REPUBLIC OF AZERBAIJAN

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ABSTRACT

of the dissertation for the degree of Doctor of Science

THE GENERAL AND DISPOSITIVE BASES OF CRIMINAL PROCEEDINGS IN THE REPUBLIC OF AZERBAIJAN

Speciality:	5612.01 – "Criminal procedure, criminalistics and forensic examination; operational-search activity"
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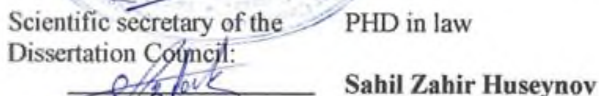

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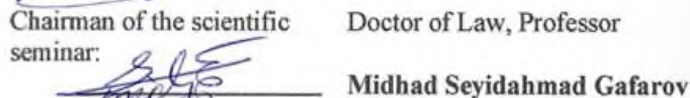

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GENERAL CHARACTERIZATION OF THE WORK

The actuality of the topic and the level of elaboration. The subject of principles in criminal procedural law almost never loses its importance and actuality. It is true that at different times the issues of implementation and maintenance of different principles may be more relevant than the others, for example, in the early 2000s, when the idea of dispute was newly enshrined in national criminal procedural legislation, scientific research on this principle became more relevant than other principles. In order to ensure the availability of new knowledge to explain the content and essence of this principle and in this connection, this principle was independently analyzed by F.M. Abbasova within the framework of her doctoral dissertation in accordance with the requirements of the time period. Also, although no new principle has been added to the national criminal procedural legislation in recent years, the experience of some foreign countries, such as the Russian Federation (hereinafter - RF), shows that the scope of principles of criminal procedure can be expanded in the process of improving the legislation, as in Russia although the Criminal Procedural Code of the Russian Federation (hereinafter CPC) itself was adopted on 18.12.2001, its second chapter, which defines the system of principles of criminal procedure, provides for the principle of reasonable duration of criminal proceedings (new Article 6.1.) was added about ten years later, on 30.04.2010 and logically, the need to study this principle has increased since this event, compared to the study of other principles that have been repeatedly studied in independent dissertations.

However, we would like to emphasize once again that the topic of principles in criminal procedural law, which is devoted to the analysis of both the whole and the individual principles, is in itself always relevant and of practical importance. This is a factor arising from the specifics of criminal procedural law, as they are guiding and concluding legal-philosophical ideas, always interpreting and applying other legal provisions, checking their constitutionality,

assessing their compliance with the right to a fair trial, and so on. They act as the main criterion in the process, the minimum standard, the source of official reference.

At the same time, it should be taken into account that the process of understanding the principles of criminal procedure itself is dynamic, evolutionary and constant. Thus, in the practice of both the national constitutional review body (the Constitutional Court) and international judicial bodies (mainly the European Court of Human Rights), the content and essence of this or that principle of criminal justice are regularly interpreted and explained. This interpretation and explanation mechanism is dynamic, that is, it is used in cases when it is necessary to express a legal attitude to a specific situation in real life or to is activated when it is necessary to define a legal position on disclosure of the content of this or that provision of the current law during the application of a particular case, its specific situation, specific person, etc. conformity to how it should be applied, to the constitution, or to a fair trial (as well as to liberties, respect for private life, etc., guaranteed by national and international law and which can be touched upon in criminal proceedings).

When it comes only for the relevance of the study of the principles of generality (we and many other authors, call it publicity, sometimes this principle is also called the principle of officialty or public notice) and dispositivity (autonomy of will), first of all, all the above mentioned can be applied to them, that is, like any other principle of criminal procedure, the scientific study of these principles is always relevant. At the same time, there are a number of specific reasons why the principles of generality (publicity) and dispositivity (autonomy of will) need to be studied.

First, it should be noted that although we find these principles in the doctrine and in the content of the case, as well as in the relevant decisions reflecting the legal positions of the constitutional review body, unlike other principles, there are no independent articles dedicated to these principles in the current criminal procedural law. However, the principles outlined in a number of foreign countries have been reinforced by the establishment of independent articles in the relevant chapters of the relevant CPCs.

This factor gives a researcher enough reason to think and, rightly, raises certain questions: Why are the above-mentioned principles not defined in the CPM as independent items? Does the fact that they are not identified as independent substances in the CPM lead to doctrinal and practical differences? In general, do these principles need to be enshrined in CPM as independent items? if so, in what context should they be reflected in the CPM, and by what legal formula? and so on. We believe that the set of questions listed is sufficient in itself to reveal the essence of the main issue of the study.

Second, it can be emphasized that the non-establishment of the above-mentioned principles in the current criminal procedural legislation as a separate norm within the chapter systematizing the principles of criminal justice has also led to a lack of knowledge (although we do not want to say no knowledge to it, we can say lack of knowledge to put it mildly) about them in the theory of national criminal procedural law. Thus, as we will show below the level of development of the topic, to date, no monograph on the principles of publicity (generality) or dispositivity (autonomy of will) has been published in Azerbaijan. Textbooks on criminal procedural law in Azerbaijan, as a rule, are guided by the system defined in Chapter II of the CPC when explaining the subject of principles, and therefore, in a sense, the principles of publicity (generality) and dispositivity (autonomy of will) is not paid enough attention. This, in turn, causes students to have a relatively weak idea of the content, essence, elements, manifestations, and correlation of these principles with other principles during their higher education. When they graduate and start their practical activities, they face difficulties in increasing their knowledge through self-education in this sphere due to the lack of works and materials dedicated to the principles of publicity (generality) and dispositivity (autonomy of will) developed on the basis of our legislation and judicial-investigative experience. In other words, another factor indicating the relevance of the study of the above-mentioned principles is the objective need for new and extensive theoretical knowledge of these principles in the national legal literature.

Third, we would like to point out that the principles of publicity (generality) and dispositivity (autonomy of will) exist not in isolation from other criminal procedural legal institutions, but as components of a single system and have a significant impact on the procedural form of the latter. This means that the study of the implementation of these principles and the development of solutions to identified problems has the potential to have a positive impact not only on improving the legal provisions of these principles, but also on improving the procedural form and legal regulation of a number of other legal institutions. In other words, the relevance of the chosen topic of research is related to the prospects for improving the legislation on legal institutions under the influence of the principles of publicity (generality) and dispositivity (autonomy of will).

As for the level of previous research on the subject, as we have already shown, in the post-independence period in the Republic of Azerbaijan, no independent monograph, research work or dissertation has been devoted to the principles of publicity and dispositivity (autonomy of will) of the criminal proceeding. However, it should be noted that we mean only the study of each of these principles separately or in combination and it should not be concluded that the ideas of publicity and dispositivity (autonomy of will) as fundamental provisions in criminal procedural law have generally escaped the attention and interest of researchers. Thus, among national scholars and authors, professors M.A. Jafarguliyev and F.M. Abbasova have commented on key provisions related to the principles of criminal procedure in their relevant textbooks on criminal procedural law for universities, have characterized the general as well as the main distinguishing features of the principles of criminal procedure as a whole, as well as the individual principles, sufficient to solve the tasks of the training course. In this sense, Professor M.A. Jafarguliyev’s and Professor F.M. Abbasova's textbooks have made a significant contribution to national criminal procedural law in the context of building a basic understanding of the principles we have studied. In addition, since the principles of criminal procedure are an integral part of the existing criminal procedural legislation, we consider it appropriate to evaluate the

interpretation of the CPC and the comments on its individual articles as a valuable contribution to the science of national criminal procedural law. Thus, in the context of the doctrinal interpretation of Chapter II of the CPC in force, the principles of criminal procedure are also examined in the commentary prepared by V.A. Ibayev and edited by the late Professor J.H. Movsumov is also covered. It is also important to note that in 2008, M.A. Gasimova's monograph, written in Russian and dedicated to the principles of criminal procedure in the Republic of Azerbaijan, was also published. In our opinion, this monograph should also be considered a valuable contribution to the development of the doctrine of principles in national criminal procedural law.

Along with the study of works published in Azerbaijan, our analysis of foreign legal literature shows that over the last fifteen or twenty years, the principles of publicity and dispositivity (autonomy of will) in criminal proceedings have been studied by foreign authors in different contexts, from different perspectives, and in the light of correlation with different legal institutions. We consider it expedient to classify these studies that are conditionally devoted exclusively to the principle of publicity of criminal proceedings, dedicated exclusively to the principle of dispositivity (autonomy of will) of criminal proceedings and devoted to cover both principles in one single scientific research as well as systematize and present by us into works covering a single research work.

