

Research Article

MODERN TRENDS OF CRIMINAL PROCEDURE IN MONGOLIA

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ABSTRACT

The process of centuries of history has clearly shown that the way in which the issues of existence of the country are regulated by the laws approved by the state is the most optimal. It is a healthy phenomenon for the law to change in line with social development, but it is considered that the imminent change of the Constitution poses a risk to the national legal system. It is inappropriate to change the constitution in the sense that it is formed from the historical experience of the society and protects the rights that are the basis of human rights. It is possible to determine how any legal phenomenon and system should change in the future by studying the historical traditions and the nature of its implementation. In other words, any change in the law has a regularity of evolving by absorbing the rational from the past and becoming more sophisticated. However, in the case of Mongolia, the study aims to determine that certain laws and regulations have a tendency to distort and introduce changes with contents that are contrary to the established concepts of jurisprudence, and in some cases violate them.

Keywords: Criminal process, trends, constitutional concepts, procedural law, human rights.

INTRODUCTION

As society develops, the methods of committing crimes also change. Accordingly, there is a need to change the national criminal procedural legislation. But these changes have no choice but to take into account the historical tradition of criminal procedure law, research based on social needs and international trends. They should be included in every amendment to the Criminal Procedure Law, as they represent objective and selected experience aimed at ensuring human rights.

To change laws and norms of the criminal process, it is necessary to take into account the peculiarities of the legal system. The characteristics of legal norms will be shaped by territory, lifestyle and social economy. In particular, for any country, the legal system is determined depending on the judicial process, the position of the judiciary, the use of sources of law and relationships.

German scientist Gottfried Leibniz on the legal system (group) "Nova Methodus Discendae Docendaeque Jurisprudentiae"¹ (1667) For the first time in his work, he put forward the idea: "The laws regulating the social relations of countries can be considered in a similar way" and became the subject of jurisprudence. Later, French scholar René David expanded on Leibniz's ideas about the legal system, creating the classifications commonly used today². Our country belongs to the Roman-Germanic legal system. Each legal system has its own characteristics and methods of ensuring human rights.

1. Prove your innocence under any circumstances, if it is not proven in court;
2. Ensuring the comprehensiveness of evidence, the principle of balance and cross-examination;
3. The decision on the case is made only by the court (Ratione temporis);
4. The principle of separating the functions of investigation and prosecution;

5. Ensuring the right to freedom from torture;
6. The principle of independence and independence of court decisions;
7. The principle of applying measures of arrest and detention in exceptional cases by decision of a judge on the basis of a court hearing;
8. The principle of non-preliminary assessment of documents in a criminal case before trial³.

These principles are directly reflected in UN treaties and conventions and are protected by the constitutions of most countries. This is also important because it gives an important impetus to the protection of human rights in criminal proceedings, compliance with general international legal norms in the ECHR, as well as increasing the ethics, discipline and responsibility of detectives, prosecutors, lawyers, and judges.

The legal essence of the criminal process is to solve a crime, fairly punish the person who committed the crime, prevent an innocent person from being found guilty of committing a crime, and protect the rights and legitimate interests of a person. In other words, to create the most optimal legal mechanism to ensure human rights in the national legal system, we cannot but rely on the fundamental legal principles of international criminal proceedings and long-standing historical traditions. It is impossible to change laws without any principles or basic research, just to serve someone else's interests.

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¹"A New Way of Studying and Teaching Law" (Latin)

²Rene David. Les grands systèmes de droit contemporains. Basic legal systems of our time. Translation from French by Dr. Tumanov, V.A. - M., 1988. P.8.

³Yale Kamisar., Wayne R.Lafave, Nancy J.King. Modern criminal procedure. -W.,2005. P.118.

The legal direction of the development of the criminal process should be determined by determining the limits of state power in relation to the investigation of crimes in the criminal process, and then improving the mechanism for protecting against inevitable violations, creating a system for ensuring human rights and freedom and their further improvement.

Over the past 20 years, the Criminal Procedure Law of Mongolia has been revised twice. 15 years after the adoption of the Criminal Procedure Law in 2002, the Criminal Procedure Law was adopted in 2017 and has now entered into force. The Criminal Procedure Law was amended 23 times during its existence, and the Criminal Procedure Law was amended 16 times in approximately 7 years.

