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THE COURT'S REFUSAL TO GRANT DEFENCE MOTIONS AS AN INDICATOR OF PROCEDURAL IMBALANCE IN CRIMINAL PROCEEDINGS

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Abstract

The article examines the judicial practice of refusing to grant defence motions as a systemic indicator of procedural imbalance in criminal proceedings. It is argued that formally lawful court decisions, expressed through the refusal to satisfy procedural initiatives of the defence, when persistent and typical in nature, are transformed into a mechanism of institutional restriction of the right to defence and undermine the principles of adversarial proceedings and equality of arms. Based on the criminal procedure legislation and judicial practice of the Republic of Azerbaijan, the study identifies typical grounds for such refusals, analyses their reasoning, and assesses their compliance with international standards of a fair trial. An empirical model of quantitative and qualitative analysis of refusals to grant defence motions is proposed, enabling the identification of structural defects in law enforcement. The frequency, nature, and reasoning of judicial refusals to grant defence motions should be regarded as indicators of procedural imbalance in criminal proceedings, reflecting structural inequality between the parties.

Keywords: *right to defence, defence motions, court refusal, adversarial proceedings, equality of arms, procedural fairness.*

I. Introduction

Modern criminal proceedings are formally based on the principles of adversarial procedure, equality of arms, and the guarantee of the right to defence. These principles are enshrined both in the Constitution and in criminal procedural legislation and are further reinforced by the State's international obligations. However, law enforcement practice demonstrates the existence of a persistent and systemic discrepancy between the normative model and the actual implementation of the procedural guarantees afforded to the defence.

Stephanos Bibas (2006) divides participants in the criminal justice system into insiders—those who run the criminal justice system (judges, police officers, and especially prosecutors) — and outsiders. Insiders possess information, power, and self-interests that greatly influence the processes and outcomes of the criminal justice system. Outsiders—crime victims, bystanders, and most of the general public—find the system frustratingly opaque, insular, and unconcerned with proper retribution. As a result of this gulf, a spiral ensues: insiders twist rules as they see fit; outsiders attempt to constrain them through new rules; and insiders, in turn, find ways to evade or manipulate the new rules [13, p. 911].

One of the clearest, yet at the same time least conceptualised, manifestations of the discrepancy in the actual implementation of the defence's procedural guarantees is the frequent refusal by courts to grant motions submitted by the defence. This includes refusals to grant motions concerning the summoning and examination of defence witnesses, the disclosure or production of evidence, the appointment of expert examinations, the exclusion of evidence as inadmissible, as well as the inclusion of alternative evidence in the case file.

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The issue at stake is not isolated, well-reasoned refusals, but a reproducible pattern of judicial behaviour in which the procedural initiatives of the defence are a priori perceived as secondary, excessive, or aimed at delaying the proceedings. In this context, it is rightly noted in the scholarly literature that *"If courts disregard the parties' arguments concerning the inadmissibility of evidence, or conversely, their efforts to obtain additional evidence, this likewise results in the repeated submission of such motions"* [11, p. 166].

II. Discussion

The procedural nature of defence motions. A motion constitutes one of the procedural forms through which the right to defence is exercised. In criminal proceedings, a motion serves as the procedural expression of a party's initiative aimed at the realization of its rights and lawful interests. For the defence, a motion represents a primary instrument for active participation in the evidentiary process, for compensating for the institutional advantage of the prosecution, and for influencing the course of the judicial examination. "*Be that as it may, the presence of a large number of motions – or their complete absence – does not in itself indicate a violation of the rights and lawful interests of persons involved in criminal proceedings"* [8, p. 71].

In circumstances where the defence is deprived of coercive powers, lacks mechanisms for the compulsory collection of evidence, and remains dependent on judicial discretion, the effectiveness of motions acquires system-forming significance in ensuring that the right to defence attains real and substantive content.

The legislative enshrinement of equality in procedural initiatives, without effective guarantees for their practical implementation, unfortunately sometimes remains merely illusory. Formally, the criminal procedural legislation of the Republic of Azerbaijan does not distinguish between motions filed by the prosecution and those submitted by the defence. However, in practice, the criteria applied by courts in assessing such motions may, in certain instances, differ.