Thus, speaking of research devoted exclusively to the principle of publicity, it should be noted that in 2006, A.S. Barabash defended his doctoral dissertation on the public beginnings of the Russian criminal process. The above-mentioned scholar has systematized the issues related to the subject of the research work, which is quite extensive, into three sections covering eight chapters. The first part of his dissertation research deals with public beginnings and disputes in the Russian criminal process, the second part deals with the purpose and objectives of criminal proceedings reflecting the public beginnings of the Russian criminal process, and the third section deals with Russia's perceptual activity in the public criminal process. From the perspective of an analytical review of the

work, it can be shown that in the first chapter of the A.S. Barabash's dissertation bases of prevailance of publicity is examined, publicity and controversy in theory and legislative practice studied in a reciprocal way. The second section of his dissertation discusses in detail the purpose of criminal proceedings, the purposes of criminal procedure activity, which are important for criminal-legal characterization, and the purposes of criminal procedural activity, which are important for sentencing, i.e. on the scale of independent chapters. In the third section of the case, the author focused on criminal procedural evidence and its objects, the system of evidence, their properties and characteristics, the scope and powers of the subjects of evidence in the process based on public principles.

While speaking of reputable research on publicity, it can be said that in 2009, M.T. Ashirbekova also defended her doctoral dissertation on the concept, content and scope of the principle of publicity of criminal proceedings. The noted researcher discussed the issues related to the subject of his research, the concept, content and importance of the principle of publicity in Russian criminal proceedings, the legal forms of publicity requirements in pre-trial proceedings, the content of publicity requirements in criminal proceedings in first instance and verification of court judgments. analyzed in conceptual chapters on the principle of publicity in court proceedings. M.T. Ashirbekova noted that the system-forming and form-forming features of the principles of criminal procedure are conditioned by the subject and method of criminal procedure, expressed her views on the concept and theoretical construction of the principle of publicity, explained the content of the requirements arising from this principle. She also touched upon the functional-subject types of procedural activity in court proceedings, the manifestation of the principle of publicity in the initiation of criminal proceedings, the preliminary investigation of crimes, the implementation of human rights activities, including the publicity of criminal prosecution. The analytical review also touched upon issues such as the appointment of a hearing and the manifestations of the principle examined during the preliminary hearings, the relationship between the principles of publicity and adversarial proceedings, as

well as the court's initiative in the trial. Finally, this work highlights the validity of the principle of publicity in appeals, cassation and other such proceedings.

Along with doctoral dissertations, a number of Ph.D. dissertations are dedicated to the principle of publicity of criminal proceedings. Although it was defended in Moscow in 1988 and was written in the context of Soviet criminal procedural law, to clarify the degree of research of the principle of publicity of the criminal process on the scale of the Ph.D. dissertations, we would like to start with our compatriot, the late scientist A.M. Yusubov's dissertation on the principle of publicity in the Soviet criminal process. It is a matter of pride that this dissertation has been extensively referenced in almost all Ph.D. and doctoral dissertations written on the relevant topic. This is not accidental, as A.M. Yusubov was the first scientist to study the principle of publicity of the Soviet criminal process at the monographic level. He reflected his research in a three-chapter dissertation that included nine paragraphs. The first chapter of his work, devoted to the essence of the principle of publicity in the Soviet criminal process, discusses the concept and importance of the principle of publicity, as well as the relationship between the principle of publicity and the categories of dispositivity (autonomy of will), the second chapter, devoted to the principle of publicity in the system of principles of the Soviet criminal procedure, first discusses the system of principles of the Soviet criminal procedure, and then the relationship of the principle of publicity with principles such as objective (material) truth, guarantee of the defendant and the presumption of innocence, the third chapter, devoted to the validity of the principle of publicity at different stages of the Soviet criminal process, sheds light on how the principle under investigation was manifested in the initiation of criminal proceedings, the preliminary investigation and the activities of the court of first instance.

In addition, L.A. Mejenina in her dissertation on the publicity of the Russian criminal process, which defended in 2002, attempted to examine the idea of publicity as the basis for the emergence and development of criminal proceedings, and sought to examine the relationship between publicity and dispositivity in modern criminal

proceedings, A.V. Fedulov in his dissertation defended in the same year on the implementation of the principle of publicity (formality) in modern Russian criminal proceedings, also studied relevant issues from the angle of theoretical and methodological bases of studying the implementation of the principle of publicity in criminal proceedings, the subjects and means of realization of the principle of publicity in modern criminal proceedings in Russia, as well as the implementation of the principle of publicity in modern criminal proceedings, S.G. Bandurin, in his dissertation titled "Publicity as a principle of criminal proceedings and its force in the initial stage of criminal proceedings" which he defended in 2004, considered the issues to be investigated in the context of the nature of publicity and its importance in Russia's criminal proceedings and the force of the principle of publicity at the stage of criminal proceedings, V.Y. Shmanatova, in her dissertation on the topic public initiative as a basis for criminal prosecution in the criminal proceedings of the Russian Federation, also studied related matters from the point of view of theoretical, historical and comparative-legal aspects of the function of criminal prosecution in controversial criminal proceedings, problems of interrelation of public, private and subsidiary accusations in Russian criminal proceedings and procedural status of criminal prosecution subjects on public accusations, S.V. Gorlova addressed relevant issues in her dissertation entitled "Criminal prosecution as a manifestation of publicity in criminal proceedings", which she defended in 2006, in connection with the general principles of publicity of criminal proceedings, the concept and types of criminal prosecution, as well as the institute of public-private criminal prosecution, A.N. Kozlova analyzed issues that are the subject of research in his dissertation entitled "Principles of public criminal procedure", defended in 2007, elements and features of the principle of publicity, the public interest as an element that forms the basis of the principle of publicity, and through the prism of the interaction of the principle of publicity and other principles of law in criminal proceedings.

As for the review of research works devoted to the principle of dispositivity (autonomy of will), again, first of all, with special

emphasis on doctoral dissertations, it should be noted that in 2006 V.V. Khatuayeva defended her doctoral dissertation on the implementation of special (dispositive) initiatives in criminal proceedings. In this doctoral dissertation the theoretical bases of realization of special (dispositive) beginnings in criminal proceedings, dispositivity in the system of basic principles of criminal proceedings (autonomy of will), manifestations of special (dispositive) beginnings in realization of criminal prosecution in public and public-private cases, court proceedings were examined. The dispositive nature of the legal regulation of the form and the form of realization of a special (dispositive) initiation in criminal proceedings have been involved in the investigation of cases on special accusation within independent chapters.

In the same year, A.V. Sumachev defended his doctoral dissertation on the theoretical and practical analysis of dispositivity in criminal law. Although this work is written in the field of criminal law, it is interesting for our study, as its content also touches on issues of criminal procedure. Thus, the fourth chapter of the work, devoted to the criminal-legal aspect of special criminal prosecution, examines the concept and legal nature of special criminal prosecution, the content and affiliation of the right to special criminal prosecution, and crimes committed under special prosecution. In 2013, E.L. Sidorenko also defended his doctoral dissertation, which considers dispositivity as a regime of criminal law. Although this case was written in the field of criminal law, it also touched upon the issues of criminal procedural law.

Speaking about the Ph.D. dissertations dedicated to the principle of dispositivity (autonomy of will), it can be shown that in 1994 an interesting dissertation was defended by O.I. Rogova. In that work, dedicated the manifestations of dispositivity in criminal proceedings, the relevant issues were considered in the context of dispositivity (autonomy of will) and correlation of criminal proceedings, manifestations of dispositivity in disposing of the subject of criminal proceedings and dispositivity (autonomy of will) in the behavior of individual participants in criminal proceedings. A.A. Shamardin's dissertation on the special origins of prosecution in

the Russian criminal process and the formation of the principle of dispositivity (autonomy of will), defended in 2001, is also interesting. In that work, which includes the study of issues such as the relationship between private and public initiatives in criminal proceedings, the conditions for the implementation of the principle of dispositivity (autonomy of will) in criminal proceedings, the main legal regulation and practical problems of special and public-private prosecution, public interest was seen as the basis for determining the form of criminal proceedings. In 2002, S.S. Ponomarenko also defended a dissertation on the dispositive beginnings of Russian criminal proceedings, and in his work on the concept and essence of dispositivity in criminal proceedings, manifestations of dispositivity at various stages of criminal proceedings, plea bargaining (dealing with justice) and the parties to the criminal process significantly touched. In 2004, I.S. Dikarev defended his dissertation on dispositivity in the Russian criminal process. He reviewed the issues selected for the study in the light of the history of the development of the doctrine of dispositivity (autonomy of will) in Russian criminal procedural law, the concept and content of sources of dispositivity in criminal proceedings, as well as manifestations of dispositivity in criminal proceedings. In 2009, D.S. Shtoll defended his dissertation on dispositivity in Russian criminal proceedings and its various manifestations. He studied the issues related to the subject of research in terms of the nature and characteristics of dispositivity in the criminal process of Russia, the various manifestations of dispositivity in the criminal process: the current situation, the problems of implementation, ways to improve.

