

**THE RELATIONSHIP OF SUBSTANTIVE AND PROCEDURAL  
LAW ON THE EXAMPLE OF CRIMINAL LAW AND  
CRIMINAL PROCEDURAL LAW**

**Qumriniso Raimqulovna Abdurasulova\*;  
Akrom Toshpulatov Ikromovich\*\*;  
Choudhoury Kaustav\*\*\***

\*Professor,

Department Criminology and Anti-corruption  
Tashkent State University of Law  
Tashkent, UZBEKISTAN  
Email id: q.abdurasulova@gmail.com

\*\*Independent Researcher

Department Criminology and Anti-corruption  
Tashkent State University of Law  
Tashkent, UZBEKISTAN  
ORCID: <https://orcid.org/0000-0002-3029-2767>  
Email id: a.toshpulatov@tsul.uz

\*\*\*Assistant Professor

Rashtriya Raksha University  
Gandhi Nagar, Gurat, INDIA  
Ministry Of Home Affairs, Government of India  
Email id: lawkaustav@gmail.com

**DOI: 10.5958/2249-7315.2021.00345.2**

---

**ABSTRACT**

*Over the past years, domestic criminal and criminal procedural legislation has undergone significant changes aimed at improving its norms, implementing advanced international standards and foreign practices in order to unconditionally ensure the rights and freedoms of citizens involved in criminal proceedings. At the same time, a number of problems and shortcomings remain in the judicial and investigative practice, including those caused by the imperfection of certain norms of criminal and criminal procedure legislation, which hinder the effective implementation of the country's criminal law policy. Therefore, the study of the most important issues of the relationship between criminal and criminal procedural law has become especially relevant and timely, especially since many facets and levels of the relationship between substantive and procedural criminal law are completely new and do not yet have an unambiguous solution. This explains the choice of research objective in this article: to reveal the essence and identify the characteristic features of criminal law and criminal procedure law; study of various aspects, forms and levels of the relationship between criminal and criminal procedural law. Scientific novelty lies in the author's approach to determining the relationship between criminal and criminal procedural law.*

**KEYWORDS:** *Substantive and Procedural Law, Criminal Law, Criminal Procedural Law.*

## 1. INTRODUCTION:

Scientific research on the interdependence and interdependence of criminal law and criminal procedure law is important in improving the effectiveness of the fight against crime, improving its legal basis. The study of law enforcement practice cannot be carried out within a single area of law, for which the areas of law governing the relations encountered in practice must be studied in a comprehensive manner. Criminal law and criminal procedure law are very interrelated areas that require a comprehensive study. The Resolution of the President of the Republic of Uzbekistan No. PP-3723 of May 14, 2018 "On measures to radically improve the system of criminal and criminal procedure legislation" sets the task of preparing a new version of the Criminal and Criminal Procedure Codes and it shows these two legal basis have relationship. The issue of the interrelationship of criminal law and criminal procedure law in the development and improvement of the theoretical basis of judicial and legal reforms, reforms in the fight against crime in our country is somewhat neglected. This article discusses some aspects of the relationship between criminal law and criminal procedure law.

## RESEARCH METHODS

The article was written using the methods of systematic analysis, logical observation, comparative analysis, interpretation of scientific works.

## SUBJECT OF RESEARCH

The subject of research is scientific research on criminal law and criminal procedure law.

## HYPOTHESES

There is debate among scholars who have done research in the areas of criminal law and criminal procedure law on the role of these areas of law, which one is superior or primary. We believe that these areas of law are essentially one task, that is, to implement a policy to combat crime, and are areas that complement each other and can not exist without each other. This article substantiates the fact that the essence of criminal law and criminal procedure law, by studying their functions, are areas that require a comprehensive study in the implementation of criminal law policy.