Equality of arms in criminal proceedings cannot be reduced to the mere formal right to file motions. It presupposes a genuine possibility of their being granted where they are aimed at establishing circumstances relevant to the case. Systematic refusals of defence motions transform the adversarial principle into a merely declaratory one.

At times, motions filed by the prosecution are generally perceived as being aimed at the *"establishment of the truth,"* whereas motions submitted by the defence are viewed as obstructing the proceedings or lacking evidentiary value. Procedural imbalance manifests itself not so much in the provisions of the law as in persistent patterns of law-enforcement practice.

The systematic refusal to grant defence motions indicates that the court effectively perceives the prosecution's case as the "baseline" version of events, imposes an excessive burden on the defence to justify its procedural initiatives, and departs from its neutral position as an arbiter. Such a perception embeds an asymmetrical model of judicial discretion, in which the refusal to grant defence motions becomes not the exception but the norm.

Typology of Judicial Refusals to Grant Defence Motions. Based on an analysis of judicial practice, several stable categories of refusals may be identified:

1. Refusals motivated by the *"sufficiency of the prosecution's evidence."* The most widespread formula for refusal is the assertion that the defence motion is *"irrelevant to the case"* due to the existence of sufficient prosecution evidence. Such reasoning is

conceptually flawed, as the assessment of evidentiary sufficiency is possible only after the completion of the judicial examination. By their very nature, defence evidence is not intended to duplicate the prosecution's case, but to challenge and rebut it. By relying on this formula, the court effectively substitutes the proper examination of evidence with a preliminary endorsement of the prosecution's version of events.

2. Refusals under the pretext of *"procedural economy."* Courts frequently dismiss defence motions by invoking the need to comply with reasonable time requirements or to prevent undue delays in the proceedings. However, the principle of procedural economy cannot be used to curtail fundamental rights, including the right to present evidence and to examine defence witnesses. This approach prioritizes the temporal dimension of the proceedings over the substantive requirements of a fair trial and places the effective exercise of the right to defence at risk.

3. Formally reasoned refusals. This category includes refusals containing standardised, formulaic wording without any analysis of the specific circumstances of the case. Such decisions may formally comply with statutory requirements; yet, in substance, they lack verifiable reasoning, thereby precluding effective appellate review. Such practice, while formally justified by references to *"inexpediency,"* the *"sufficiency of the prosecution's evidence,"* or *"procedural economy,"* in reality deprives the defence of genuine mechanisms for influencing the evidentiary process.

In the absence of officially consolidated statistics concerning the granting of parties' motions, it appears methodologically appropriate to conduct the analysis on the basis of representative hypothetical procedural-typological situations that reflect persistent patterns of judicial refusals to grant defence motions, as observed in the decisions of the courts of first instance and appellate courts of the Republic of Azerbaijan. Judicial practice in various jurisdictions, in certain instances, demonstrates the structural persistence of refusals to grant defence motions. This tendency is particularly evident at the stage of deciding on preventive measures, when motions are submitted for the summoning of defence witnesses, as well as in attempts to challenge the admissibility of prosecution evidence.

Refusal to summon and examine defence witnesses. In proceedings before a court of first instance concerning a serious offence against the person, the defence submitted a motion to summon and examine a witness capable of confirming the accused's alibi. The court dismissed the motion, stating that "*the circumstances relied upon by the defence have already been established by the body of evidence examined during the trial*." The procedural problem lies in the fact that the court effectively predetermined the evidentiary value of the witness's testimony prior to hearing it, which contradicts the very logic of judicial examination. Such a refusal indicates that the defence's version of events is not treated as an equal and autonomous narrative within the proceedings and undermines the very essence of the adversarial principle. Indeed, "*the adversarial principle in practice requires … that the parties be afforded the opportunity to file motions for the summoning of witnesses and experts to the court hearing*" [1, p. 113].