As we mentioned earlier, a number of researchers have considered it expedient to look at the principles of publicity and dispositivity (autonomy of will) as we do, that is, in the context of a single study. Among such studies, again, starting with the work for claiming the degree of Doctor of Laws, L.N. Maslennikova's dissertation, defended in 2000, focuses on public and dispositive beginnings in Russian criminal justice. L.N. Maslennikova systematized the issues related to the research subject in seven independent chapters: the methodology of understanding public and

private origins in criminal proceedings; retrospective development of public and dispositive initiatives in Russian criminal proceedings; interpretation of public and dispositive beginnings in criminal procedural theory; interests as a primary basis for determining the quality of public and dispositive beginnings in criminal proceedings; external factors determining the content and interrelationship of public and dispositive beginnings in criminal proceedings; internal factors determining the content and interrelationship of public and dispositive beginnings in criminal proceedings; prospects for the development of public and dispositive initiatives in criminal proceedings in Russia.

We consider that F.N. Bagautdinov's doctoral dissertation, defended in 2004, can also be evaluated as a scientific work in which the principles of publicity and dispositivity (autonomy of will) are analyzed within a single study. This work is devoted to public and private interests in Russian criminal proceedings and guarantees of their provision in the preliminary investigation, and consists of two sections and seven chapters.The first section of his dissertation, devoted to the theoretical foundations of the study of public and private interests and the guarantees of their protection in the preliminary investigation, examines issues such as public and private interests in criminal proceedings, the role of the purpose and principles of criminal proceedings in their provision. In the second section of F.N. Bagautdinov's dissertation devoted to ensuring public and private interests in the preliminary investigation the role of criminal prosecution in ensuring public and private interests in the investigation of crimes, ensuring the personal interests of persons belonging to the prosecution and assisting the prosecution, ensuring the personal interests of defense entities, ensuring the property rights of participants in criminal proceedings, public and the role of the prosecutor and the judiciary in ensuring personal interests are examined.

There are Ph.D. dissertations among the works in which the principles of publicity and dispositivity (autonomy of will) are analyzed within a single study. For example, in 2002, S.A. Kasatkina in her dissertation entitled "Publicity and dispositivity (autonomy of

will) in the criminal process of Russia", defended both the principles mentioned in one research work, etc.

The goals and objectives of the research. The main purpose of the study was to develop proposals and recommendations of practical and theoretical importance in ensuring and regulating the principles of dispositivity (autonomy of will) and publicity of criminal procedure. In order to achieve these goals, efforts have been made to solve the following **objectives**:

to consider issues such as the concept, essence and significance of the principles of dispositivity (autonomy of will) and publicity of criminal procedural law separately, to study the place of these principles in the system of principles of criminal procedure, as well as their correlation with other principles;

to consider freedom of appeal through the prism of the principle of dispositivity (will), to file a complaint (application) to law enforcement agencies on a crime, to file a complaint directly to the court on special accusation, to take procedurally important action (inaction) to independently investigate rights such as appealing decisions;

to investigate issues such as filing, defending and resolving civil lawsuits in criminal proceedings in the context of the principle of dispositivity (autonomy of will);

to examine legal significance of the subject's dispositive consent in matters of establishment, termination and legal regulation of criminal-procedural relations and the issue of the dispositive consent of the defense in the termination of the criminal prosecution in the absence of circumstances justifying the persecuted person from this perspective;

to study the effects of the public principle of criminal procedural law on the activities of officials conducting pre-trial proceedings and the manifestations of this principle in pre-trial proceedings;

to study the manifestations of the principle of publicity of criminal procedural law at the stage of judicial review, its impact on the procedural activity of the court and the public prosecutor;

to consider the dispute of court judgments (other final decisions) as both a dispositive right and a public jurisdiction.

Criminal-procedural legal relations arising, continuing, terminating and requiring legal regulation in connection with the provision of the principles of public and dispositivity (autonomy of will) of criminal procedural law constituted the **research object. The subject matter of the research** is comprised of conceptual and practical sources reflected various aspects of the studied issues.

Research methods. The methodological basis of the dissertation research was formed by dialectical cognitive methods, the specific methods applied to different parts of the work were selected according to the nature of the researched issues. The methodology of the research is determined by the systematic application of logical cognition, analysis-synthesis, comparative research, interdisciplinary research, systemic structuring, situational modeling, doctrinal interpretation, sociological opinion poll, generalization of experience and a number of other methods of scientific cognition. Among the lawyers belonging to different sociological parameters for the implementation of the opinion poll, assuring respondents that their identities will be kept anonymous, questionnaires were conducted, pre-prepared questionnaires were provided to them, and the answers given by the respondents were later summarized and used in the content of the dissertation.

Main provisions introduced for defense:

1. In the work it is drawn attention to that the principles of dispositivity (autonomy of will) and publicity (generality) are not included in the national criminal procedural literature, nor in the current criminal procedural legislation, which can be officially referred to by law enforcement officers and participants involved in the proceedings. It is justified that each principle of criminal procedure implies a legal formula for a specific legal and philosophical idea, and this legal formula becomes more specific when established in existing legislation, with a laconic name, sometimes even a word (for example, a dispute, etc.) can be expressed. In this connection, it is proposed and justified to establish the principles of publicity (generality) and dispositivity (autonomy of

will) directly in a normative manner by adding a new Article 36-1 to Chapter II of the CPC. The author has also prepared a specific legislative recommendation on the wording of the proposed new edition that should be Article 36-1.

2. The principles of criminal procedure do not operate in isolation from each other, but in close interaction. As an integral part of a unified system, all the principles of criminal procedural act in one form or another, both among themselves and with other institutions of criminal procedural law. The principles of dispositivity (autonomy of will) and publicity are not exceptions. The relationship between the principles of publicity and dispositivity (autonomy of will) and other principles is that other principles can also provide additional guarantees for dispositive rights that constitute a category of procedural rights, they may impose additional rules and prohibitions on officials performing their procedural powers as a duty. Just as public elements can be found as part of a specific independent principle, dispositive elements can also be found as part of individual principles. Such elements are explained in detail in the content of the case.

3. In the work it is criticized that Article 43.3 of the Criminal Procedural Code for using the category of *a defense party* to identify a subject whose consent is required to terminate criminal proceedings without justification, and this approach is justified. Given that Article 43.3 of the CPC applies to the circumstances of the life of the accused, it is argued that if the accused is alive, his or her consent must be sufficient for the prosecution to be terminated without justification. As a continuation of this approach, it is proposed that Article 43.3 of the CPC be amended accordingly.

4. Although Article 46.4 of the CPC, which regulates the immediate initiation of criminal proceedings by a prosecutor in connection with the implementation of the principle of publicity, deals with any crime against justice, the inconsistency between Articles 46.4 and 209.2 of the CPC is criticized and justified, as Article 209.2 of the CPC, which regulates the immediate initiation of criminal proceedings on the facts, provides for a small number of such offenses. Given the importance of justice and the public danger

of crimes against justice, the threat to public and state interests, the nature and extent of the consequences, in resolving the discrepancy between the two norms under consideration, it is suggested that the approach in Article 46.4 of the CPC be preferred. As a continuation of this approach, it is proposed that Articles 209.2.14-209.2.16 of the CPC be removed from the text of the Code and that Article 209.2.14 be reworded.

5. Taking into account the fact that the public nature of the public prosecutor's criminal activity is manifested, first of all, in the mandatory provision of his participation in the trial, the work is based on Article 314 of the Criminal Procedural Code, which regulates the participation of the public prosecutor in the trial and the consequences of his absence. In order to eliminate these shortcomings, it is proposed to amend the second sentence of Article 314.2 and the second sentence of Article 314.3 of the CPC in an improved new wording, including the addition of new sentences to Article 314.3, the content of which was developed by the author and widely commented on in the content of the work.

