STAGES OF DEVELOPMENT OF THE INSTITUTE OF PROCEDURAL COSTS ASSOCIATED WITH CRIMINAL PROCEEDINGS (ON THE EXAMPLE OF THE LEGAL SYSTEM OF UZBEKISTAN)

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Abstract: The process of studying and analyzing the causes of the problems of the institute of procedural costs in criminal proceedings, as well as the development of proposals for its improvement, creates the need to study its historical stages. On this basis, this article draws on the history of the development of procedural costs, the specific aspects of the development of the Uzbek statehood studied in stages: 1) The history of law before the Arab conquest of Central Asia; 2) The history of law in the period of the introduction of Islam in Central Asia and the introduction of Sharia law; 3) History of law during the reign of Tsarist Russia; 4) History of law in the USSR; 5) the period of development of the national legislation of independent Uzbekistan. Also, in determining the direction of improvement of the institute of procedural costs, suggestions were made to take into account the conclusions formed on the basis of the characteristics of its historical development.

Keywords: criminal procedure, procedural costs, stages of development, history of legislation, Islamic law, participant in the process, human rights.

INTRODUCTION

Duties set out in such laws as "On measures to radically improve the system of criminal and criminal-procedural legislation" PP-3723 dated May 14, 2018 [1], "On measures to further improve forensic science" PP-4125 dated January 17, 2019 [2] adopted on ensuring the rule of law and ensuring the implementation of the priorities of further reform of the judicial system, put forward in the "Actions strategy on the five priorities of development of Uzbekistan in 2017-2021", in essence, serves to further enhance the status of the institution of procedural costs and the need to improve it, which is one of the mechanisms for ensuring a reliable guarantee of the rights and freedoms of the individual in criminal proceedings.
Indeed, because procedural costs are one of the most pressing issues in the judicial system, the quality of justice and the effectiveness of the functions of criminal procedure legislation cannot be achieved without addressing the issues involved. In order to make an in-depth analysis of the problems of a particular legal institution and to develop sound proposals for its improvement, it will be necessary to study the process of its historical formation.

**LITERATURE ANALYSIS AND DISCUSSION**

The stages of development of the institute of costs in criminal procedure go back a long way. Because a society is made up of people, there is an illegal act or a crime, and as long as there is a crime, there is punishment as a measure of influence. Sentencing, on the other hand, requires a criminal investigation in a certain order. As the criminal case is being considered, there is also a need for related costs. In this sense, the well-known Arab jurist Muhammad al-Fadel wrote that “Punishment is the lawful torture of a person who has committed a crime, physical torture and suffering inflicted by the state on the offender for the commission of a crime. Punishment is carried out by restricting certain rights "[3],” which also serves to substantiate the above interdependence.

Therefore, the history of the formation of the institute of procedural costs can be directly linked to the period of the origin of mankind. It is true that in the early days of human society, issues such as what action was considered a crime, what punishment was imposed on it, were resolved not on the basis of certain legal norms, but on the basis of customary revenge of the victim. However, in the later stages of human development, the issues of crime and punishment in different countries were regulated on the basis of certain rules. In particular, the laws of the kings of Egypt, the laws of Hammurabi (Babylon), the laws of Manu (India), the Book of Laws of the Wei Kingdom (China), the laws of Solon (Athens), the laws of Rome, the Avesto are among them [4]. Of course, these laws were the most acceptable source of law for their time and the population of the region, served as a basis for solving crimes and punishments, and served the formation of a modern legal system during their historical development.

Based on the above, we believe that it would be expedient to study the history of the development of the institution of procedural costs in the national legal system in certain stages. In this regard, the history of the development of the institute of procedural costs in the territory of Uzbekistan can be divided into the following five stages:

1. The period before the Arab conquest of Central Asia.
2. The period of the penetration of Islam in Central Asia and the introduction of Sharia law.
3. The period of Tsarist Russia’s rule.
4. The period of the Soviet Union.
5. The period of independent Uzbekistan.

