Title: The procedural principles in criminal proceedings in the Kingdom of Saudi Arabia and the Arab Republic of Egypt

Author: Malwina Waksmańska

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1. The procedural principles

Long convinced that law is simply a set of rules, people frequently forget about the importance of principles of law. Safferling (2012: 378) indicates that law of criminal procedure is dominated by principles more than any other field of law.

This paper is intended to shed some more light on the issue of principles of law in the criminal procedure in the Kingdom of Saudi Arabia and the Arab Republic of Egypt.

The means of presenting this subject will be an analysis of legal principles in criminal procedure in Polish legal doctrine and then, an attempt to present particular legal institutions and legal provisions featured in specific legal acts that fulfil those principles in Saudi Arabia and Egypt. What is more, this matter cannot be discussed without introducing the background, namely legal systems that are currently in force in those two Middle Eastern countries.

The present study aims at displaying the problems connected with rendering the idea and importance of procedural principles in criminal proceedings, some level of paucity of coverage of this matter in Saudi Arabian and Egyptian legal doctrine and implementation of the procedural principles in the given countries in the context of coexistence of
distinct legal systems and differences occurring in those systems between Middle Eastern and Muslim countries, and Poland. Unfortunately, due to the limited space and time available for carrying out this study, only some of the procedural principles will be presented in a more detailed way.

The purpose of this study is not to comprehensively present each and every legal principle, since, taking into account the depth of this issue, this would be an impossible task, but to point out some similarities and differences that prevail in various legal systems in the contexts of legal principles.

This paper, albeit only preliminary, considers the problems of principles of law, especially the procedural principles in criminal proceedings. Such investigations have been already carried out; however, previous research in this field did not focus on procedural principles that may occur in the countries in the Middle East. Thus in order to discuss this issue I have chosen two contrasting Middle Eastern countries: the Kingdom of Saudi Arabia and the Arab Republic of Egypt.

1.1. The characteristics of procedural principles in criminal proceedings

First of all, the term procedural principles (also, procedural rules) in Polish legal doctrine is not understood unequivocally (Marszał & Zagrodnik 2017: 79).

From one point of view they are considered as directives. It means that they indicate a specific formula which should be a basis for the specified trial system—something that may be called a postulated formula. Those postulates which are addressed to legislator can be regarded as principles-ideas or postulates-formulas. They do not provide for any exceptions since they establish a group of ideal formulas that determine a general direction of particular solutions for the model (formula) of criminal procedure. In this sense, procedural principles may be designated by the name of principles in the abstract sense. It is important to say that those principles are not regarded as effective legal norms (Marszał & Zagrodnik 2017: 79–80).

On the other hand, a principle that may be binding, unlike the postulate, must be connected with a specific system of procedural criminal
law in a given country. Considered in this respect, it becomes an effective legal norm in this particular system of procedural criminal law. Therefore, it is a directive but arising from this indicated system. This kind of principles may be called procedural principles in a concrete sense (Marszał & Zagrodnik 2017: 80).

The abovementioned distinction shows that one simple definition of procedural principles or even principles of law does not exist. What is more, it is an arduous task to determine clear criteria which may form the basis for distinguishing procedural principles. Nevertheless, the system of principles of criminal procedure exists since those principles form the model of proceedings and they remain interdependent. But because there are many criteria of distinguishing those principles, the scholars are not unanimous in defining the system of principles (Marszał & Zagrodnik 2017: 82).

In literature there is lack of consensus of opinions among scholars in regard to the defining criterion that would be suitable for distinguishing legal norms which would constitute principles at the same time. Notwithstanding the above, we should bear in mind that it is crucial to create one system of principles characterizing the criminal procedure that would be organized and internally consistent (Cieślak 2011: 165).