Refusal to appoint a forensic examination at the initiative of the defence. In a case concerning an economic offence, the defence filed a motion seeking the appointment of an alternative forensic economic examination due to inconsistencies identified in the expert report submitted by the prosecution. The court dismissed the motion, reasoning that "*the expert report is clear, comprehensive, and raises no doubts.*" The procedural problem lies in the fact that the court substituted a proper examination of the defence's arguments with a subjective assessment of the sufficiency of the prosecution's evidence, thereby preventing the defence from effectively challenging the expert conclusions. Such an approach reinforces the prosecution's advantage in the sphere of expert knowledge and runs counter to the principle of equality of arms.

Refusal to declare evidence inadmissible. In a case concerning the unlawful trafficking of narcotic substances, the defence submitted a motion to declare inadmissible evidence obtained during a personal search conducted in violation of procedural requirements. The court dismissed the motion, stating that *"the violations committed did not affect the objectivity of the evidence."* The procedural problem lies in the fact that the court applied an evaluative criterion of the "materiality of the violation" that is not expressly provided for by law, thereby extending the scope of judicial discretion to the detriment of the defence. This demonstrates that an expansive interpretation of judicial discretion operates to the detriment of the defence and creates risks from the standpoint of safeguarding the right to defence.

Refusals at the stage of deciding on a preventive measure. When determining the preventive measure of detention, the defence submitted motions requesting the production of medical records, the summoning of relatives, and the application of an alternative preventive measure. The court dismissed these motions, limiting its reasoning to references to the *"gravity of the charge"* and the *"risk of absconding."* The procedural problem lies in the fact that such refusals are formulaic in nature, while motions filed by the prosecution are granted without a comparable level of substantiation. This disparity indicates an imbalance in the standards applied in procedural assessment and points to a violation of the principle of equality of arms.

A selective analysis of appellate practice demonstrates that appellate courts, as a rule, reiterate the reasoning of the court of first instance, refrain from conducting an independent assessment of the defence's arguments, and characterize the refusal to grant defence motions as falling within the court's *"permissible discretion."* This approach leads to the institutional entrenchment of procedural asymmetry and significantly diminishes the effectiveness of judicial oversight mechanisms. In certain cases, higher courts further justify their position by relying on the notion that specific errors are harmless and have had little or no impact on the final judicial decision. *"The conventional approach to harmless error review prohibits reversal of a defendant's conviction or sentence, even when the law was violated during proceedings in the lower court, unless the violation influenced the outcome below"* [6, p. 1413].

4. International Standards and the Case-Law of the European Court of Human Rights. In the practice of the *ECtHR*, it has been consistently emphasized that the principle of equality of arms requires that the defence be afforded a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage vis-à-vis the prosecution. The Court has assessed the systematic refusal to grant defence motions—particularly where such refusals lack adequate and individualized reasoning—as a factor capable of undermining the overall fairness of the proceedings, even where each individual decision formally complies with domestic law. In this regard, it is of particular importance that equivalent standards be applied both to the substantiation of defence motions and to the reasoning underlying judicial refusals. In other words, the level of justification required from the defence must be proportionate and equivalent to the level of reasoning provided by the court when dismissing such motions.

In the case of *Bricmont v. Belgium*, the ECHR stated that*: "It is normally for the national courts to decide whether it is necessary or advisable to call a witness. There are exceptional circumstances which could prompt the Court to conclude that the failure to hear a person as a witness was incompatible with Article 6 (art. 6)"* [2, § 89].