Clear historical facts were taken into account when dividing the development history of the institute under study into stages. It should be noted that in the first historical period, which lasted the longest and richest in the study of the above stages, i.e. before the conquest of Central Asia by the Arabs, various forms of state and law existed in the territory of Uzbekistan. Hence, the history of the development of state and law in this region dates back to several thousand years BC. According to historical sources that have come down to us, about 20 tribes lived in the Central Asian region. It has been reported that all issues of common importance to these tribes were discussed and resolved at a meeting of tribal activists, and that each tribe and clan had its own rules and strict adherence to them [5]. Abulgazi Bahodirkhan, the author of Shajarai Turk, gives the following information about the administration of justice in ancient nations: “The ancient people were better than this people. If the people can come together and kill the sinner, or if the sinner can be asked by the people, why does a king ride a horse on a man and sit in the net of his house and give all the will of the people to him?”[6]. The content analysis of this information serves to substantiate the above conclusions. In addition, it testifies to the existence of the foundations of statehood and the rule of law in the territory of Uzbekistan in BC, as well as the fact that issues of public interest were resolved through the council. Later, the first states such as Khorezm, Bactria and Sogdiana were formed in this region. These areas were once under the influence of the Iranian Achaemenids, the Macedonians. There are also states such as Qang, Greco-Bactria, Tokharistan, Parkana, Parthia. And although they have their own traditions and rules of the judicial system, none of them has reached us completely. However, one can find information on judicial issues in the Avesto, one of the oldest sources of law in force from the ninth to the fourth century BC. In particular, its legal provisions reflected in the book Vendidot contain information on criminal, judicial law, family and marriage issues. A number of types of crimes and the types of penalties imposed for the people are listed. In general, these data show that even in BC, the foundations of statehood existed in the territory of Uzbekistan, and issues of public interest were resolved through the council.

The penetration of Islam in Central Asia and the period of the legal system based on Sharia law. The occupation of the territory of present-day Uzbekistan, then
called Transoxiana by the Arabs, and the adoption of Islam by the Arab Caliphate, established in the Arabian Peninsula in the 7th century, ushered in a new stage in the development of legal norms, including procedural costs. During the period, which lasted from the VII century to the XIX century, almost 12 centuries, the judicial system of all states formed on the territory of modern Uzbekistan was regulated on the basis of Sharia norms. It is known from the history of Islam that disagreements over the rule of the Khilafah led to the division of the Muslim world into two directions, Sunni and Shiite. This separation, in turn, began to be observed in their views on the sources of Islamic law that generalized them. Islamic jurisprudence (fiqh) was emerged. Fiqh is the right to ensure that one's daily life is in accordance with the Shari'ah. Indeed, verse 18 of Sura al-Jariyah of the Qur'an states: «...(O Muhammad), We have made you (steady) on a Sharia (clear path) from the work of religion" [8]. Sharia is a legal system that has left a deep mark on the formation of legal consciousness and legal culture in the lives of the peoples of Central Asia, especially the Hanafi Uzbeks, for many centuries. The following writings of our great ancestor Amir Temur are a clear example of this: “The first rule that rose from the east of my heart was that I spread Islam and supported the shariah of Muhammad, may God bless him and grant him peace ... I have adorned my kingdom with the Shari'ah ... I have appointed scholars and teachers in each city to teach Muslims about religious matters and to teach them the Shari'ah and Islamic sciences: tafsir, hadith, and fiqh.” [9]

It is known from Islamic law sources that in the Shari'a, trials were conducted by judges. They are empowered to directly apply the Shari'a laws to every social reality, and usually to enforce them, that is, to ensure their application in practice [10]. The participants in the trial included a judge, a religious cleric who judged the case, a plaintiff (muddai), a defendant (muddai alayhi), and witnesses. In Islamic law, the plaintiff and the defendant are equally referred to as the "victims." It was only after the case was heard and the verdict was handed down that the person began to be found guilty. The trial was held in a mosque, and the plaintiff and defendant were required to appear in person in person. [11] As the Islamic judicial system improved, they were later joined by other officials who assisted the judge in the proceedings, including a “representative (now a legal representative or lawyer). In proving the deed, fiqh recognized the following three categories of evidence: confession, witness (testimony of witnesses) and oath [12]. In turn, a number of requirements are set for this evidence, which is the basis for proving the act, which encourages judges to be accountable in criminal cases.