Many scholars present various types of divisions and classifications. Some of them use the term general principles of criminal procedure. Dudka (2015: 130) enumerated the general principles of criminal procedure, but she explained that they have to comply with the specific conditions, namely they shall apply only to criminal proceedings, they shall settle matters of great importance for the procedural criminal law and they shall be applied to any typical situation in a typical criminal trial. On the other hand, Grajewski (2007: 59–139) enlisted the general principles based on the criterion of functionality. In contradistinction, basing on the criterion of generality, Cieślak (2011: 165–166) introduced the division into the general principles of the first and second degree. The group of first degree principles contains traditional principles such as constitutional-organizing and functional ones, while the second group includes the general principles which did not acquire corresponding antitheses and may be applied in other areas of law. Those include,
for instance, the principle of humanism, the principle of fairness, or the principle of accurate criminal reaction (Cieślak 2011: 165–166).

1.2. Procedural principles in Polish doctrine
Following the information presented above in the previous subsection, we may observe the difficulties in defining the procedural principles. However, for the purpose of this paper, amidst all the various classifications and categories distinguished that employ different criteria, one division will be presented in more detailed way, namely the division given by Zgryzek (2017: 83), who adopted two groups of principles—of first and second degree. Here, we will focus on functional principles. In this group, Zgryzek (2017: 79–141) differentiated the so-called strictly procedural principles. The principles were distinguished as follows:

- The principle of legalism;
- The principle of officiality;
- The principle of complaint;
- The principle of truth;
- The principle of concentration of evidence;
- The principle of the free assessment of evidence;
- The principle of direct examination of evidence by the judge;
- The principle of the presumption of innocence of the accused;
- The principle of the right of defence;
- The adversarial principle or the principle of audi alteram partem;
- The principle of a fair trial;
- The principle of openness;
- The principle of orality;
- The principle of speed of criminal proceedings.

According to the criterion of functionality, the aforementioned principles can be classified into four groups. The first one is connected with the initiation of legal proceedings, while the second group is related to hearing of evidence. The third one refers to the legal situation of an accused person during a criminal trial. Finally, the fourth group pertains to the form and the manner of conducting the proceedings (Zgryzek 2017: 83).
2. Sources of law

For better understanding of the problem discussed in this paper it is necessary to present the sources of law which prevail in specific countries. The legal systems prevailing in Saudi Arabia and Egypt differ significantly, which is crucial for the forming of criminal proceedings in those countries as well as applying procedural principles.

2.1. Sources of law in the Kingdom of Saudi Arabia

The main source of criminal procedural law in Saudi Arabia is the Law of Criminal Procedure—Royal Decree No. (M/2) introduced on 22 Muharram 1435 AH (26 November 2013). This legal act replaced the Royal Decree from 2001, which was the first statutory law regulating the criminal procedure in Saudi Arabia. Most of the provisions contained in this legal act do not regulate particular legal issues or the functioning of legal institutions of criminal procedural law in a specified and clarified manner. Needless to say, this creates the possibility of a broad interpretation of legal rules by the procedural authorities.

Saudi Arabia has other specific sources of law beside a few statutory acts, since the supreme law in force is Sharia law, which is a classical Islamic law. There are two main sources of Sharia, namely the Quran and the Sunnah. The Quran consists of 6342 verses, while only 225 verses refer to legal issues of which criminal law issues are presented in thirty verses. The jurisdiction and procedure itself are contained in thirteen verses only (Lippman 1989: 29–62). The content of the Quran is completed by the Sunnah, which is a collection of stories about Muhammad’s life and his statements that were transmitted orally after his death (Czajkowska & Diawol-Sitko 2012: 246). It is composed, among others, of hadiths in which the interoperation of the Quran was made (Danecki 2011: 85–97).

2.2. Sources of law in the Arab Republic of Egypt

The Egyptian legal system is considered to be a civil law system. In other words, it is based on codified laws. The main source of criminal procedural law is the Code of Criminal Procedure enacted in 1950 (Qanun al-Ijra’at al-Jina’iyyah). It was based on the French model. As
noted by Reza (2007: 108), it was frequently amended and interpreted by various courts, especially the Court of Cassation (*mahkamah al-naqd*).