It goes without saying that industry legislation undergoes changes in accordance with social life, but frequent changes over time are inextricably linked with the lack of quality research to determine the need for amendments or changes in the law or the interests of a group of people. Also, one should not ignore the fact that changes are still taking place that are not consistent with the norms established by legal science, selected in the course of history and accepted in international relations. If the purpose of the Criminal Procedure Law of 2002 was to regulate relations related to the conduct of criminal proceedings, then the purpose of the Criminal Procedure Law of 2015 is the rapid and complete disclosure of crimes, the identification of perpetrators and legal entities and their punishment. fairly and without guilt, without finding anyone guilty of committing a crime, protecting the rights and legitimate interests of a person, restoring violated rights. In this sense, the purpose of the Criminal Procedure Code has become broader, and the entire criminal process has changed.

The Criminal Procedure Law preserved the independence of investigators and detectives, as well as the independence of the investigative body. For example, if the investigator was found guilty of committing a crime under the Criminal Code, any person was considered a suspect or accused, but according to the Criminal Code these powers were transferred to the prosecutor. Also, the prosecutor makes all decisions related to the resolution of criminal complaints, information, inquiries and investigative cases, which goes beyond the scope of the "supervisory" function provided for by the Constitution, and becomes the executor of the investigation.

In this context, a situation in which the prosecutor cannot control his decisions and actions risks giving rise to human rights violations. Section 1 of Article 56 of the Mongolian Constitution states that "The Prosecutor shall supervise registration, investigation and sentencing, and shall participate in court hearings on behalf of the State." Monitoring means "detailed observation of the progress and situation of a process" or care and observation from an outsider. If hands are involved, it will be more executive than supervisory in nature. In other words, a person cannot evaluate his own decision as right or wrong, and this assessment cannot be objective. The prosecutor's duty is defined as "supervision", but there are legal reasons to believe that making a final decision in any case and conducting a manual investigation if necessary is contrary to the above provisions of the Constitution. Some provisions of the Law on the Prosecutor's Office were previously appealed to the Constitutional Court as violating the Constitution, but certain decisions were made⁴.

⁴One. Constitutional Court of Mongolia dated July 25, 1994 No. 07 "On consideration of a dispute regarding violation of the Constitution of the Law on the Organization of the Prosecutor's Office" /Conclusion/

"Participation in the conduct of certain investigation and registration of cases" in Article 14, Section 1, Article 6 of the Prosecutor's Office Law of Mongolia and Article 2 "The prosecutor supervising the investigation and registration of cases, the basis of the Criminal Procedure Law" may conduct investigation in accordance with with the rules" does not violate Article 56, Part 1 of the Constitution of Mongolia...;

However, when analyzing the decision of the Constitutional Court, it should be noted that, rather than drawing a conclusion about the powers of the prosecutor to conduct a specific investigation, it does not discuss the "body that decides all cases". This is due to the fact that the law of that time did not give the prosecutor the authority to single-handedly bring the case to an end. Without changing the system of management of the prosecutor's office, giving prosecutors the power to conclude cases at the pre-trial stage risks negatively affecting human rights activities.

The powers of the prosecutor's office have become "immeasurably" increased under the Criminal Code, which may be due to the greater participation of representatives of the prosecutor's office in the process of creating the law. In particular, by order of the Minister of Justice No. A/01 dated January 6, 2015, the composition of the working group for the development of the draft Criminal Code of Mongolia was approved. The working group consisted of 36 members representing each sector, the head of the working group was the Deputy Prosecutor General, and more than 30% of the working group was represented only by prosecutors. Depending on the composition of the working group for the development of the law, it is recognized that "the creation of legal rules is influenced by factors other than moral, political and ethical principles, for example, the interests of a particular group of those who follow them"⁵.

Foreign countries have no experience of involving a prosecutor in the investigation of a case, or the practice of independent control and investigation of a case. This Mongolian system contradicts the international principle of "separation of the functions of investigation and prosecution,"⁶ but, on the other hand, it introduces a completely new experience of the prosecutorial control function.

One of the main systemic changes in the Criminal Procedure Code affected the judiciary. In particular, the court of appeal has been changed, which will consider the case only if there are legal grounds and will not return the case from the indictment. In Article 50 of Part 2 of the Constitution: "If the decision of the Supreme Court is contrary to the law, the implementation of the provision that it is subject to cancellation by the Supreme Court itself," which was regulated by Articles 40.10-40.12 of the Law. the criminal trial was cancelled. In other words, by the law of January 25, 2021, the law of January 25, 2021 abolished the procedure for discussing decisions of the supervisory court, which, according to the regulations, could be considered questionable, and now 5 judges of the supervisory level will make the final decision on the case.