## **The main part. The concept of substantive and procedural law in the theory of law.**

In the theory of law, the division of law into substantive and procedural law is accepted. Substantive law is a system of legal norms that regulates social relations. Norms of substantive law determine the rights and duties of legal entities, their legal status, the scope of legal regulation [1]. Unlike procedural law, which strengthens the forms and order of implementation of substantive law, the conditions of its protection, substantive law allows to influence social relations through their direct, indirect legal regulation [2]. Procedural law is the norms that determine the procedure for exercising rights, fulfilling obligations and enforcement. Procedural law is a set of norms that determine the process and procedure for applying the rules of substantive law [3]. Analyzing the views on the issue of substantive and procedural law in the theory of law, it is possible to distinguish the following features of substantive and procedural law

### **Norms of substantive law:**

- Regulates the factual facts determining the content of procedural norms;
- Is more variable (dynamic) than procedural norms;
- Associated with the material conditions of social life;
- The purpose of these norms is to ensure human rights and freedoms, to regulate relations in

society, to establish law and order;

- Has regulatory, law enforcement features;
- Aimed at all subjects of law;
- Officially canceled.

### **Norms of procedural law:**

- Determines the forms and procedure for the exercise of substantive rights, the conditions of its protection;
- Is stable (static) in relation to the norms of substantive law, has a restrictive nature by its nature;
- Has a dual nature, on the one hand arises from the material conditions of society, on the other hand is closely related to the norms of the field of substantive law governing these relations;
- Determines the jurisdiction of the court to consider cases, along with the protection of the rights, freedoms and interests of the individual in court;
- Has a procedural nature (determines the reasonable order of consideration of cases);
- Usually aimed at authorized persons, ie persons authorized to apply the rules of substantive law (judge, prosecutor, investigator, etc.); terminated with the repeal of the relevant substantive law.

**As for the essence of criminal law**, criminal law is one of the main areas of law. Scholars who have studied criminal law have several views on the concept of criminal law and its essence. Scholars who have studied the nature of criminal law as a theoretical problem have expressed differing views on exactly what issues the concept of criminal law covers. Different views have been expressed among the legislature and its supporters, as well as legal scholars, on the clear definition of the "area of responsibility" of criminal law. The fact that this issue, ie the "area of responsibility" of criminal law, is not clearly defined, on the one hand, is reflected in the attempts to unreasonably expand the field of criminal law, to solve important social problems, mainly through criminal law. In particular, it should not be overlooked that in recent years, criminal law has introduced norms that define the responsibility for many social relations, which can lead to a repressive approach to solving social, political and economic problems. On the other hand, some scholars believe that the field of criminal law is a field that does not solve any social relations, the main task of which is to determine the punishment for violating the rules established in other areas of law. In particular, J.-J. Russo defined that criminal law is essentially not a separate branch of law, but a sanction of all branches [4]. Of course, there are flaws in both of the above views on the nature of criminal law. U.Khalikulov noted that in order for the criminal law to meet modern requirements, in the study of law, including criminal law, it is necessary to go beyond the boundaries we have learned, to consider the issue from different points of view [5].

The naming of criminal law as a branch of law depends in many respects on which idea prevails in the criminal law policy of different countries, i.e. the main focus depends on the priority of the idea of crime or the idea of punishment. From the naming of this field is formed not only the field, but also the structure of the science of criminal law. N.S. Tagantsev, as a legal relationship, has two aspects: the attitude of the offender to the interests protected by law - the crime; believes that the state's attitude towards the offender for committing a crime reflects the punishment. Therefore, the structure of criminal law can be of two types: either the priority is given to the criminal act, in which the punishment is considered an inevitable consequence, or the priority is the punitive activity of the state, in which the criminal act is seen only as the basis of this punitive activity [6].

Хорижий давлатлардажиноят ҳуқуқининг асосий ғояси сифатида жиноий In foreign countries, if the main idea of criminal law is a criminal act (crime), it is called criminal law (Criminal Law), if the main idea is given priority, it is called criminal law (Penal Law). In particular, in the United States, Germany, the United Kingdom and Japan, it is called criminal law, while in France and Poland it is called criminal law in other Eastern European countries [7].

Of course, in the current era of globalization, the increasing implementation of international law to domestic law, the development of new approaches to the nature of criminal punishment, attitudes in the field of criminal law are changing. In the literature, the view that criminal law is a set of legal norms on crime and punishment prevails in different views on the concept of criminal law [8]. The convenience of such a definition, firstly, is in its brevity, and secondly, it defines the essence of criminal law as a branch of law.