The Code does not contain any provisions which would clearly indicate that specific procedural principles should apply in Egyptian criminal proceedings. However, the legal provisions featured in the Code regulate in detail the course of criminal proceedings. In spite of the fact that the principles are not explicitly expressed in legal provisions, it does not mean that they cannot be derived from existing regulations.

3. The principle of a fair trial

The principle of a fair trial is a compelling example to discuss, because this principle is not only featured in various national legal acts, but, most importantly, it has been regulated by international legislation.

The fairness of procedure refers to the manner in which the statutory model of the criminal trial has been formed. There are particular ideas and values according to which criminal proceedings should be held. Collaterally, it should also be held in accordance with strictly procedural principles that shall be implemented throughout the criminal trial. The values adopted in a given procedure can be referred to as the rules of a fair trial and they establish standards for a fair proceeding (Skorupka 2017: 219).

3.1. The principle of a fair trial in the Republic of Poland

The discussed principle is featured in Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which was adopted by the General Assembly of the United Nations on 19 December 1966. Poland ratified the Covenant in 1977. According to this article in the determination of any criminal charge against any person or of this person’s rights and obligations in a suit at law, every person shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. It was also indicated that all persons are equal before the courts and tribunals. Moreover, the relevant principle is regulated by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on
Human Rights (ECHR), which was adopted on 4 November 1950. The adoption of the ECHR was a milestone for European countries, since in this legal act the European Court of Human Rights was established. In 1992 Poland became a party to the Convention (Garlicki 2014: 88–89). Article 6 of the ECHR states as follows:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
   1. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
   2. to have adequate time and facilities for the preparation of his defence;
   3. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
   4. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   5. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The content of the provision of Article 6 (1) ECHR is similar to the provision contained in Article 45 (1) of the Constitution of the Republic of Poland according to which everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.
As far as the principle of a fair trial is concerned, it undoubtedly incorporates several directives. First of all, there is a directive according to which the authorities conducting the proceedings should treat participants faithfully. Secondly, the authorities at any time are obliged to respect the dignity of the parties to the proceedings. Thirdly, procedural authorities must inform participants of their respective rights and obligations. Lastly, the proceedings should be conducted quickly by the authorities so that the matter can be settled within a reasonable time limit (Waltoś & Hofmański 2016: 336–337).

The enumeration of the aforementioned directives is important since they are reflected in many provisions of criminal procedural law. In other words, it means that they are featured in many legal acts. This is essential for understanding the importance of procedural principles and principles of law in general.

For instance, the manifestation of the principle of a fair trial can be found in Article 16 § 2 of the Code of Criminal Procedure according to which the authority (organ) conducting the proceedings is obligated, where appropriate, to advise the parties to the proceedings of their rights and obligations, also in situations when the legal statute does not stipulate this kind of duty appertaining to the authorities.

3.2. The principle of a fair trial in the Kingdom of Saudi Arabia

Saudi government made declaration that Saudi Arabia will rapidly become a party to the ICCPR; however, it is one of a few countries that has never signed nor ratified the Convention. Although the ECHR does not prevail in Saudi Arabia, the country has been a party to the Arab Charter on Human Rights (ACHR) since 2008. The ACHR was enacted in 2004 by the Council of the League of Arab States (Rishmawi 2009). The content of the Arab Human Rights Charter corresponds to the provisions on conducting a fair trial contained in the ICCPR (Human Rights Watch 2008).

According to Article 13 (1) of the ACHR every person has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him/her or to decide on his/her rights or his/her obligations.
An example of implementation of the discussed principle may be Article 71 of the Law of Criminal Procedures—Royal Decree No. (M/2). The regulation included in this provision refers to the parties to the proceedings who should be notified of the date, time and place of the investigation proceedings.

