

The accusatory bias in the criminal proceeding: the prosecutor factor

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Various reforms will prove to be ineffective in situations, which the judges have no choice between acquitting and convicting the defendant. A crucial condition of success in any undertaking in the sphere of criminal justice and law enforcement is freeing the judges from structural barriers that do not let them acquit the defendants due to insufficiency of evidence or close cases on rehabilitating and non-rehabilitating grounds. These structural barriers originate primarily from the procuracy.

Before demanding that the judges be independent and impartial, it is necessary to achieve a situation in which the consequences for the judges are the same whether the verdict is guilty or not guilty. At the moment this is not the case: the procuracy has a number of possibilities to generate career obstacles for judges who delivered unsatisfactory verdicts: from appealing such verdicts to initiating “corruption” inspections. In cases of minor offences and crimes of average gravity there exist certain ways of avoiding pressure. However, the situation is different when it concerns grave offences – the probability of a guilty verdict is 98%, of a not-guilty verdict – 0.3%. The behavior of the judges in cases of less gravity suggest that this correlation is caused primarily by the dependence on the Office of Public Prosecutor than by the judges’ own legal consciousness.

After the judges acquire freedom from the constant “conviction” pressure from the procuracy, it will make sense to discuss such problems as the independence of judges from the “telephone” justice, internal norms and values of the professional community, quality of laws, and the qualifications of the investigative agencies. Currently, courts have to generate verdicts of guilty independently of these conditions. The judges have no ability to make decisions based on their beliefs and values or on a critical assessment of case materials. The procuracy must not only on paper, but also in practice, become one of the sides in the process, and its rights should be equal with those of the defense. At the moment the powers of the procuracy outweigh not only the discretion of the judge but also the presumption of innocence.

In this policy paper we present an analysis of statistics of the Legal department, on the basis of which we offer the following recommendations:

- 1) Deprive the procuracy of the right to appeal not-guilty verdicts or to demand their reconsideration
- 2) Ban the reconsideration of cases which result in stiffer punishment faced by the defendant, or significantly limit the rights of the procuracy to lodge appeals at its own discretion (leaving this right to the injured party)
- 3) To change the Criminal procedure code in such a way that the judge would acquire the right to close the case due to conciliation of sides in cases of any gravity, with the condition that the injured party during the court proceedings is the same one against whom the crime was committed. In other words, only the immediate victims of the offender may reconcile with him or her.
- 4) Endow the judges with the right of initiative in recognizing the fact of active repentance of the defendant at his or her discretion, on the basis of evidence of active repentance (that is, readiness to make amends for the harm and not repeat the same offence again), without the solicitation by the investigator. The position of the investigator and the prosecutor must not influence the discretion of the judge.