A.V Naumov defines the concept of criminal law as follows, "Criminal law is a set of legal norms that determine what acts are criminal and determine the penalties for perpetrators, as well as other measures of criminal law, the grounds for criminal liability and exemption from criminal liability." [9] The concept of criminal law, summarizing the views on its essence, summarizes the views of scholars on the subject as follows: the objectives of criminal law; institutions that reflect the structure and content of criminal law; as a branch of criminal and punitive law; can be divided into groups related to the subject and methods of criminal law regulation. Because each scholar approaches the issue from one of the above perspectives, different views on the nature of criminal law have been formed. M.H Rustambaev shows the application of the concept of criminal law in several senses: 1) the field of law, 2) the field of law, 3) the field of science, 4) the subject [10].

M.Usmonaliev, P.Bakunov said that "criminal law in the broadest sense is a criminal liability established by the supreme state authority of the Republic of Uzbekistan, which determines the criminality and desirability of an act and its basis, goals and objectives of punishment, penal system, general principles of sentencing, liability and a set of legal norms regulating the impunity, as well as the application of medical coercive measures against persons who have committed socially dangerous acts" [11].

Summarizing the above views, criminal law can be defined as a field of law that regulates the relationship between the perpetrator and the state, which determines what socially dangerous acts are crimes and punishes them. In turn, based on this definition, the essence of criminal law is reflected in the social relations that arise as a result of the commission of a crime, between the person who committed it and the state.

**As for the essence of criminal procedural law**, criminal procedural law is a system of rules of procedure governing the activities related to the investigation, preliminary investigation and trial of criminal cases, ie the legal procedures that ensure the performance of criminal proceedings [12].

The main social function of the criminal process is that the state organizes and implements the fight against crime. The legal basis for combating crime is the norms of criminal, criminal-procedural and criminal-executive law, which perform the function of protection in the conduct of criminal policy of the state. This activity cannot be carried out without the application of the rules of criminal procedure law. It is this situation that determines the place of criminal procedural law in the legal system.

**Criminal proceedings are applied in the following four senses:**

1. specific activity;
2. a set of norms of a certain type;

3. legal science with a specific subject of research;
4. subject of study [13].

### **The main features of criminal procedure are:**

- a. By specially authorized state bodies and officials (representatives of citizens, public associations and communities may participate in this activity in the manner prescribed by law);
- b. In the form prescribed by the criminal procedure law;
- c. The protection of the rights and legitimate interests of victims of crime, as well as the protection of the person against unlawful and unjustified accusations, convictions and restrictions on their rights and freedoms.

The criminal process, like any event, has a form and content, its form can be both material and ideal. The material form includes the fact that the crime was committed and the rules for determining the guilt of the person who committed it. These rules can be expressed in laws and acts of law, treaties and agreements, legal customs, precedents and other forms of law. The legal relationship that results from the application of these rules is an ideal form because they are directly reflected in the minds of the participants in the criminal proceedings. The main content of criminal proceedings is the activity of criminal investigation bodies, prosecutors and courts in making procedural decisions and taking legal action [14]. The analysis of research on criminal procedure law allows us to conclude that its essence is a form of state activity in the fight against crime, defined by the norms of law.

### **Relationship between criminal law and criminal procedure law.**

The question of the interdependence of criminal law and criminal procedure law is manifested in the integral connection with the division of law into substantive and procedural law. The division of law into substantive and procedural law is one of the legal contradictions in the division of law into such types as public and private, objective and subjective law. Such a division of law in medieval philosophical views stems from the division of the essence of things into "material" and its form into "formal" types. For this reason, in some literatures, substantive law is referred to as "substantive law" (for example, English substantive law, French droit substantiel or droit de fond), and the term "form of law" is used to describe procedural law (for example, French droit formel, or droit de forme) [15].

Although procedural law is considered as a norm that strengthens the forms and procedure for the implementation of substantive law, the conditions of its protection, the issue of the relationship between criminal law and criminal procedure law is one of the topics that has not been sufficiently studied. Including Professor Dj. Fletcher emphasizes that law enforcement activities in the fight against crime should not be limited to the relevant field of law, institutions, norms, but should cover the issue more broadly. To this end, he suggests a study of the relationship between criminal law and criminal procedure law [16].