To a certain degree it may prove that Saudi Arabia is not deprived of laws that protect conducting a fair trial. Regardless of the fact that some provision featured in the Law of Criminal Procedures may give the impression that such protection is appropriate and sufficient, Human Rights Watch (2008: 76–78) observed in its reports that the principle of a fair trial in criminal proceedings is not respected. The parties to the proceedings are not granted the same rights. To put it another way, there is a lack of equality between the parties. The non-profit organisation documented also the validation of binding legal provision—in most cases the accused are not informed about the charges or about their right of defence.

3.3. The principle of a fair trial in the Arab Republic of Egypt

The Arab Charter on Human Rights was supposed to guarantee the realization of specific principles; however, Egypt is not a party to the ACHR. Moreover, this country did not ratify this act. Consequently, referring to Article 13 of the ACHR is not possible in Egypt. Nevertheless, it does not signify that Egyptian legal system is completely devoid of any indications of the principles of a fair trial. In accordance with Article 96 of the Egyptian Constitution from 2014, the State should provide protection to victims, witnesses, accused and informants as necessary and pursuant to law.

In the case of compulsory measures such as apprehension, Article 36 of the Egyptian Code of Criminal Procedure may be an example of the implementation of the examined principle. In compliance with this article, the judicial officer should listen to the statement of an apprehended person immediately. If the apprehended person fails to present statement exonerating himself/herself, the judicial officer should report this to the competent Public Prosecution within 24 hours. Next, the Public Prosecution has 24 hours to question the apprehended person, then they have to order the arrest or release thereof. Also, according to Article 131
the investigating magistrate is obliged to interrogate the accused immediately. This provision imposes certain time limits on the authorities involved in this stage of the proceeding.

Another evidence of the principle of a fair trial may be found in the regulation contained in Article 40 according to which nobody can be arrested or incarcerated unless by virtue of a warrant. Of course, this kind of warrant must be issued by the competent authorities. In other words, Egyptian law bans false arrest.

4. The adversarial principle

Beside the fair trial, one of the principles regarding the manner in which the proceedings are conducted is the adversarial principle (principle of *audi alteram partem*). According to Zgryzek (2017: 117) it is one of the most important principles determining the structure of criminal process model. This principle prevails mostly in judicial proceedings.

The adversarial principle constitutes the directive of conducting the criminal proceedings in the form of a dispute between equal parties before an impartial court. The basis for the implementation of this principle is the inception (during the trial) of the procedural relation between at least three parties, which are a competent authority, a prosecutor (passive party) and a party accused (active party) (Waltoś & Hofmański 2016: 284; Zgryzek 2017: 118).

The manifestation of the adversarial principle is the existence of impartial and independent procedural authority before which a dispute is conducted and to which judicial settlement belongs (Murzynowski 1994: 171–173). A possible inequality between the parties should be moderated by the legislators by introducing various legal institutions, such as, for instance, presumption of innocence (Murzynowski 1994: 171–172).

4.1. The adversarial principle in the Republic of Poland

In the Polish criminal proceedings the adversarial principle does not occur in its complete scope. It results from the fact that the role of public plaintiff is taken by an authority of the state, which is a prosecutor who
has at her/his disposal administrative base and who can cooperate with the police. In this case the actual situation of the accused, even if someone has a defense attorney, is less advantageous than the prosecutor’s situation (Zgryzek 2017: 117–118).

Murzynowski (1994: 182–183) argued that due to the adversariality it is possible to conduct a trial in a situation where each of the parties presents its arguments and suggestions as well as tries to influence the court. On the other hand, the court is aware that it functions in this particular situation and should weigh arguments of both parties before the settlement.

For instance, the adversarial principle was incorporated in Article 315 of the Code of Criminal Procedure. According to that provision, the parties can file a motion for conducting the action.

