоохранительной деятельности и роботизация юридической профессии // Юридический вестник Кубанского государственного университета. 2019. № 1. С. 52-56.
- [5]. Gladysheva O.V., Kostenko R.V., Sementsov V.A. Digitization: Problems of Use and Protection of Information in Criminal Proceedings // Studies in Computational Intelligence. 2019. Vol. 826. P. 395-401.
- [6]. [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_200008/](http://www.consultant.ru/document/cons_doc_LAW_200008/)