In case of Murtuzaliyeva *v. Russia*, the ECHR formulated the *test.* According to this test, *"Where a request for the examination of a witness on behalf of the accused has been made in accordance with domestic law, the Court, having regard to the above considerations, formulates the following three-pronged test: 1. Whether the request to examine a witness was sufficiently reasoned and relevant to the subject matter of the accusation? 2. Whether the domestic courts considered the relevance of that testimony and provided sufficient reasons for their decision not to examine a witness at trial? 3. Whether the domestic courts' decision not to examine a witness undermined the overall fairness of the proceedings?"* [10, § 158]. This judgment of the Grand Chamber clearly delineates the limits of judicial discretion in relation to procedural initiatives taken by the defence and establishes that defence motions must be assessed not merely in a formal manner, but substantively, as an integral requirement of European human rights standards. In its decision of 18 March 2021, the Plenum of the Constitutional Court of the Republic of Azerbaijan stated that: *"The results of the assessment of evidence must be reflected in judicial acts in a detailed and clear manner; the reasons and grounds for the admission or rejection of evidence, as well as for the granting or dismissal of motions submitted, must be indicated, and the conclusion reached must be sufficiently reasoned"* [5].

Refusal of procedural initiatives of the defence is permissible only where there exist objective and verifiable reasons that do not place the defence at a substantially disadvantageous position. The Court effectively recognizes that the structural restriction of the defence's procedural initiative undermines the overall fairness of the proceedings, even where the decisions in question are formally lawful.

The principle of equality requires that the defence be afforded a genuine opportunity to present evidence and arguments and cannot be reduced to the mere formal right to file motions. At the same time, if a party has not submitted any motions at all, this circumstance in itself cannot be regarded as a violation of the principle of equality of arms.

In the case of *Vidal v. Belgium*, the ECHR stated that, as a general rule, it is for the national courts to assess the evidence before them, as well as the relevance of the evidence which defendants seek to adduce. More specifically, Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the *"autonomous"* sense given to that word in the Convention system. Within the Convention system, the *"autonomous*" meaning of this provision implies that it *"does not require the attendance and examination of every witness on the accused's behalf: its essential aim, as is indicated by the words 'under the same conditions', is a full 'equality of arms' in the matter"* [14, § 33].

The ECHR has emphasised that it is not its task to express an opinion on the relevance of evidence that has been admitted or rejected in this manner, nor, more generally, to take a position on the guilt or innocence of the accused. A national court is not entitled to assess in advance the probative value of the testimony of defence witnesses before examining them. Refusal to hear a witness on the assumption that his or her testimony would allegedly be "irrelevant" disrupts the balance between the parties. In this context, the Court stated that: *"When the appellate judges substituted a conviction, they had no fresh evidence; apart from the oral statements of the two defendants (at Liège) or the sole remaining defendant (at Brussels), they based their decision entirely on the documents in the case-*

file. Moreover, the Brussels Court of Appeal gave no reasons for its rejection, which was merely implicit, of the submissions requesting it to call …as witnesses." [14, § 34]. This approach directly contradicts the widespread practice of refusing to summon defence witnesses on the pretext of the "sufficiency of the prosecution's evidence" and leads to a violation of the adversarial principle and the requirements of equality of arms.

In case of Mirilashvili *v. Russia*, the ECHR stated that: *"In sum, in order to determine whether there has been a breach of Article 6 §§ 1 and 3, the Court may have to examine separately each limb of the applicant's complaint and then make an overall assessment"* [9, § 166]. According to this approach, repeated refusals to grant defence motions must be assessed cumulatively, even if each individual decision may appear permissible when taken in isolation. It is precisely the cumulative effect of procedural restrictions that may give rise to a violation of Article 6 of the Convention. The principal doctrinal value of this judgment lies in the Court's emphasis not on isolated procedural rulings, but on the application of a systemic and overall assessment. In other words, the fairness of judicial proceedings must be evaluated not on the basis of individual episodes, but with regard to the overall dynamics and impact of the process as a whole.

The approach of the legislation of various states and of the ECHR toward the principle of immediacy in the examination of evidence is essentially of the same nature. Statements based on "hearsay" are not regarded as inadmissible per se; however, preference is given to direct evidence. In case of *Murtazaliyeva v. Russia*, the Grand Chamber of the ECHR stated that: "*Article 6 §§ 1 and 3 (d) of the Convention contain a prohibition on the use of hearsay evidence against a defendant in criminal proceedings, but exclusion of the use of hearsay evidence is also justified when that evidence may be considered to assist the defence. In other words, Article 6 §§ 1 and 3 (d) not only enshrine the defendant's right to confront prosecution witnesses and question defence witnesses, but guarantees the principle of immediacy, which requires that the trial court be able to observe the witnesses' demeanors and thus form its own impression of their reliability"* [10, § 25]. In this context, the Court has formulated seven guiding principles. According to Guideline 1, the principle of immediacy requires that testimonial evidence be produced in proceedings before the competent trial court; therefore, all viable measures, and if necessary, coercive measures, should be taken to bring absent witnesses to the trial hearing.