The court resolves any dispute by a majority vote. However, if 3 out of 5 judges of the supervisory level get together and come to a consensus, a decision of any content is made, and this decision is final and cannot be appealed. With the development of the electronic environment, people constantly evaluate the correctness or incorrectness of a particular court decision and will continue to

Two. Resolution of the Constitutional Court of Mongolia dated June 27, 2005 No. 05 "On resolving the dispute over whether certain provisions of the Law on the Organization of the Prosecutor's Office violate the relevant provisions of the Constitution" /Conclusion/

1. Article 12, 12.3 of the Law on the Prosecutor's Office of July 4, 2002 "If the testimony of a victim, witness or expert opinion is in doubt, or the investigation and inquiry are not carried out in accordance with the grounds and in the manner prescribed by law, the prosecutor conducts an investigation," and the provisions of the article 10, 10.1 of the Law "The Investigation Department under the General Prosecutor's Office conducts investigations in cases under the jurisdiction of the Criminal Procedure Law" not to violate Articles 1 and 3 of Article fifty-six of the Constitution of Mongolia... a decision was made accordingly. legalinfo.mn.

⁵Hans Kelsen. General theory of law. Translation. Khatanbaatar M., ed. Amarsanaa, J.-Ub., 2013. P. 120.

⁶Yale Kamisar., Wayne R.Lafave, Nancy J.King. Modern criminal procedure. -W.,2005. P.118.

evaluate it in the future. This is because behind every decision that comes close to judicial justice, there is always a tendency for citizens to have faith in their government and rely on the judicial system. In these challenging times, there is an immediate need to change this system, which is directly dependent on just three judges, and ensure the independence and independence of the courts.

Everyone has the right to a public and fair trial by a competent, independent and impartial tribunal established by law in criminal cases or in determining his rights and obligations in civil actions. In other words, everyone is guaranteed the right to have any case related to them resolved by courts at all levels, regardless of how this is reflected in the national legal system. However, Mongolia's transfer of this fundamental human right to the judiciary violates the provisions of the Covenant. The law of 06/03/2022 abolished the procedure for returning criminal cases to court for additional investigation, which created in society the idea that corruption and official crimes take a long time to be investigated and after being brought to court, the case is dismissed due to the expiration of the statute of limitations. As a result, even if the investigation is considered incomplete by the appellate and supervisory courts, the case cannot be returned for additional investigation, and the court faces the difficult task of resolving incompletely investigated cases. While it cannot be denied that in the past criminal cases have been deliberately dismissed due to the expiration of the statute of limitations at the stage of judicial and prosecutorial oversight, discriminatory treatment of cases that are not fully investigated constitutes a violation of human rights.

Thus, over the past 20 years in Mongolia, any changes related to the Criminal Procedure Law have led to violations of human rights and contradicted the content and principles of international norms. This is influenced by the weak development of the legal science of the criminal process and the insufficient participation of researchers and scientists in the law-making process.

CONCLUSION

1. The development of any legal system should be aimed at improving and improving the applied rules in accordance with social changes. Therefore, the purpose of developing the criminal process is, in short, to ensure human rights. However, "development" is not defined in the evolution of laws and rules of criminal procedure in Mongolia.
2. It can be considered that the balance of the principle of equal discussion of the parties has been lost in the Criminal Procedure Law of Mongolia. This is due to the fact that at the pre-trial stage, the prosecutor, as part of the performance of the prosecutorial function, is obliged to conduct a specific investigation, and in the form of an assignment, the detective has the authority to give "directions". and bringing the matter to completion... created a risk to ensure rights. In other words, the prosecutor has the opportunity, with the help of a detective, to take the necessary measures to fulfill his duties and create favorable conditions for bringing to justice.
3. Everyone has the fundamental right to resolve any dispute in court. Courts go to court at all levels, and the transfer of power to decide whether a person's case is resolved or not has led to the loss of guarantees of the fundamental rights of that person.
4. As a result of the repeal of the rule on remanding a case for further investigation, the court faces the difficult task of somehow resolving any incompletely investigated case. If the investigation into a case is truly incomplete, it leads to the inevitable choice of false conviction and unfounded acquittal, which inevitably leads to violation of human rights.

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