6. The work supports the idea expressed in Articles 84.4 and 112.2 of the CPC, but justifies that although these norms were established to define the range of officials who are not allowed to act as public prosecutors in criminal proceedings, their current content may give the impression that all other employees of the prosecutor's office who have not conducted the preliminary investigation themselves or who have not exercised the function of procedural leadership - prosecutors and investigators - may be admitted to the defense of public prosecution. In order to avoid such legal uncertainty, it is proposed that Article 84.4 of the CPC be revised and substantiated by the author in an improved version. Also, since Articles 84.4 and 112.2 of the CPC reflect the same idea in the same context, in order to reduce the normative burden of CPM, to remove duplicate norms from the law, it is proposed to remove Article 112.4 from the content of CPM, provided that the article is given in the wording recommended by the author in the content of the case.

7.1. The decision on whether to initiate criminal proceedings in a number of crimes depends directly on whether the victim has the

right to file a complaint (application) to law enforcement agencies, depending on his will. This is a manifestation of the principle of dispositivity (autonomy of will). The scope of actions for which the existence of a complaint of the victim is required for the initiation of criminal proceedings has been established by law in the form of a closed list. In criminal procedural law, these are considered public-private accusations, and their scope is determined by the legislature, depending on the priorities of the state's policy to combat crime. There are no specific algorithms, clear criteria or clearly formulated conditions for the legislature to determine the scope of public-private prosecution cases. This is more of a political issue (assuming a policy to fight crimes).

7.2. Similarly, special prosecutions are one of the main manifestations of the principle of dispositivity (autonomy of will) in criminal proceedings. Determining the scope of crimes that can be prosecuted under a special prosecution depends on the priorities and main directions of the state's anti-crime policy, as well as the extent to which the state assumes the role of law enforcement. According to the position supported in the content of the case, special prosecutions reduce the workload of law enforcement agencies conducting pre-trial proceedings, allowing them to conduct numerous procedural actions, make procedural decisions in cases of crimes that are less dangerous to society, do not affect the public interest or have little impact, etc., frees from such bureaucratic work. Each state has its own domestic policy, the level of legal literacy of its citizens, the criminogenic situation in the country, the level of legal education, etc. decides for itself, taking into account such factors. In the practice of the CIS countries, criminal procedural legislation, as a rule, defines a closed circle of specially-accused cases (numerus clausus) as an element of the principle of dispositivity (autonomy of will) of the criminal process, and only allows the system to prosecute crimes established by law. This method has also been applied in the Republic of Azerbaijan.

8. If the consent of non-governmental entities is required in criminal proceedings in order to be able to perform a procedural action or to make a procedural decision, then the will of the subject,

which is part of the principle of dispositivity (autonomy of will), is the legal significance of voluntary expression. and the legal consequences of its use. Legislation can be considered as one of the manifestations of the principle of dispositivity (autonomy of will), which in certain cases makes the behavior of officials dependent on the will (consent) of non-governmental entities. Because in all cases when the mechanism is activated in connection with the consent of the subject, which is established by law as a normative condition that must be complied with, which leads to a legal result, the subject voluntarily agrees to perform a specific procedural action or to make a procedural decision. acquires the right to exercise his right. Therefore, the cases related to this mechanism can be unequivocally assessed as an element of the principle of dispositivity (autonomy of will) of criminal procedural law. However, the rules for obtaining the consent of entities that are state bodies (officials) in resolving certain issues are not covered by the principle of dispositivity (autonomy of will), because these entities are engaged in representation and protection of public interests, not personal ones. Procedures for consenting to an action or decision should be seen not as an expression of the free will of these subjects, but rather as a means of exercising procedural powers, in particular procedural oversight powers.

9.1. At the stage of initiating criminal proceedings, the principle of publicity is manifested in the obligation of law enforcement agencies to take specific measures by law. At this stage, at the stage of initiating criminal proceedings, law enforcement agencies in all cases act on the possibility that the crime has been committed or is being prepared, because it is impossible to say unequivocally and definitively whether the crime was committed or who exactly committed the crime. The principle of publicity also imposes on law enforcement agencies the task of resolving this possibility at the first stage of criminal proceedings. In order to solve this public task, the prosecuting authorities have to carry out procedural activities before the criminal case is initiated.

9.2. The principle of publicity in the preliminary investigation calls for the immediate detection of crimes; the requirement that all

cases be investigated objectively, comprehensively and fully; that the rights and legitimate interests of the participants in the proceedings who do not have public authority must be protected by the officials of the criminal proceedings; in the claim for compensation for damage caused as a result of illegal actions of the criminal prosecution body; in the requirement that state bodies comply with the procedural form; shows that the necessary investigative actions must be carried out regardless of the wishes and will of the persons concerned.

10. The court is a public authority for administering justice in criminal cases (other materials) on behalf of the state and in the interests of the state and society, along with the legitimate interests of the individual, and conducts its procedural activities in accordance with the principles of publicity, however, the principle of publicity in its activities manifests itself in a different way from the procedural activities of public authorities subject to criminal prosecution. The main factor behind this is the principle of separation of powers and the legal status of the courts. The right to a fair trial requires courts exercising public authority to be legally established, independent and impartial. The public powers of the court differ to some extent from the public powers of the prosecuting authorities due to the requirements of independence and impartiality. One of the main differences is the level of activity of the prosecution in the evidence and the level of activity of the court in the evidence. Another major difference is the scope of the trial, or more precisely, the power to change the scope of the accusation.

Scientific novelty of the research. Speaking about the scientific novelty of the research, first of all, it should be noted that the doctoral dissertation on this topic (in general, any dissertation for a scientific degree) was prepared for the first time in Azerbaijan. In this sense, one of the main innovations of the dissertation research is that for the first time after the restoration of the state independence of the Republic of Azerbaijan and the adoption of new criminal procedural legislation, the principles of publicity and dispositivity of the criminal process have been subjected to independent research of complex nature. In addition, the dissertation contains a number of

ideas and suggestions that have not been put forward by other authors, which can be considered as scientific innovations of current research. The nature of scientific innovation can be observed in the content of the main provisions submitted for defense. One of the main achievements of the current dissertation is that it contains proposals for the improvement of a number of articles of the criminal procedural legislation in concrete content and, most importantly, scientifically justified. We consider it important to emphasize that the vast majority of legislative proposals put forward by us were submitted for discussion by practicioners, and the practicioners who participated in the survey, as a rule, considered these proposals successful and expedient. We believe that these proposals can be taken into account by the legislature in improving the existing criminal procedural legislation.

Conceptual and practical significance of the research. The main theoretical significance of the work is expressed in the fact that the current research for the first time for the science of criminal procedural law of the Republic of Azerbaijan explained the principles of publicity and dispositivity (autonomy of will) in a comprehensive and interrelated context. This work has the potential to serve as a theoretically important methodological tool for new dissertations, monographs, textbooks and teaching manuals to be written later.

Judges who perform the functions of justice and judicial control in their practical activities, lawyers representing and defending the persecuted persons in the criminal case, the victims of the crime, as well as other subjects participating in the proceedings during the trial, prosecutors with the functions of supervision, procedural guidance, defense of public prosecution in pre-trial and court proceedings, other law enforcement officers, legal scholars, researchers, teachers and students of the law faculties, including persons interested in criminal procedural law can make extensive use of research content.

The dissertation contains scientifically substantiated concrete proposals for the improvement of several provisions of the current criminal procedural legislation, as well as wording of new articles. If

these proposals are taken into account by the legislature, a number of important additions and changes can be made to the CPC.

Approbation and application. Some of the main results obtained by the author in the course of the research have been published In the journal of legal sciences of the Peoples' Friendship University of Russia, which is included in the Russian Science Citation Index database on the Web of Science platform, some works were published in journals, which are accepted as equivalent to publications included in international summary and indexing systems and belong to periodical scientific publications recommended by the Supreme Attestation Commission of the Russian Federation for the award of scientific degrees and scientific titles, and some of publications in the materials of international scientific events held in foreign countries and placed in the relevant scientific indexing system (provided by elibrary.ru). In addition, scientific articles on various issues of the dissertation were published in periodicals recommended for publication in the Republic of Azerbaijan, as well as in the materials of various national and international conferences held in the Republic of Azerbaijan, thus, the main results were brought to the attention of the scientific and practical community. The content and results of the dissertation were used directly in the author's personal pedagogical activity.

Name of the organization where the dissertation work is performed. The dissertation research was carried out at the Department of Criminal Procedure of Baku State University.