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It is known that the work of Imam Burhaniddin Ali ibn Abu Bakr Marginani, a well-known jurist in the Islamic world, is one of the most famous works of the Ahl as-Sunnah wa'l-Jama'ah. Among the commentaries on Hidaya, Ubaydullah ibn Mas'ud's Maktasar ul-Viqaya is particularly noteworthy. As an Uzbek commentary on this book, Maqsudhoja ibn Mansurhoja's Majma'ul-Maqsud was published. In addition to the legal issues encountered in public life, issues related to litigation are regulated by Sharia law. These works on jurisprudence provide general information on certain types of procedural costs associated with litigation. In particular, paragraph 9 of the Book of Testimony on Issue 112 in Mukhtasar's work states: When the language of the witness is translated in a way that the judge does not know, there should be 2 people. And it is better for the judge to have two people who go to the interrogator to ask about the condition of the witness. ”[14] This rule refers to the service of an interpreter, which is recognized as a type of procedural costs in the current criminal procedure legislation, or in other words, the guarantee of the right to use the mother tongue in criminal proceedings. In addition, the provisions of Section 114 (Return of Testimony) of the Mukhtasar state that in the event of a return from testimony, the witnesses shall pay the damages caused by that return. [15] Under Islamic jurisprudence, the costs of litigation are borne by the person whose participation or interests were spent. This rule also applies to the payment for the services of an interpreter, that is, the translator's payment instructions are imposed on the user of the service of translator. This idea is put forward as a scientific hypothesis. In addition, the nature of the types of evidence (confession, testimony, and oath) specific to the judicial process under Islamic law is the basis for such a conclusion. This is because all of this evidence is directly related to the individual, i.e., the victim and the defendant, and logically, they have resolved the costs associated with their participation in the proceedings to the best of their ability.

However, in the study of crime and punishment in the Shari'a, the punishment for all crimes is determined and the types of punishment are divided into three groups: 1) Hadd (flogging, amputation of an arm or leg, death penalty); 2) Revenge or compensation and expiation; 3) Repression (imprisonment, warning, fine, community harassment, etc.) [16].
Among these types of penalties, the penalty of compensation is significant for the institute of procedural costs. This is because the penalty of restitution has been applied to crimes against life and health (such as murder, bodily harm) [17]. In the Book of Diyat, which is reflected in Section 127 of the Mukhtasar, the amount of compensation is clearly defined, whether the crime was committed intentionally or negligently, depending on the nature of the bodily injury [18]. For its own purposes, this type of punishment served to compensate the victim for the damage caused by the crime and the procedural costs associated with his participation in court proceedings. Thus, until the beginning of the XIX century in the territory of Uzbekistan the institute of procedural expenses was regulated on the basis of Sharia norms.

With the establishment of Tsarist Russia in Central Asia and the introduction of the norms of the Romano-Germanic legal family in the judicial system, the next stage in the development of the institute under study began. It is noteworthy that in the early days of Tsarist Russia, the judiciary in Central Asia was not abolished. Judges in civil cases, in particular, had greater powers. Gradually, however, procedures for the Romano-Germanic legal family began to be introduced. In this regard, it would be expedient to study the development of the institute of procedural costs in this period in connection with the legal system of Tsarist Russia. This legal system also served as the basis for the current system of national legislation on the institution of procedural costs.