Guideline 2 provides that the test for assessing any request for the attendance or cross-examination of witnesses—which is identical for the defence and the prosecution—relies on the individual witness's prima facie relevance to the outcome of the trial and to the position of the requesting party. This is an exclusively *ex ante* test. Hence, in assessing any request for the attendance or cross-examination of witnesses, the trial court is not permitted to anticipate the result of the examination of the evidence—except in favor of the defence.

The third and fourth guidelines articulate a structured and restrictive approach to the admission of pre-trial testimonial evidence in criminal proceedings, firmly rooted in the principle of immediacy and the overarching requirement of procedural fairness under Article 6 of the Convention. With regard to Guideline 3, the Court underscores that the reading out of pre-trial statements at trial must remain an exceptional measure. This reflects a normative hierarchy in evidentiary evaluation: oral testimony delivered in open court, subject to adversarial examination, constitutes the primary and preferred form of evidence. The principle of legality in criminal procedure demands not merely flexibility, but precision and foreseeability. Accordingly, the Court requires an exhaustive statutory catalogue of *"good reasons"* capable of justifying the non-attendance or non-examination of a witness at trial.

The Court systematizes these reasons into two principal categories: (1) unavailable witnesses and (2) witnesses in need of protection. The first category is narrowly defined and includes objective impediments such as death, serious illness or incapacity, disappearance, residence abroad, as well as legally recognized privileges (the right to silence as a co-accused, the privilege against self-incrimination, and family-related exemptions). The second category concerns protective considerations, namely risks to the life or physical integrity of the witness or the safeguarding of particularly vulnerable individuals.

Unavailable witnesses include deceased witnesses, those suffering from physical or mental incapacity, those who have disappeared or reside abroad, as well as situations involving a co-accused's right to silence, the privilege against self-incrimination, and family-related exemptions. Witnesses in need of protection include cases involving the protection of life or physical integrity and the protection of a vulnerable witness's health.

Importantly, the Court introduces a qualitative distinction based on the authority before whom the evidence was originally produced. Testimony taken before a judge at the pre-trial stage is not equivalent, in terms of procedural guarantees, to statements obtained by the police or a public prosecutor. Judicial involvement typically ensures greater procedural safeguards, neutrality, and reliability. Consequently, the scope of acceptable justifications for reading out absent-witness testimony must vary accordingly: it may be broader where the statement was taken by a judge under stronger guarantees and narrower where it was obtained by investigative authorities lacking the same level of structural impartiality. This differentiation strengthens both the principle of immediacy and the principle of equality of arms by preventing the routine substitution of live testimony with investigative statements.

It must be clearly distinguished by whom the statements were taken (a judge, a prosecutor, or the police), since evidence collected at the pre-trial stage by the police or the prosecutor cannot be equated, in terms of reliability and accuracy, with evidence obtained at the same stage by a judge. Accordingly, the range of legitimate reasons capable of justifying the reading out at trial of statements made by an absent witness should be broader where the evidence was taken by a judge—having regard to "the content … and the context in which he made them" [12, § 38(iii)]—and narrower where it was obtained by a prosecutor or the police. Such an approach is necessary to ensure the effective protection of the principle of immediacy and equality of arms.

Guideline 4 complements this restrictive framework by introducing the requirement of adequate counterbalancing safeguards. Even where a legitimate reason for non-attendance exists, the admissibility of pre-trial testimony does not automatically follow. The trial court bears a positive obligation to verify that measures capable of mitigating the disadvantage to the defence have been implemented. A paradigmatic example is a pre-trial hearing conducted under adversarial conditions, allowing the defence to question the witness at an earlier stage.