The volume of the structural units of the dissertation separately and the total volume of the dissertation in number of symbols. Dissertation is comprised of 412,707 characters, without taking into account the gaps in the text, Chapter I 61,435 characters, Chapter II 89,638 characters, Chapter III 38,042 characters, Chapter IV 106,912, characters and Chapter V 41,587 characters.

MAIN CONTENT OF THE WORK

In the **Introduction** part, the relevance and level of development of the topic, research goals and objectives, research methods, main provisions, scientific novelty of the research, theoretical and practical significance of the research, approbation and application of the research, the name of the organization where the dissertation work is performed, the total volume of the dissertation in number of symbols, indcluding the volume of the structural units of the dissertation separately, is indicated.

The **first chapter** of the work is entitled **"The principles of dispositivity (autonomy of will) and generality (publicity) in criminal procedural law: basic provisions",** it combines three paragraphs titled "The definition and meaning of the principles of criminal procedure", "The definition and essence of the principles of generality (publicity) and dispositivity (autonomy of will) of criminal proceedings" and "The interaction of the principles of general (publicity) and dispositivity (autonomy of will) of criminal procedural law with other principles".

The first chapter proves that legal principles are the basic ideas that characterize the essence and public purpose of law and should always be guided. The principles of law act as the principles of criminal procedure in the field of criminal procedural law. The principles of criminal procedure, like all legal principles, retain the property of being a guiding principle, that is, first of all, a legal idea, simply, as a principle of criminal proceedings, these ideas are diversified, more concrete, receives a targeted case (addressed to courts, law enforcement agencies conducting criminal proceedings and a participant in criminal proceedings), takes the form of norms that define the basic provisions of criminal proceedings, not all legal activities with abstract boundaries. Statement of the main principles and conditions used in the title of Chapter II of the CPC, as well as in Article 9, Articles 10-36 of the CPC may raise the question of whether there are two categories of provisions, i.e. basic principles and basic conditions, or specific provisions that are both basic principles and basic conditions. In addition, if it is accepted that

Articles 10-36 of the CPC establish two different types of provisions that are considered to be basic principles and basic conditions, in this case, the question of which of these articles set out the basic principles and which of them set out the basic conditions will become relevant. We believe that Article 9.1 of the CPC did not differentiate between the definition of the basic principles and conditions, nor did Article 9.2 of the CPC jointly determine the negative legal consequences for their violation. It turns out that these two categories, even if they are different categories, have the same purpose and the same legal force. In this case, their differentiation has no functional significance. Second, in our view, the distinction between categories as basic principles and basic conditions of criminal procedure is an artificial problem due to the terminology used in the new legislation, because when we look at the legal literature, we find only the interrelationships between the principles of criminal procedure and the general conditions of the individual stages and their distinction, however, in the science of criminal procedural law, it is practically impossible to distinguish between categories as the basic principles and basic conditions of the criminal process.

Due to the fact that the current legislation does not provide for independent articles establishing these principles, there are principles of criminal procedural law that the question of how to name them and what provisions should be included in the legal formula is open for discussion. In criminal proceedings, the principles of publicity (generality) and dispositivity (autonomy of will) are of such principles. Even though the decision of the Constitutional Court of 15.06.2011 regarding the interpretation of Articles 37.4, 39.1.9, 40.2 and 41.7 of the Criminal Procedural Code includes expressions such as the principle of dispositivity and the principle of publicity in criminal proceedings, however, we see in Chapter II of the CPC that these principles are not established as independent norms. Due to the lack of a specific normative expression, these principles, in particular, the principle of publicity, are called in different terms in theoretical sources (for example, Professor C.H. Movsumov calls it stateness, Professor M.A.

Jafarguliyev calls it statehood, A.V. Fedulov calls it officialty, A.M. Yusubov calls it publicity, etc.) and this complicated proper understanding the legal literature, including conduct of new scientific research, and so on. As can be seen, in the Republic of Azerbaijan, there is an idea that criminal prosecution should be initiated and continued by public authorities, regardless of the will of the victim, in cases where the public interest and the public interest are paramount to the criminal process. One of the current problems is that this idea has not been established as a principle under a specific name. Similarly, the principle of dispositivity, which reflects the idea of freedom of will in the exercise of subjective rights, is an idea realized in the spirit of current legislation, has not been established as a principle under a specific name. In this connection, we support the idea that the principles of publicity and dispositivity (autonomy of will) of criminal proceedings should be enshrined in Chapter II of the CPC, and we believe that although publicity and dispositivity (autonomy of will) are antagonistic to each other, their provisions, for example, should be set out in a new Article 36-1 to be added to the CPM. The author's wording of the new Article 36-1, which is intended to be added to the CPM in the context of the case, can be considered one of the main results of the study.

As an integral part of a unified system, all the principles of criminal procedural act in one form or another, both among themselves and with other institutions of criminal procedural law. So that, as a principle, the principle of legality, along with its other functions, also performs the function of determining the system of legal sources of dispositive rights and public duties, according to the principle of equality before the law (court), if a certain course of conduct in criminal proceedings is envisaged as a procedural right for a non-official subject to use at his own will, the realization of this right must be real and possible without the application of any criteria of discrimination (discrimination) against that person (inadmissibility of negative discrimination in the realization of the dispositive right), officials of state bodies conducting criminal proceedings should not give preference to anyone on the basis of non-statutory considerations (inadmissibility of positive discrimination in the

performance of public duties), etc., while acting in the protection of public interests and the interests of the state. In some cases, however, it is possible to find specific provisions in the articles of the CPC that set out the individual principles of procedural law based on the autonomy of the will, or on the public duty to ensure the interests of society. For example, Article 12 of the CPC emphasizes that victims of crime are free to demand the initiation of criminal proceedings and may exercise this right at will, and that participants in criminal proceedings are completely independent in choosing the means and facilities to protect their rights and freedoms. are limited by the criteria set by the law with specific prohibitions, etc., or it is clear from Article 13 of the CPC that even if the state prosecuting authority (its official) acts in the interests of society as a whole, as well as the state, it may not take procedural actions or make procedural decisions beyond the limits set by the guarantees of honor and dignity of an individual or an individual and so on.

In the first chapter, in order to improve the existing criminal procedural legislation, it was proposed to establish the principles of publicity and dispositivity (autonomy of will) in criminal proceedings by adding a new article to Chapter II of the CPC with the following content:

Article 36-1. Publicity and dispositivity of criminal proceedings

36-1.1. In the cases and in accordance with the procedure provided for by this Code, the prosecuting authorities shall act to protect the interests of the state, the public interest and the interests of the participants in the criminal proceedings in connection with the performance of their official duties.

36-1.2. In cases and in accordance with the procedure provided for by this Code, persons participating in criminal proceedings may, in order to protect their interests, file an application (including a civil lawsuit), complaint or petition to the prosecuting authority. or have the freedom of will in determining the scope of the request (request), as well as in withdrawing the request (waiver of the request), as well as in exercising the procedural rights granted to them.

The **second chapter** of the case is entitled **"The right of participants in criminal proceedings to file complaints and civil claims as an element of the principle of dispositivity (autonomy of will)"** and consists of four paragraphs named "To file a complaint (application) to law enforcement agencies about a crime as a dispositive right", "Filing a complaint to the court as a special prosecution as a manifestation of the principle of dispositivity (autonomy of will)", "The right to appeal the actions (inaction) and decisions of the official conducting the proceedings" and "The right to file a civil suit in criminal proceedings".

The second chapter states that the decision on whether to initiate or not to initiate criminal proceedings in a number of crimes depends on whether the person directly affected by the crime (victim) has exercised, at his or her own discretion, the right to file a complaint to the law enforcement agencies about the crime to which he or she has been exposed. The scope of actions for which the existence of a victim's complaint is required for the initiation of criminal proceedings is established by law in the form of a closed list - in the form of a single system in Article 37.3 of the CPC, since the adoption of the CPM to date, the system has undergone several changes due to the decriminalization and criminalization of various acts. However, in a number of cases provided by law, criminal proceedings for such offenses may also be initiated by the prosecutor. This is a manifestation of the influence of the principle of publicity on the definition of types of criminal prosecution. Termination of criminal prosecution in cases related to public-special types of accusations is also connected with the right of the victim to reconcile, however, the exercise of this right, unlike special prosecution cases, is not unlimited in public-private prosecution cases and is governed by the relevant provisions of criminal law. However, the right to conciliation in cases of public-private prosecution also retains its dispositive nature and depends only on the will of the victim.