The principle opposite to the adversarial one is the inquisition principle. Just as the adversarial principle, it is not legally defined. This principle is derived from the analysis of legal provisions regulating the whole course of criminal trial, especially hearing of evidence (Skorupka 2017: 170). The inquisitorial character of proceedings is based on the assumption that all trial functions, prosecution, defense and settlement of a dispute belong to a judge, while the parties have actually no rights, and the accused is not even subject to proceedings and is not able to exercise her/his right to defense (Dudka & Paluszkiewicz 2015: 155).

4.2. The adversarial principle in the Kingdom of Saudi Arabia

Litigation is possible solely in a situation when the parties are equal and that equality, indeed, is an element of adversariality (Zgryzek 2017: 117). The analysis of the Saudi Arabian Law of Criminal Procedure raises some doubts whether the parties to proceedings actually have the same rights. The accused seems to be in a worse position compared to the public prosecutor (especially in contradistinction to Polish criminal proceedings). Furthermore, as has already been mentioned in the previous section, the adversarial principle relies on trilateral trial in which each of the subjects has its own specific functions. Disturbance of any of those functions results in a criminal trial that is not adversarial (Zgryzek 2017: 118). It can therefore be concluded that, although in the Law of Criminal Procedure some examples of adversariality manifesta-
tion can be found, this principle is not fully implemented, while the trial itself has an inquisitorial character.

The manifestation of the adversarial principle in the preparatory proceedings is Article 99 of the Saudi Arabian Law of Criminal Procedure. According to that provision, witnesses are examined separately but they can also be examined in the presence of the parties. During the examination, the parties can remark it as well as can appeal to an investigating officer to ask a witness questions in relation to the relevant issues of the case. The officer may refuse to ask an irrelevant or suggestive question.

In compliance with Article 73, during the investigation, the parties may file an application to an investigating officer; however, the officer has to issue a decision with ground for it. According to Article 74 if the decision was not issued in the presence of the concerned parties, it is an officer’s duty to notify the parties about the decision within three days from the date of its issuance. It should be noted that the legislator omits some matters connected with this legal institution. It has not been indicated whether this kind of application is an evidence motion or other type of motion, such as motion for conducting the action. Furthermore, in the provisions it has not been stated whether the officer’s decision is subject to complaint (and the parties have the right to file a complaint) or it is final. Nevertheless, the whole Saudi Arabian Law of Criminal Procedure seems to be rather vague, but this kind of inaccuracy should not happen during the proceedings and should not leave the parties feeling uncertain on the question of their rights.

Additionally, the law regulating criminal proceedings in Saudi Arabia enables a wide group of authorities to take procedural measures within the scope of investigation, which in general may influence the adversarial principle.

4.3. The adversarial principle in the Arab Republic of Egypt

In the case of the Egyptian Code of Criminal Procedure, the adversarial principle has been implemented in some legal provisions. During preparatory proceedings, the parties have the right to access documentation regarding the proceedings (Article 77 of the Egyptian Code of Criminal Procedure). While in the judicial proceedings, the manifestation of the adversarial principle can be a regulation featured in Article 271. Hearing
in the court starts from calling the parties to proceedings and witnesses. The accused is asked to give her/his name, surname, occupation, place of residence and date of birth. Next, the accused is charged on indictment or writ of summons. The prosecutor and the civil rights plaintiff then file their motions. After that, the accused is asked to enter a plea. If the accused is pleading guilty, the court may allow for that statement and deliver a judgement without hearing witnesses. Otherwise, the court shall hear the prosecution witnesses. First, they are examined by the prosecutor, then by a victim (injured party); thereafter, by the civil rights plaintiff. All these three subjects can re-examine the witnesses in order to clarify issues presented by those witnesses earlier during a trial. It should be emphasized that people involved in the proceedings have a number of rights which allow them to conduct a trial in a form of a dispute. For instance, according to Article 272, the prosecution witnesses are examined in the first place. Then, there is a hearing of defense witnesses who are first examined by the accused and her/his attorney, and then by the prosecutor, the injured person and the civil rights plaintiff. The accused and the attorney may hear a witness again in order to clarify the affairs presented by that witness during a hearing. Every participant in the proceedings has the right to file a motion for the second hearing of witness’s testimony with the aim of clarification of the issues on which the witness testified.