In general, since 1832, work has begun to regulate all laws in force in Russia, including the norms on court costs. There are two main types of court costs: 1) general costs for the organization and operation of criminal courts; 2) special expenses related to the investigation and trial of individual criminal cases.

The second type of court costs, in turn, is divided into two groups: a) the costs that are necessary for the organization of the trial (they include the costs of ensuring the participation of the accused, witnesses and others, the distribution of various announcements); b) final costs to be transferred to the appropriate account upon completion of the trial [19].

As a result of the generalization of these rules, on May 12, 1861, as the first normative legal document regulating procedural costs, a draft resolution on "Expenses for criminal and criminal proceedings" was formed. It outlines some types of court costs, the procedure for calculating and paying them, and the grounds for their subsequent reimbursement [20]. But in 1862 the project was severely criticized by the Judicial Fees Committee. This is due to the fact that investigators are given greater authority over the payment of procedural costs, which leads to the arbitrary misuse of funds and damage to the state budget without reaching the participants in criminal proceedings [21]. This project was
later improved, and on November 20, 1864, the Charter of Criminal Procedure was approved.

It should be noted that this document has also become the starting point and legal basis of the main law that determines the procedure for criminal proceedings - the Code of Criminal Procedure. The norms of this Charter are expressed in 2 books and 1254 articles, in which for the first time the legal relations related to criminal proceedings are more fully regulated. In particular, issues related to the institute of procedural costs are mentioned in two places in this document. The first of them is reflected in Articles 192-199 of Chapter 11 of the first book of the Charter on the "Procedure of International Judicial Proceedings". In particular, Article 192 stipulates that those who participated on the basis of a subpoena or on their own initiative as witnesses and as persons with information must be reimbursed for travel expenses during or during the interrogation. Article 193 stipulates that a witness and a person with the necessary information must be summoned from a distance of 15 versts [23], 3 tiyns for 1 verst (1066.8 meters) and 25 tiyns for daily expenses away from the place of residence. The rest of the articles contain rules for recovering expenses. Articles 976-999 of Chapter 4 of the Second Book on the Procedure for General Judicial Proceedings by Local Judicial Bodies reflect other norms related to the institute of procedural costs. For example, Article 976 stipulates that all expenses related to criminal proceedings shall be reimbursed from the state treasury, in the next article - these expenses shall be recovered from the person to whom the sentence is passed, and the rest shall be transferred to the state treasury.

Article 977 provides for the costs to be collected from convicted persons:
1) travel expenses of persons involved in the investigative actions;
2) the cost of incentives for witnesses, informants of the crime and other persons assisting the criminal proceedings (witnesses, assistants);
3) costs associated with the storage and dispatch of material evidence, chemical and technical research and the publication of various announcements.

Articles 979-989 of the Charter set out the methods for calculating court costs, their amount and the procedure and conditions for payment, and Articles 990-999 set out the grounds and procedure for collecting procedural costs. The above norms of the Charter sought to form an integrated mechanism aimed at regulating the institution of court costs. Although the types of procedural costs listed in the Charter did not fully cover the costs incurred in criminal proceedings, they were important as one of the first legal documents relating to this institution. Since its adoption in 1864, this document has been improved by a number of normative and legal acts of the country, entered into force throughout the country and began the fourth period of development of the institute of procedural costs, ie...
the history of law in the former Soviet Union. On this basis, on May 25, 1922, the first Code of Criminal Procedure of the RSFSR was adopted and applied in the territory of Uzbekistan. Articles 86-88 of Chapter 6 of the First Criminal Procedure Code of the USSR, entitled "Judicial Expenses and Terms", adopted by the decision of the Central Executive Committee of the USSR on June 16, 1926, regulated the types of procedural costs.

In particular, in accordance with Article 86, "Court costs are:
1) amounts paid to witnesses, experts, translators;
2) amounts spent on storage, transportation and inspection of evidence;
3) other expenses incurred by the court for criminal proceedings "[24].