The existence of special prosecution cases in the criminal proceedings of any state, i.e. the possibility of criminal prosecution as a special prosecution, is one of the main arguments for the validity

of the principle of dispositivity in the criminal procedural law of this state. The initiator of the proceedings on special accusations is the special prosecutor. Comparative research confirms that each state determines its own domestic policy, the level of legal literacy of its citizens, the criminogenic situation in the country, the level of legal education, etc. decides for itself, taking into account such factors. For example, in the practice of the CIS countries, the scope of actions related to special accusations has been defined quite differently. The doctrine argues that the scope of special cases should be both expanded and narrowed, and that such cases should be abolished altogether. The main argument of the supporters of expanding the scope of special cases is that such cases reduce the workload of law enforcement agencies conducting pre-trial proceedings, allowing them to take numerous procedural actions, make procedural decisions, etc. in cases of crimes that are less dangerous to society, do not affect the interests of society or have little effect and frees from such bureaucratic work. The main argument of the opposite approach is that the lack of pre-trial proceedings in special cases reduces the effectiveness of the preparation of the necessary materials for the trial, sometimes victims of crime are unable to gather the necessary evidence, and thus are deprived of the opportunity to defend their rights and legitimate interests. Proponents of this approach consider it more expedient to conduct a simple investigation of special cases. According to the provisions of the current legislation, criminal prosecution has a certain effect not only on the prosecution function, but also on the defense function. Prosecution in the form of a special prosecution also gives the defense some dispositive rights.

The right to appeal the actions, omissions and decisions of the relevant officials conducting criminal proceedings may also be considered a dispositive right by its nature, because the exercise of the right to appeal is directly related to the subject's free will and, in most cases, the implementation of the necessary proceedings by public authorities (inspection by a prosecutor, judicial review by a court, etc.). For the effective exercise of the right to file a complaint, there is an institute of procedural control in the criminal process,

because in order to keep the complaint inactive, it is necessary to have officials who must carry out procedural action on the basis of this complaint. Procedural control (internal control, prosecutorial control, judicial control) is an integral element of criminal proceedings, a unique law enforcement mechanism within the criminal process. The right to lodge a dispositive complaint creates specific obligations (review, review, decision-making, etc.) for the other party, i.e. the person responsible for reviewing the complaint.

Unlike judicial review, the prosecutor's supervision is permanent and is carried out regardless of whether the relevant complaint is filed or not. Simply, by filing a complaint with the prosecutor, the participant in the criminal proceedings has the opportunity to draw the latter's attention to the issue of concern to the relevant subject and thus increase the effectiveness of prosecutorial oversight. As a dispositive right, the right of an official conducting a criminal trial to appeal an action, omission, or procedural decision in the full sense of the word manifests itself in the course of judicial review, because judicial review proceedings are initiated by the appellant, which is one of the main features of the dispositive nature of procedural law.

In the Republic of Azerbaijan, the issue of compensation for damage caused as a result of a criminal act may be resolved within the course of criminal proceedings. Although filing a civil lawsuit is allowed in criminal proceedings, it always remains an institution of a civil-legal nature, and therefore the right to file a civil claim retains its dispositive character in criminal proceedings. The fact that the right to file a civil claim in criminal proceedings is a dispositive right stipulates that public authorities conducting criminal proceedings shall not conduct any proceedings in connection with such a claim until a formal civil action has been filed in the criminal proceedings. However, a systematic analysis of the existing criminal procedural legislation shows that Ssome provisions of the CPC consider it permissible to take certain measures to secure a civil claim that has not yet been filed (which may be filed in the future, and is likely to be filed in the future). With the existence of such provisions in the CPC, the factor of full validity of the principle of dispositivity in

civil litigation leads to serious disagreements in practice. The legal position supported by the Supreme Court on this issue is completely different. According to this position, in the absence of a civil action in the case, the prosecuting authorities should not take steps to secure such a potential claim. There is no unequivocally dominant approach to this issue among practitioners. The fact that a civil lawsuit was filed in the course of criminal proceedings does not mean that this civil lawsuit will definitely be resolved within the criminal proceedings, because, in addition to empowering the trial court to decide on the merits of a civil claim, it also empowered the court to keep the civil claim unconsidered in criminal proceedings.

The **third chapter** of the work is entitled **"The resolution of issues of legal significance in criminal proceedings with the consent of the participants in the proceedings as an element of dispositivity (autonomy of will)"** and consists of two paragraphs titled “The dispositive consent of the subject in criminal-procedural legal relations and its legal significance” and “The dispositive consent of the defense in case of termination of criminal prosecution without justification”.

It is noted in the third chapter that a number of norms of the current legislation give importance to *the consent* of the participants of criminal-procedural legal relations, which has a legal effect. Since voluntary consent is directly related to the autonomy of the will, this legal phenomenon also falls under the influence of the principle of dispositivity. The meaning of the word *consent* in the explanatory dictionary is quite narrow and one-sided in the field of legal relations, because in different procedural legal norms the word consent is terminated to a certain extent and has different meanings depending on the context of the legal norm. Thus, within one norm, *consent* is a term in which procedural control means that the authorized official allows the official conducting the proceedings to make a specific procedural decision, while in another it means that an entity without any authority has no objection to any decision. means. There is a wide range of subjects who can use the consent to take this or that action, to make a decision, in specific cases, which can be assessed as a manifestation of the will of the person.

Sometimes the consent of one of the defense parties - the person being prosecuted - is a determining factor not only for the decisions and actions of the prosecuting official, but also for the conduct of the other defense party (for example, Article 92.10.6 of the CPC). or in cases regulated by Article 92.11, etc.).

The consent of the person whose interests are represented has legal significance for the actions of the person representing the interests of that person is not only characteristic of the relationship between the subjects of the defense, but also of the relationship between the subjects of the prosecution (for example, in the case regulated by Article 95.3 of the CPC, etc.). Speaking about the legal significance of the existence of the consent of a particular subject for the settlement of legal relations, the relations between the subjects with limited criminal procedural activity and their legal representatives are especially distinguished, because in other relationships the consent of the person represented is given priority over the behavior of the person represented, in relations between entities with limited criminal procedural capacity and their legal representatives, on the contrary, the consent of the entity representing legal interests takes precedence over the behavior of the entity represented (for example, in cases regulated by Article 100.4 of the CPC, etc.). When discussing the element of agreement in resolving issues of procedural importance, it is necessary to mention a phenomenon such as *the consent of the parties*. Thus, if the law requires the consent of the parties to resolve a specific issue, in this case, the consent of both parties to the criminal proceedings - both the prosecution and the defense - must be obtained to resolve the matter (for example, in the case of Article 330.4 of the CPC, etc.). It is important to emphasize that procedures for obtaining the consent of entities that are state bodies (officials) in resolving certain issues are not covered by the principle of dispositivity (autonomy of will), because these subjects are engaged in the representation and protection of public interests, not personal, the procedures by which they consent to a particular action or decision should be seen as a means of exercising procedural powers, in particular procedural

oversight powers, rather than as an expression of the free will of these subjects.

Analysis of Articles39, 41.2, 43.3, 43.3-1, 106-1.4, 282.1-1, etc. of the CPC demonstrates that in order to be able to terminate the criminal prosecution of the person being prosecuted without justification, the legal person or his legal successor shall be determined if he is unable to express his personal consent due to objective reasons (due to death), if not (not available), the defense attorney's consent is required. In this sense, the rule on the consent of the defense and, in this case, the legal procedures arising from this rule can be considered a manifestation of the principle of dispositivity in criminal proceedings.

In the third chapter, in order to improve the existing criminal procedural legislation, it is proposed that Article 43.3 of the CPC be amended as follows:

43.3. In the course of the court hearing, the court shall have the right to decide on the termination of the criminal prosecution, as well as in the cases provided for in Articles 39.1.3, 39.1.12 and 40.2 of this Code, with the consent of the accused.

The **fourth chapter** of the work is entitled **"The principle of publicity in the activities of law enforcement agencies and its various stages"** and consists of four paragraphs named "The public powers of the bodies carrying out criminal proceedings at the stage of initiation of criminal proceedings", "The manifestations of the principle of publicity at the stage of primary research", "The features of the implementation of the principle of publicity in the activities of the public prosecutor" and "The influence of the principle of publicity on the procedural activity of the court of first instance".