Crucially, the Court rejects purely formal or symbolic safeguards. A judicial instruction advising the fact-finder to treat untested testimony with caution is insufficient. Likewise, the mere theoretical opportunity for the accused to challenge the absent witness indirectly—whether by testifying personally or by calling alternative witnesses—does not adequately compensate for the lost opportunity for direct cross-examination? The Court thus moves beyond formal equality and insists on substantive procedural balance.

Taken together, Guidelines 3 and 4 reinforce a strict evidentiary discipline: exceptional admissibility, narrowly defined justifications, institutional differentiation based on the source of evidence, and a robust requirement of compensatory safeguards. Their combined effect is to preserve the structural integrity of the adversarial process and to ensure that the principle of immediacy remains a living and operative guarantee rather than a merely declaratory norm.

Guideline 5 holds that even where adequate counterbalancing safeguards have been secured to offset the disadvantages experienced by the defence, the trial court must refrain from founding a conviction solely, or to a decisive degree, on the pre-trial statement of a witness who did not appear at trial. To do otherwise would undermine the very substance of the principle of immediacy.

According to Guideline 6, in situations where inconsistencies arise between a witness's pre-trial account and his or her testimony delivered before the trial court, the principle of immediacy dictates that greater evidentiary weight should be attached to the statement given in open court.

Guideline 7 establishes that these constitute strict and non-derogable limits for the trial court. Any departure from them risks infringing the principle of immediacy and, as a consequence, compromising the overall fairness of the proceedings. Evidence obtained or relied upon in contravention of these guidelines cannot be considered by the trial court unless domestic legislation expressly permits the reading out of pre-trial testimonial statements on the basis of an agreement between the prosecution and the defence.

In case of Ibrahim and Others v. the United Kingdom *"As the Court has explained on numerous occasions, it is not the role of the Court to determine, as a matter of principle, whether particular types of evidence, including evidence obtained unlawfully in terms of domestic law, may be admissible… the Court has explained that the admission of such statements as evidence to establish the relevant facts in criminal proceedings renders the proceedings as a whole unfair, irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant's conviction"* [7, § 254].

With regard to evidence obtained in breach of domestic law, the Court has also identified an important exception. Where confessional statements are obtained in violation of Article 3 of the Convention—that is, as a result of torture or other inhuman or degrading treatment—their admission as evidence renders the criminal proceedings as a whole unfair, irrespective of their probative value or of whether they played a decisive role in securing the conviction.

This approach is grounded in the fundamental consideration that the use of statements extracted through torture inherently and irreparably undermines the fairness of the trial. Evidence obtained by such means cannot, under any circumstances, serve as a basis for establishing the facts in criminal proceedings.

In the case of *Ibrahim and Others v. the United Kingdom*, the ECHR held that, when assessing the impact of procedural violations occurring at the pre-trial stage on the overall fairness of criminal proceedings, the proceedings must be examined as a whole and, where appropriate, regard must be had to a non-exhaustive list of factors derived from the Court's case-law: (a) whether the applicant was particularly vulnerable, for example, by reason of his age or mental capacity; (b) the legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with; where an exclusionary rule applied, it is particularly unlikely that the proceedings as a whole would be considered unfair; (c) whether the applicant had the opportunity to challenge the authenticity of the evidence and to oppose its use; (d) the quality of the evidence and whether the circumstances in which it was obtained cast doubt on its reliability or accuracy, taking into account the degree and nature of any compulsion; (e) where evidence was obtained unlawfully, the nature of the unlawfulness in question and, where it stemmed from a violation of another Convention Article, the nature of the violation found; (f) in the case of a statement, the nature of the statement and whether it was promptly retracted or modified; (g) the use to which the evidence was put, and in particular whether it formed an integral or significant part of the probative evidence upon which the conviction was based, and the strength of the other evidence in the case; (h) whether the assessment of guilt was performed by professional judges or lay jurors and, in the case of the latter, the content of any jury directions; (i) the weight of the public interest in the investigation and punishment of the particular offence in issue; (j) other relevant procedural safeguards afforded by domestic law and practice [7, § 274].