According to J. Fletcher, substantive norms determine "the existence of guilt in general," while procedural norms determine that the person is "genuinely guilty". U.S. According to Djekebaev, "the existence of guilt in general" can turn into "genuine guilt", but this will depend on the evidence, the rules of their admissibility and assessment, as well as the personal characteristics and abilities of those authorized to decide whether guilty or not guilty. Such an approach is consistent with the Anglo-Saxon direction of law [17]. According to the legal views formed since the time of the former Soviet Union, criminal law is considered to be superior to criminal procedural law. The



purpose of the criminal process was to identify the person who committed the crime in accordance with the norms of criminal law, to prove his guilt, to impose a sentence on him.

According to Mizulina, the fact that accusations, investigations, trials and executions are concentrated in the hands of one person - the state - has led to a shift in the criminal procedure of the state towards the prosecution. For this reason, he defines "criminal process as a form in which criminal-legal and criminal-procedural activity are carried out and in some way compatible with each other" [18]. Of course, here E. Mizulina expressed his opinion that the criminal process in the Anglo-Saxon legal system is based on the principle of dispute. Article 121 of the Constitution of the Republic of Uzbekistan provides for the establishment and prohibition of the establishment and operation of private cooperatives, public associations and their subdivisions in the territory of the Republic of Uzbekistan, which independently perform operational search, investigation and other special functions. and indicates that the trial will be conducted by the state itself.

As noted above, criminal law is a set of legal norms that define whether a socially dangerous act is a crime and prescribe penalties for such acts. In contrast, criminal proceedings are activities involving the initiation, investigation, and resolution of criminal cases by the competent authorities and officials in the manner and form prescribed by law. But here, it should be borne in mind that the criminal process is not only an activity in the order and form prescribed by law, but also regulates the social relations that occur in this process. For this reason, it should be borne in mind that the concepts of criminal procedure and criminal procedure law are not exactly the same, but that there are differences between them. We believe that criminal procedural law should be understood as legal norms governing the social relations that arise in the course of criminal proceedings (more commonly referred to in the literature as a criminal trial).

The area of law closest to criminal procedural law is criminal law, which defines the grounds and principles of criminal liability, whether the act is a crime, the types of punishment imposed for the commission of a crime, and other types of measures. Criminal procedure law, on the other hand, defines the procedural form in which criminal liability for a crime is decided. Thus, criminal procedural law creates forms of application of the norms of criminal law, which is a substantive law.

But these two areas of law have a separate legal relationship and their own subject matter. Criminal law relations are generally relations between a person and the state who have committed an act for which criminal liability is established, and this relationship arises from the time the crime is committed. Criminal-procedural relations, on the other hand, are relations between the participants in the proceedings, which arise from the time of the first notification of the commission of a crime. Criminal-procedural relations serve as a means of clarifying and clarifying criminal-legal relations. However, the realization of criminal relations is not the only task of criminal procedural law. The procedural form also provides for the protection of citizens from unfounded accusations and convictions, and their rehabilitation in such cases. Properly applied criminal procedure norms serve to prevent crime, to form a respectful attitude to the law [19].

According to procedural scholars, the establishment of criminal relations and the application of criminal liability measures can be carried out only within the framework of criminal procedure relations. While the norms of criminal law can be applied, firstly, only through the norms of criminal procedure law, and secondly, only the subjects of criminal procedure relations are entitled to apply the norms of criminal law. The existence of references to the Criminal Code and the Code of Criminal Procedure in Articles 13, 82, 84, 236, 242, 265, 271, 325, 331, 379, 389 and others also implies that these two areas of law are closely interrelated and interdependent.

Scholars who have studied the relationship between criminal law and criminal procedure law in general have not set themselves the goal of which of these branches of law is primary, but have

noted that they are closely interrelated. It would be wrong to say that one of the areas of law being studied is a priority. In particular, A.D. Proshlyakov identifies criminal law, criminal-procedural law and criminal-executive law as a single, complex field.

D.Yu. Goncharov explains that the integration of norms of criminal and criminal-procedural legislation is a process related to the regulation of a single, compatible relationship, which is specific to the group of social relations that arise in connection with the commission of a crime. A.A. Vasilchenko, on the other hand, believes that criminal law and criminal procedure relations are part of a single mechanism of criminal law regulation.