The fourth chapter states that from the moment of receipt of information or application on a crime that has already occurred or is still being prepared by the competent law enforcement body, as well as the direct disclosure of such information by the state body authorized to prosecute until the initiation of criminal proceedings (opening of simplified pre-trial proceedings), the position of the authors is more correct, considering the activity carried out by the relevant body as a procedural activity, and the stage of this activity as

an independent stage with specific beginning and end of the criminal process, as well as specific goals and procedurally important tasks to be solved. At this stage, the manifestation of the principle of publicity manifests itself in the obligation of the investigator, investigator and prosecutor to take specific measures by law. Thus, at this stage, these officials perform procedural actions and make procedural decisions in accordance with the duties arising from their positions. At this stage, it is not clear whether the crime was committed unequivocally or conclusively, or who exactly committed the crime. Although the CPC uses information about a crime committed at the initial stage of criminal proceedings as a term, in accordance with the requirements of the presumption of innocence, we cannot assess an action or omission referred to in any application or information as a specific crime until the court has a valid conviction. This means that at the stage of initiating a criminal case, law enforcement agencies in all cases act on the possibility that a crime has been committed or is being prepared. The principle of publicity also imposes on the relevant authorities the task of resolving this possibility at the first stage of the criminal process. At this stage, the public duty of these entities is to start work, to determine whether the required grounds exist and, depending on whether such grounds have been established, to make one of the alternative decisions, which determines the further course of the criminal proceedings and the prospects of the public activity of the criminal prosecution bodies.

Although not all the requirements of the principle of publicity are manifested at the stage of initiating criminal proceedings, it is possible to observe the full implementation of its requirements in the preliminary investigation. As the main manifestation elements of the principle of publicity in primary research it can be noted the demand that crimes be uncovered as soon as possible, that all cases related to the case be objective, the requirement that a full and thorough investigation be carried out, that the rights and legitimate interests of the participants in the proceedings be protected by the officials of the criminal proceedings, the demand for compensation for damage caused as a result of illegal actions of the criminal prosecution body,

the requirement that the necessary investigative actions be carried out regardless of the wishes and will of the persons concerned, including the obligation to comply with the procedural form.

With the speedy detection of crimes, the following tasks of a public nature, i.e., which play a role in ensuring the interests of the state and society, are solved: criminals are exposed more quickly and they are prevented from committing new crimes; conditions are created for faster court proceedings; the prestige and trust of law enforcement agencies in society is growing; it is possible to ensure the rights and legitimate interests of victims of crime more quickly; The operation of the law enforcement system provides a basis for more efficient use of resources and reduction of workload.

The requirement that all matters related to the case, which are closely intertwined with the principle of publicity, be investigated objectively, completely and comprehensively is specified in current legislation by a number of job responsibilities and procedural rules for participants in criminal proceedings who are officials (for example, Articles 49.4.4, 50.1, 53.4, 84.5.3, 85.2.1, 85.6.3, 86.2.1, etc. of the CPC).

The manifestation of the principle of publicity in demanding that the rights and legitimate interests of the participants in the proceedings should be protected by the officials of the criminal proceedings is due to the fact that in democratic societies, the observance of fundamental human rights and freedoms in all spheres of activity is a key issue. However, the function of protecting the rights and legitimate interests of other subjects of the process by officials must be significantly distinguished from the function of protection against criminal prosecution. The human rights function as a public duty also follows from Article 12.1 of the CPC. In addition, a number of other provisions of the CPC make this duty more specific (for example, Article 119 of the CPC).

The principle of publicity of the criminal process strives, as it envisages the conduct of judicial proceedings on behalf of the state by the relevant competent authorities of the state in the interests of the state and society, to take responsibility for the legality and validity of such proceedings on behalf of the relevant state bodies.

Regarding the personal responsibility of the official of the criminal prosecution body for the legality of the procedural activity, regardless of the personal guilt of this official, the interrelationship of the state's liability for damages caused by its procedural activities is also interesting. We believe that the coexistence of both of these rules is a clear indication of the principle of publicity at the stage of preliminary research.

The public prosecutor participates in criminal proceedings in connection with the performance of his/her official duties, acts in the public and state interests, therefore, its procedural activity should be characterized as public activity, but it cannot be applied to the subjects of criminal proceedings, because he participates in a stage of the criminal process at which the powers to carry out the criminal proceedings are exclusively in the court. Although the principle of publicity completely excludes the participation of the public prosecutor in one form or another in special cases, it stipulates that the defense of the public prosecution in public-private and public-prosecution cases is entrusted to him. The public nature of the public prosecutor's activity is manifested, above all, in the provision that his participation in the trial is mandatory. Through this provision, the state ensures the permanent representation of public interests in court proceedings.

Article 84.4 of the Criminal Procedural Code limits the number of prosecutors allowed to act as public prosecutors. Despite the different approaches in the legal literature, we believe that this rule minimizes subjectivism in the defense of public prosecution, because if the prosecutor who approved the indictment is given the opportunity to defend the accusation in that act in court, in this case, proving the veracity of the accusation is not only a public affair, it will also, in a sense, become the personal case of the prosecutor who upheld the accusations (in order to protect his prestige) and the prosecutor will do his utmost to ensure that the accusations he affirmed in the pre-trial proceedings are upheld in court. Therefore, in our opinion, in the long run, the adoption of a rule contrary to Articles 84.4 and 112.2 of the Criminal Procedural Code may lead to

the danger of a subjective interest in the defense of public prosecution.

The court is impartial, it can neither assume nor defend. Since its function is the resolution of the case, the principle of publicity, like other principles, cannot fundamentally change the nature of the court's procedural activities, for example, it does not turn it into a prosecuting authority, but simply defines certain features of the court's decision-making function. Although the court is considered a public authority for administering justice in criminal cases (other materials) on behalf of the state and in the interests of the state and society, along with the legitimate interests of the individual, and carries out its activities in accordance with the public principle, the principle of publicity in its activities manifests itself in a completely different form, not as in the procedural activities of public authorities subject to criminal prosecution. The main factor behind this is the principle of separation of powers and the legal status of the courts.

In the fourth chapter, in order to improve the existing criminal procedural legislation, it is proved that in order to more effectively meet the requirements of the principle of publicity, it is expedient to amend Article 84.4 of the CPC in the following improved version:

84.4. Participation of prosecutors and investigators in public hearings as public prosecutors, conducting preliminary investigations on criminal cases and simplified procedural materials, belonging to the investigation group on complex cases, supervising the investigation, supervising the implementation and application of laws in the activities of investigative bodies, is not allowed.

209.2.14. when there is the existence of signs of a crime committed against justice.

In this part of the case, it is justified such an idea that it is more expedient to remove Articles 209.2.14-209.2.16 of the CPC from the text of the CPM and to give Article 209.2.14 in the following new wording:

209.2.14. when there is the existence of signs of a crime committed against justice.

In this chapter it is also substantiated in order to ensure the recommendation of the Constitutional Court addressed to the

Parliament in its Decision dated 15.02.2008 on the interpretation of Articles 43.1.1 and 314.2 of the CPC and to improve Article 314.2 of the CPC, it is more expedient to give the second sentence of this article in the following new wording:

If the accusation made against the accused during the pre-trial proceedings is not confirmed during the court hearing, he is right to renounce the accusation in full or in part if the accusation is not confirmed, as well as to propose, on the basis of his proposal, that the act of the accused be classified by a lighter sentence of criminal law.

As a follow-up to the proposals to improve Article 314 of the CPC, it was suggested that a new sentence be added to Article 314.3 of the CPC in the following wording:

In cases where the public prosecution is defended by several public prosecutors, if at least one of them comes to court, failure of other public prosecutors to appear at the hearing, regardless of the reason, shall not preclude the trial.

As a normative solution to eliminate another gap in that article, it is also proposed that the second sentence of Article 314.3 of the CPC be amended as follows:

If the public prosecutor fails to appear at the hearing for any reason, the court shall consider the possibility of replacing him with another public prosecutor, and only if it is not possible to replace the public prosecutor who did not appear at the hearing with another public prosecutor, the hearing shall be adjourned.

Finally, given that the legislation of some CIS countries more precisely regulates some issues related to the replacement of public prosecutors in court from the point of view of legal certainty, it was considered expedient to use this positive practice in the current criminal procedural legislation of the Republic of Azerbaijan. In this connection, it was proposed to add a new sentence to Article 314.3 of the CPC in the following wording:

The replacement of the public prosecutor during the trial shall not lead to the repetition of the procedural actions taken up to that time, but in cases where it is important for the proper

performance of the public prosecution, the court may repeat the individual procedural actions at the request of the public prosecutor.