5. Conclusions

All things considered, procedural principles are essential in the criminal procedure since they guarantee the protection of some basic rights. Although the classifications of those principles are not consistent, there are some criteria that allow legal scholars to distinguish particular principles and later, find in the legal provisions the manifestations thereof. This kind of approaching this matter is characteristic for Polish legal doctrine. In Poland the principles such as the principle of legalism or the principle of officiality are clearly featured in specific articles of the Code of Criminal Procedure. However, the situation is different in the case of other legal systems. Despite the fact that foreign legislation does
not contain legal provisions that would explicitly point out to certain provisions, it does not imply that in other countries there is a lack of those principles. Some provisions may be concerned as indications of procedural provisions. Nevertheless, we should not forget about the legal and cultural context which prevail in other countries. It would also be noteworthy to point to some issues that are connected with the compliance with the law. For instance, in Saudi Arabia the authorities constantly violate written legal acts (namely royal decrees) as well as the Sharia law.

Bibliography


The procedural principles in criminal proceedings…


**List of legal documents**


**Summary:** The Polish legal doctrine indicates the existence of procedural principles (rules) in the Polish criminal proceedings. Those principles include, among others, the principle of legalism, the principle of officiality, the principle of a fair trial, the principle of the presumption of innocence of the accused and the principle of the right of defence. According to one of the criteria for the classification of those principles, one may distinguish principles related to the initiation of criminal proceedings, principles related to the taking of evidence, principles which refer to the form and manner of conducting proceedings and principles pertaining to the legal situation of the accused. However, this kind of scientific approach does not exist in the Middle East. Both the Code of Criminal Procedure of the Arab Republic of Egypt from 1950 and the Royal Decree of the Kingdom of Saudi Arabia from 2013—The Law of Criminal Procedure do not contain any provisions that would clearly indicate that certain procedural principles can be applied. However, it does not mean that some of the criminal procedural legal institutions introduced in the given countries do not guarantee the implementation of at least some of the procedural principles.

**Keywords:** principle of law, criminal procedure, Saudi Arabia, Egypt, fair trial, adversariality
Zasady proceduralne w postępowaniu karnym
w Królestwie Arabii Saudyjskiej i Arabskiej Republice Egiptu

Streszczenie: Polska doktryna prawna wskazuje na istnienie zasad procesowych w polskim postępowaniu karnym. Zasady te obejmują m.in. zasadę legalizmu, zasadę oficjalności, zasadę rzetelnego procesu, zasadę domniemania niewinności oskarżonego oraz zasadę prawa do obrony. Według jednego z kryteriów kwalifikacji tych zasad, można wyróżnić zasady związane z wszczęciem postępowania karnego, zasady związane z postępowaniem dowodowym, zasady odnoszące się do formy i sposobu prowadzenia procesu jak również zasady odnoszące się do sytuacji prawnej oskarżonego. Tego rodzaju podejście naukowe nie istnieje jednak na Bliskim Wschodzie. Zarówno kodeks postępowania karnego Arabskiej Republiki Egiptu z 1950 r., jak i dekret królewski Królestwa Arabii Saudyjskiej z 2013 r. – Prawo postępowania karnego nie zawierają żadnych przepisów, które wyraźnie wskazywałyby na możliwość zastosowania pewnych zasad procesowych. Nie oznacza to jednak, że niektóre z instytucji prawnych postępowania karnego obowiązujących w tych krajach nie gwarantują zastosowania przynajmniej niektórych zasad proceduralnych.

Słowa kluczowe: zasada prawa, postępowanie karne, Arabia Saudyjska, Egipt, rzetelny proces, kontradyktoryjność