## 2. CONCLUSION

The study of the views on the relationship between criminal law and criminal procedure law allows us to draw the following conclusions about the interdependence and interdependence of these two areas of law. The debate over which of criminal and criminal-procedural law is primary does not have a positive impact on the development of these areas of law. Criminal law and criminal procedure law are interdependent, single-task, ie, areas that regulate closely interrelated social relations in the implementation of state policy in the fight against crime. Although criminal law and criminal procedural law are separate branches of law, they have meaning as a single complex, the exclusion of one of the components of this complex makes the other meaningless and unnecessary. The relationship of these areas of law is reflected in tasks, institutions, concepts and even terms. Legal qualification of an act is a dynamic process of applying material and procedural norms at different stages of the criminal process, subject not only to criminal law but also to procedural rules. In improving the legislation, it is necessary to take into account the interdependence of not only criminal law and criminal procedure law, but also criminal law. Therefore, the new version of the Criminal, Criminal Procedure and Criminal-Executive Codes of the country should be developed in parallel, taking into account the social relations regulated by each, in the discussion of these codes to organize joint discussions of representatives of all three fields and project authors. Resolving the issue as we have proposed will eliminate conflicts in the Criminal, Criminal Procedure and Criminal Procedure Codes and ensure the coherence of the codes.

## REFERENCES

1. Saydullaev Sh. Theory of state and law. Textbook. Tashkent: TSU, 2018. 151p.
2. Odilqoriev XT. Theory of state and law. Textbook. Tashkent "Adolat", 2018. pp.267-268.
3. Rousseau JJ. Du contrat social, ou Principes du droit politique, Oeuvres de Jean-Jacques Rousseau. T. 1. Politique. Paris, 1793. p. 235.
4. Kholikulov USh. Improvement of the criminal legislation of the Republic of Uzbekistan in the context of deepening democratic reforms. Dissertation doct. jurid. Sciences: Tashkent, 2018. pp. 17.
5. Tagantsev NS. Russian criminal law: lectures. Part General. 1994;1:15-16.
6. Henrikh NV, Kvashis VE. The concept of criminal law (methodological aspects of the introduction to criminal law). Scientific Bulletin of the Omsk Academy of the Ministry of Internal Affairs of Russia 2016; 2(61).
7. Rustambaev MH. Course of criminal law of the Republic of Uzbekistan. Volume 1. The Doctrine of Crime. Textbook. 2nd edition, supplemented and revised T.: Military-Technical Institute of the National Guard of the Republic of Uzbekistan, 2018. 7 p.

8. Usmonaliev M, Bakunov P. Criminal law. General section. Textbook for universities. Tashkent: "Nasaf" publishing house, 2010. 10p.
9. Zuev SV, Sutyagin KI. Criminal process: textbook. Chelyabinsk: SUSU Publishing Center, 2016. p.11
10. Fletcher J, Naumov AV. Basic concepts of modern criminal law. M.: Jurist, 1998. pp.152-154.
11. Dzhekebaev US. Basic principles of criminal law of the Republic of Kazakhstan (comparative commentary to the book by J. Fletcher and A.V. Naumov "Basic concepts of modern criminal law"). - Almaty: Zheti zhargy, 2001. p.39
12. Mizulina E. Criminal process: the concept of self-restraint of the state. Tartu, 1991. p. 37.
13. Smirnov AV, Kalinovsky KB. Criminal procedure. Short course. 2nd ed. SPb.: Peter, 2009. p. 23.
14. Abdurasulova Q. General Description, Causes and Prevention of Corruption Crimes. ProAcademy. 2018;1(4):5-8.
15. Khudaykulov FK. Extreme cruelty is as the way of committing crime of murder: theoretical-practical problems and their solutions. European Journal of Research. 2019;4(10):8-11.
16. Khudaykulov FK. Force and threat of violence are as the ways of commission of rape. Хукукийтадқиқотларжурнали. Тошкент 2019;85(1):50-54.
17. Khudaykulov FK. Signs Of The Objective Side Of Crime In The Theory Of Criminal Law Belonging To The Romano-Germanic Legal Family: Theoretical And Practical Problems. The American Journal of Political Science Law and Criminology. 2021;3(1):57-62.
18. Feruzbek K. Offence of Infanticide: National and Foreign Experiences. Review of law sciences. 2020;(4).85-89.