In the ECHR's case-law, a consistent position has been maintained to the effect that every motion submitted by the defence must be examined in an individualized and substantive manner. Such an assessment must include an analysis of the potential role of the motion in the establishment of the facts of the case.

In the practice of certain domestic courts, a formalistic approach tends to prevail. Within this framework, defence motions are dismissed through the use of standardized (formulaic) wording such as *"irrelevant to the case"*, *"the circumstances have already been established"* or *"sufficient evidence has been obtained"* without any meaningful examination of how the requested procedural measure might affect the defence's position. As a result, judicial discretion loses its individualized character and risks being transformed into a mechanism for the mere reproduction of the prosecution's narrative, which is incompatible with the adversarial principle and the requirement of equality of arms.

The ECHR adopts a principled position to the effect that a domestic court is not entitled to predetermine the probative value of evidence submitted by the defence. The ECHR has expressly stated that refusing to hear a defence witness on the basis of assumptions that his or her testimony would be irrelevant is incompatible with the requirements of a fair trial [14, § 33]. This approach confirms that the evidentiary value of defence evidence can be assessed only after it has been examined in adversarial proceedings and with due respect for the principle of equality of arms. Otherwise, the court risks losing its role as a neutral arbiter.

At the same time, in the judicial practice of certain domestic courts, refusals to grant defence motions are frequently justified by a prior assessment of evidence that has not yet been examined. The court effectively proceeds on a presumption of the sufficiency of the prosecution's evidence and treats the defence's procedural initiatives as secondary or redundant. Such an approach is not only incompatible with the standards developed in the Court's case-law, but also distorts the very logic of judicial fact-finding: the proper examination of evidence is replaced by its preliminary "filtering". This practice runs counter to the adversarial principle, the requirement of equality of arms, and the very essence of a fair trial. In the ECHR's case-law, it has been consistently emphasized that considerations of procedural economy and reasonable time cannot serve as independent grounds for restricting the rights of the defence. The Court has stated that the need to expedite proceedings cannot justify refusing procedural measures that are relevant and important for the defence [7, § 29–30].

Nevertheless, in domestic judicial practice, even where defence motions are aimed at verifying decisive factual circumstances of the case, references to the "prolongation of the proceedings" or to the alleged "lack of necessity" are frequently invoked as universal grounds for refusal. As a result, the principle of reasonable time is effectively set in opposition to the rights of the defence, whereas, under the ECHR's standards, these principles are not mutually exclusive but must be maintained in a state of balance.

One of the principal discrepancies between the ECHR's standards and certain domestic judicial practices concerns the approach to assessing the cumulative effect of procedural restrictions. In the case of *Mirilashvili v. Russia*, the Court emphasized that the fairness of the proceedings must be evaluated as a whole and that, in this context, the cumulative impact of refusals to grant defence motions must be taken into account.

By contrast, in certain domestic courts, each refusal is at times assessed in isolation, without taking into account their repetition or similar nature, which may cumulatively create a persistent imbalance in the procedural position of the parties. Such a fragmented approach prevents the identification of structural deficiencies in the conduct of the proceedings and, in effect, legitimizes the systematic restriction of the defence's procedural activity.

According to the ECHR's standards, appellate courts are required to conduct an effective review of the reasoning underlying refusals to grant defence motions and must not confine themselves to a merely formal endorsement of the first-instance court's discretion. Effective judicial scrutiny necessitates an examination of whether such refusals have affected the overall fairness of the proceedings.

However, in appellate practice, another approach is frequently encountered. Arguments concerning the unjustified dismissal of defence motions are often rejected by reference to the *"court's discretionary power"*. This creates an institutional effect: procedural asymmetry is not remedied but rather reinforced at the higher judicial level. As a consequence, the mechanism of effective oversight over first-instance discretion is weakened, and the systematic limitation of the defence's procedural initiatives becomes legally entrenched.