The fifth chapter of the work is titled as **"Challenging court judgments (other final decisions) as a dispositive right and a public duty"** and is comprised of two paragraphs with titles "Challenging court judgments (other final decisions) as a dispositive right" and "Making protest of court judgement (other decision) as a public duty".

The fifth chapter states that the right to challenge court judgments (other final decisions) should be considered a dispositive right as it meets other criteria of willpower and dispositive rights. When it comes to challenging court decisions, *freedom of appeal* should be considered not only as a feature of the appellate court, but also as an element inherent in cassation and additional cassation proceedings. Although the right to appeal is dispositive, it is not unlimited. Although an entity may decide at its own discretion whether or not to exercise this right, in determining the scope of the issues it may dispute in exercising this right, its wishes and desires are limited to matters which have previously been the subject of litigation. So, the dispositive nature of the law does not mean its infinity. However, by exercising the right to file an appeal, the subject can obtain the results he or she wishes to have sufficiently significant, as the appellate instance has the power to make both a judgment and a decision in the case.

When subjects wish to challenge court judgments or other final decisions in cassation, they should take into account that they may use the appropriate right to challenge the misapplication of substantive and procedural law only in cases determined by the courts of first instance and appellate courts. They do not have the opportunity to dispute whether any of the facts have occurred by exercising the relevant right in question.

Although Article 84.6.11 of the CPC provides for the issuance of a relevant protest as a procedural right of the public prosecutor, the procedural rights of public authorities do not provide for their use of this right on a dispositive basis, i.e. according to the autonomy of the will, such entities also use their rights to perform

their duties. The right of the public prosecutor to protest is of such a legal nature, that is, although by its legal nature it envisages the possibility of conduct for the public prosecutor (the possibility of a lower court decision being challenged in a higher court), for the public prosecutor, the exercise of this right is not voluntary. This approach is also reflected in paragraph 15 of the Order No. 02/46 of 09.03.2001 of the Prosecutor General on the main responsibilities of the Prosecutor's Office for the protection of public prosecution in criminal proceedings. That provision also confirms that the right to protest is not discretionary and is not subject to the principle of voluntariness. In cases where the public prosecutor's request is not granted or taken into account, his failure to protest will be assessed in practice as the public prosecutor's evasion or refusal to protest. Because the public prosecutor, guided by the principle of legality, must substantiate every request to the court with the relevant provisions of the law. This means that from the public prosecutor's point of view, each of his claims is lawful and well-founded, and must therefore be granted or taken into account by the court. If the court does not do so, again, from the public prosecutor's point of view, the court does not grant a claim that is lawful and reasonable. In this case, it is a logical step for the public prosecutor to protest against the court's judgement or other decision.

In **the Conclusion** part, the main theoretical generalizations and suggestions are presented in a systematic way.

The Appendix part contains the content and results of the opinion poll conducted among the practitioners.

The following scientific works of the author were published in accordance with the dissertation topic:

1. The principle of "statehood", "officiality" or "publicity" of the criminal procedure? // Baku University News. Series of Social-Political Sciences, - 2018, № 3, - pp. 69-76. (in Azerbaijani)
2. Cases of special accusation as a manifestation of the dispositivity principle of criminal procedural law // Materials of the international scientific-practical conference "Globalization and the

main directions of development of legal science in the Republic of Azerbaijan" dedicated to the 95th anniversary of the birth of the national leader of the Azerbaijani people Heydar Aliyev, - May 29-30 – Azerbaijan, Baku, BSU: 2018, - pp. 229-232. (in Azerbaijani)

3. Appeal to the court exercising the function of judicial control as a type of dispositive law // Ganun. Scientific legal journal, - 2019, № 02 (292), - pp. 44-49. (in Azerbaijani)

4. Correlation of the principles of publicity and dispositivity with other principles of criminal procedure // Scientific news of the Police Academy. Scientific legal journal, - 2019, № 2 (22), - pp. 68-73. (in Azerbaijani)

5. On the dispositive consent of the defense party to be able to terminate the criminal prosecution without justification // Baku University News. Series of Social-political Sciences, - 2019, № 2, - pp. 16-30. (in Azerbaijani)

6. Challenging court judgments (other final decisions) as a dispositive right // Scientific news of Police Academy. Scientific legal journal, - 2019, № 3 (24), - pp. 70-75. (in Azerbaijani)

7. The right to appeal to the court in the form of a special accusation in the context of the principle of dispositivity // Public administration: theory and practice, - 2019, № 3 (67), - pp. 119-128. (in Azerbaijani)

8. Considerations on the definition and purpose of the principles of criminal procedure // Ganun. Scientific legal journal, - 2019, № 07 (297), - pp. 57-63. (in Azerbaijani)

9. To file a complaint (application) to law enforcement agencies as a dispositive right // Scientific and pedagogical news of the Odlar Yurdu University, - 2019, № 51, - pp. 252-257. (in Azerbaijani)

10. Assignment of expertise: in the context of the principles of publicity and dispositivity // Scientific news of Police Academy. Scientific legal journal, - 2022, № 1 (25), - pp. 120-125. (in Azerbaijani)

11. Dispositive consent of the subject in criminal procedural legal relations and its importance // Scientific news of Police

Academy. Scientific legal journal, - 2022, № 2 (26), - pp. 47-51. (in Azerbaijani)

12. Making protest against the court's judgement (other decision) as a public duty // Azerbaijan Law Journal, - 2020, № 2, - pp. 88-95. (in Azerbaijani)

13. On the role of the subject's freedom of will in filing appeals, cassation and additional cassation complaints // Scientific news of Police Academy. Scientific legal journal, - 2020, № 3 (27), - pp. 62-67. (in Azerbaijani)

14. Analytical review of modern research on the principles of publicity and dispositivity of criminal procedural law // Public administration: theory and practice, - 2020, № 3 (71), - pp. 215-224. (in Azerbaijani)

15. Challenging court judgments (other final decisions) as a dispositive right // Legal framework. Scientific-theoretical, practical journal, - 2020, № 4, - pp. 139-146. (in Azerbaijani)

16. Elements of the principle of publicity in primary investigation // Ganun. Scientific legal journal, - 2020, № 06 (308), - pp. 38-48. (in Azerbaijani)

17. Dispositive consent of the subject in criminal-procedural legal relations and its legal significance // Scientific and pedagogical news of the Odlar Yurdu University, - 2020, № 53, - pp. 108-113. (in Azerbaijani)

18. The principle of publicity and the procedural activity of the first instance court // Materials of the international scientific-practical conference "Interrelation and application of legal areas in modern time" dedicated to the 97th anniversary of the birth of the national leader of the Azerbaijani people Heydar Aliyev, - June 2, 2020 – Azerbaijan, Baku, Baku State University: 2020, - pp. 643-648. (in Azerbaijani)

19. On the right to file a civil claim as an element of the principle of dispositivity in criminal proceedings // Azerbaijan Law Journal, - 2021, № 1, - pp. 34-41. (in Azerbaijani)

20. The judiciary as a form of public power and justice as its main public function // SSS Academy Conference: 2021. (in Azerbaijani)

21. Implications of the principle of dispositivity in the criminal procedure of the Republic of Azerbaijan // International scientific conference “XXI century, new calls and modern devolopment trends of law”, - December 21-22, 2021 – Azerbaijan, Baku, Baku State University: 2021, Book of abstracts, - pp. 162-163. (in Azerbaijani)

22. The essence of the principle of publicity in criminal proceedings // Eurasian Law Journal, - 2018, № 11 (126), - pp. 218-220. (in Russian)

23. On implications of dispositive bases in criminal proceedings: according to the legislation of the Republic of Azerbaijan // Bulletin of Voronezh State University. Law Series, - 2019, № 4 (39), - pp. 241-248. (in Russian)

24. About the principles of autonomy of will and publicity in the criminal procedure of the Republic of Azerbaijan // The development of legal science and the problem of overcoming gaps in law. Collection of scientific articles based on the results of the ninth international round table, - 2019, - pp.59-65. (in Russian)

25. Discretionary powers of subjects of public authority, carrying out criminal procedure // Science and technologies: strategy and development. Collection of scientific works, - 2019, Vol. II, - pp. 91-98. (in Russian)

26. Dispositivity principle in the criminal procedure of Azerbaijan Republic: concept and application in individual rights // Bulletin of Peoples' Friendship University of Russia. Series: Legal sciences, - 2021, № 2, Vol. 25, - pp. 504-520. (in English)

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