Articles 87-88 of the Code set out the grounds and procedure for recovering court costs. The Instruction on the Procedure for Payment of Witnesses, Experts, Interpreters and Attorneys in Criminal and Civil Cases, approved by the People's Commissariat of Justice of the RSFSR on July 31, 1923, sets out the amount of procedural costs and the procedure for their payment.

An analysis of these codes shows that they did not differ much from the Criminal Procedure Code of 20 November 1864 in terms of their potential for detailed regulation of the institution of procedural costs. For example, it leaves open the issue of compensation for damage caused by the actions of state bodies and officials responsible for criminal proceedings.

At the same time, the approach to the regulation of the institute of procedural costs in the Second Code of Criminal Procedure of the USSR, adopted on August 1, 1929, differed from others. In other words, this institution is reflected in Article 140 of the twelfth chapter "Judgment" and its types are expressed as follows:
“Court costs are:
1) Amounts paid to witnesses, experts, translators;
2) Amounts spent on storage, transportation and inspection of exhibits”[25].

The rest of the article contains rules on the procedure for collecting court costs.

Consequently, in regulating the norms of this Code, the legislature took into account only the procedural costs incurred in the judicial process, and did not comment on the issue of costs in the pre-trial investigation and criminal investigation. Moreover, it gives the impression that the procedural costs in this code are only considered as a matter of sentencing in the case.

Later, the Third Code of Criminal Procedure of the USSR, which was approved on May 21, 1959 and came into force on January 1, 1960, set separate norms for court costs, as in the previous code [26]. However, the types of court costs were relatively broad. In particular, the Code of Judicial Expenses is reflected in three articles of Chapter 5, Articles 86-88, entitled “Procedural Terms and Criminal Expenses in Criminal Cases”. In particular, in accordance with Article 86 of the Code:

“Court costs are:
1) The amount given and to be paid to witnesses, victims, experts, specialists, interpreters and attesting witnesses;
2) The amount spent for storage, transportation and inspection of evidence;
3) The amount paid for the legal assistance of the defense counsel present on the basis of the appointment of the investigating authority or the court;
4) Other expenses related to the criminal case

Article 87 of the Code deals with the sources and procedure for recovering court costs, while Article 88 is entitled “Reimbursement of expenses incurred by witnesses, victims, experts, specialists, interpreters and attesting witnesses”

Retention of salaries of witnesses, victims, experts, specialists, interpreters and impartial in the workplace, payment for distraction from regular training and the right of these persons to reimbursement of expenses related to the investigation and testimony in court, as well as the right of the expert and specialist to receive remuneration in connection with the performance of their duties in criminal proceeding are shown in this article.

CONCLUSION

It can be seen that this Code has a much broader scope than the previous one in terms of the level of coverage of the costs of criminal proceedings in the institute of procedural costs. In addition, as observed in the codes discussed above,
it also focuses on costs related to litigation, and therefore does not include a norm on the payment of procedural costs. Taking into account the legal and technical formulation of the draft Code of Criminal Procedure, a relatively acceptable legal form of regulation of criminal procedure norms related to this institution has been selected and put into practice. However, taking into account the issues not covered by the norms of the three codes studied in the legal and technical formulation of the current draft Criminal Procedure Code of independent Uzbekistan of September 22, 1994, a relatively acceptable legal form of regulation of criminal procedure was selected and implemented.

In general, as a result of studying the history of the development of the institute of procedural costs, it can be concluded that in all periods, this institution was inseparable from the processes of criminal, criminal proceedings. It has further developed as a result of the increasing need for it in criminal proceedings. Throughout history, the legislature has had the primary goal of society to protect the property interests of those involved in criminal proceedings. Therefore, in determining the direction of improving the institution of procedural costs, it is necessary to focus on the protection of the rights and freedoms and property interests of participants in criminal proceedings.

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