A comparative analysis of the ECHR's standards and domestic judicial practice demonstrates that the core problem lies not in the formal absence of procedural rights of the defence, but in their practical neutralization through a consistent pattern of refusals to grant defence motions. Unlike the Court's approach, which focuses on assessing the overall fairness of the proceedings and the substantive effectiveness of procedural safeguards, domestic practice at times tends toward a formalistic and legalistic analysis. Such an approach fails to detect the cumulative procedural harm inflicted upon the defence and, as a consequence, allows structural imbalance within the proceedings to remain concealed.

III. Conclusion

For the purpose of identifying procedural imbalance, an empirical analytical model may be proposed, based on a quantitative and qualitative assessment of judicial refusals to grant defence motions. The purpose of the proposed model is to detect procedural imbalance through such quantitative and qualitative analysis. Within the framework of the model, both quantitative and qualitative indicators may be distinguished.

Quantitative indicators include the total number of defence motions submitted, the percentage of defence motions granted, the percentage of refusals, and the ratio between motions granted to the prosecution and those granted to the defence. Qualitative indicators include the type of motion (expert examination, witness examination, admission of evidence, challenge/recusal, etc.); the procedural stage at which the motion was submitted; the nature of the reasoning provided for refusal (formulaic/standardized versus individualized and substantive); and the availability and effectiveness of appellate review. It is proposed to calculate a conditional Index of Procedural Disbalance (IPD) according to the following formula:

IPD=(Rd/Hd)−(Rp/Hp)IPD = (R_d / H_d) - (R_p / H_p)IPD=(Rd/Hd)−(Rp/Hp)

where:

R_d — number of refusals in respect of defence motions;

H_d — total number of defence motions;

R_p — number of refusals in respect of prosecution motions;

H_p — total number of prosecution motions.

A positive value of the index indicates asymmetry to the detriment of the defence. When *IPD > 0*, this indicates procedural asymmetry to the detriment of the defence, *IPD = 0*, a formal balance exists in the treatment of motions submitted by both parties**,** *IPD < 0*, this suggests—albeit in comparatively rare instances—the possibility of asymmetry operating to the detriment of the prosecution. This index enables a comparative measurement of the relative intensity of judicial refusals within court practice. When quantitative indicators are applied in conjunction with qualitative analysis, the IPD may function as an objective indicator of procedural imbalance.

In the context of problems related to the granting of defence motions, the concept of *"cumulative procedural harm to the right of defence"* refers to the overall negative effect produced by a series of formally lawful, yet repetitive and systematically recurring refusals to grant defence motions of a similar type. This effect is not detectable through the isolated analysis of individual procedural decisions; rather, it becomes apparent only through a systemic and dynamic assessment of the proceedings as a whole, ultimately leading to the deformation of the adversarial principle and the equality of arms.

The proposed doctrine departs from the traditional approach. Under the conventional method of analysis, each refusal is examined separately, primarily through the lens of legality and the absence of a formal violation. By contrast, the suggested approach posits that the chain-like and systematic repetition of refusals may alter the procedural architecture itself and erode the substantive content of the right of defence.

The doctrine of cumulative procedural harm is directly linked to the approach articulated by the Court in case of Mirilashvili v. Russia and Murtazaliyeva v. Russia. In those cases, the Court focused not on the formal correctness of individual procedural acts, but on the assessment of the overall fairness of the proceedings.

The scientific novelty of the research lies in the substantiation of the concept of *"cumulative procedural harm"*, which makes it possible to identify latent forms of procedural imbalance in criminal proceedings that remain undetected within the framework of traditional normative analysis, but become visible through a systematic assessment of judicial practice in refusing defence motions.

Judicial refusals to grant defence motions cannot be regarded as neutral procedural decisions. When such refusals assume a systematic character, they become indicative of a disruption of procedural equilibrium, undermining the adversarial principle, the equality of arms, and the overall fairness of criminal proceedings. The analysis of such practices enables the identification of hidden deficiencies in the application of law and provides a basis for formulating well-founded proposals aimed at improving judicial practice and reforming procedural mechanisms.

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