

BASIC PRINCIPLES OF CRIMINAL PROCEDURE LAW AND UNDERTAKING CRIMINAL PROCEDURAL ACTIONS THROUGH VIDEO LINK-ASSENT OR NOT?

One of the most current issues when it comes to undertaking criminal procedural actions through video links is the question: is it in accordance with the basic principles of criminal procedure law (primarily the principle of immediacy, adversarial principle, the principle of orality and the principle of publicity) or not? The basis of the correctness of the issue lies in the fact that the basic principles of criminal procedure law are the basic rules on which criminal procedure law is based as a branch of positive law and without them, contemporary criminal procedure cannot be imagined. In addition, they are of a constitutional nature and represent an international legal standard. However, despite their importance as such, it must not be allowed for them to become a dogma and instead of being an advanced initiator forces to become the brakes on the normative development of the process.

The principle of immediacy resolves the question of the manner in which the court finds out the content of an individual piece of evidence, as well as evidence as a whole. According to this principle, in criminal proceedings, the court finds out directly all the evidence, all the facts and circumstances of the case relevant for the realization of a criminal procedural task. There is no mediator between the criminal court and the source of knowledge. The court finds out all the evidence in criminal proceedings by direct examination of witnesses, experts, defendants, direct consideration of their mental state and reactions and direct insight into the documents, which are read and considered by the court itself, and thus, in the most favourable way possible, the court gets acquainted with the state of affairs and evidence on which it bases its decision.

The analysis of the content of the principle unequivocally shows that undertaking certain criminal procedural action through video links (for example, with the examination of a particularly sensitive witness) does not violate the basic postulates of the principle of immediacy that there is no mediator between the court and the evidence from which the court determines a certain fact or facts, that the composition of the panel is not changed from the beginning to the end of the main trial, that the parties be present at the main trial, etc.). Even in such procedural cases, the immediacy between the court and the subject who gives testimony only seemingly but not essentially ceases. Despite the fact that the person giving the testimony is not physically present in the courtroom where this evidentiary action is being taken, he or she is virtually there. Here, the immediacy between the court and the subject who gives a

statement only seemingly ceases because there is a so-called factual (virtual, indirect or technical) immediacy (Bejatović, 2021).

The basis of the adversarial principle is the rule of *audiatur et altera pars*, which ensures that in all phases of the procedure the word of the other party is "heard", i.e., that each party to the criminal proceedings has the opportunity to express its views in appropriate procedural forms, both in relation to the criminal case and in relation to all other issues in the criminal procedure. With such a content of this principle, the principle in many ways contributes to the establishment of the truth in criminal proceedings, as well as versatile, complete and legal accomplishment of the criminal procedure task. Given such a significance, the CPC envisages a number of instruments that ensure the practical implementation of the principle in all phases of criminal proceedings, with the most pronounced at the main trial where there is a direct encounter of the parties before the court, where they are given the fullest possible realization of this principle because they can use words or movements to (directly) present their views, propose and present their evidence and at the same time they respond to the allegations and claims of opposing parties. However, despite the fact that the principle is most pronounced at the main trial, it is also present in all other phases of the criminal proceedings with a different scope of its practical realization. Given this, it is indisputable that undertaking criminal proceedings through video links is not in conflict with the principle of contradiction (Škulić, 2021). The truth is that it is realized here through technical means for the transmission of image and sound, which is not a negation but only a way of modifying the principles. The same is the case with the principle of orality. Even in the case of undertaking a criminal procedural action via video link, the principle of orality is not violated either, because even in such cases, oral communication between the subjects of undertaking a procedural action is unhindered. True, it is realized here through technical means, which is also not a negation but only a modification of the principle. When it comes to undertaking criminal procedural actions through video link, defence counsel, injured parties and other participants have the right to actively participate in taking action - they have the same rights on this issue as if the action was taken directly in court. Given this, it is indisputable that undertaking criminal proceedings through video links is not in conflict with the adversarial principle (Škulić, 2021). The truth is that it is realized here through technical means for the transmission of image and sound, which is not a negation but only a way of modifying the principle. The same is the case with the principle of orality. Even in the case of undertaking a criminal procedural action via video link, the principle of orality is not violated either, because even in such cases, oral communication between the subjects of undertaking a procedural action is unhindered. True, it is realized here through technical means, which is also not a negation but only a modification of the principle.

The essence of the principle of publicity is reflected in the right of the

parties and the right of every adult third person directly interested to attend the work of the court, primarily the main trial and monitor its work in resolving specific criminal matters. With this content, the principle is the guarantee of the right to a fair trial and the individual right of the defendant in criminal proceedings - the right of the defendant to a public hearing. It is in the function of protecting the parties in the procedure from "administering justice in secret, without public supervision", maintaining trust in the courts and achieving a fair trial, and its consistent application is in personal interest, as well as social (general) interest. An exception to the general rule given in this way is envisaged in criminal proceedings against juvenile perpetrators of criminal offenses, where there is only the possibility of allowing the so-called limited public and strictly provided for cases excluded from the public in criminal proceedings against adult offenders. However, even in such situations, the party public is *condicio sine qua non* for court hearing. It is always present and is an integral part of the process. Considering its content, it is clear that even in the case of undertaking criminal procedural action through a video link, the public is not excluded unless there are some of the legally prescribed reasons for excluding the public at all. The principle is only modified here - it is provided by technical means for the transmission of images and sound and not by the direct stay of the person in the courtroom, which is not a negation but only a modification of the principle that does not negate its essence (Ćorović and Čvorović, 2021).

Undertaking criminal procedural actions through video links is in accordance with the basic principles of criminal procedure law. In such cases, the way of their practical realization is only modified, but they are not denied.

Literature

1. Bejatović S. (2021). Videolink i druga tehnička sredstva kao način preduzimanja procesnih radnji u kaznenom postupku (kriminalno-politička opravdanost ili ne?), U: «Videolink i druga tehnička sredstva kao način preduzimanja procesnih radnji u kaznenom postupku (norma, praksa i poželjni slučajevi širenja mogućnosti primene)», OSCE Mission to Serbia, Belgrade, pp. 14.

2. Škulić M. (2021). Krivičnoprocesno zakonodavstvo Republike Srbije i tehnička sredstva za prenos slike i zvuka (sadašnje stanje i predlozi de lege ferenda), U: «Videolink i druga tehnička sredstva kao način preduzimanja procesnih radnji u kaznenom postupku (norma, praksa i poželjni slučajevi širenja mogućnosti primene)» OSCE Mission to Serbia, Belgrade, pp. 35.

3. Ćorović E., Čvorović D. (2021). Posebno osetljivi i zaštićeni svedok kao mogući subjekt ispitivanja putem tehničkih sredstava za prenos slike i zvuka, U: «Videolink i druga tehnička sredstva kao način preduzimanja procesnih radnji u kaznenom postupku (norma, praksa i poželjni slučajevi širenja mogućnosti primene)», OSCE Mission to Serbia, Belgrade.