



# REVISTA INCLUSIONES

HOMENAJE A MARÍA NOEL MÍGUEZ

Revista de Humanidades y Ciencias Sociales

Volumen 7 . Número Especial

Abril / Junio

2020

ISSN 0719-4706

**CUERPO DIRECTIVO**

**Directores**

**Dr. Juan Guillermo Mansilla Sepúlveda**

Universidad Católica de Temuco, Chile

**Dr. Francisco Ganga Contreras**

Universidad de Tarapacá, Chile

**Subdirectores**

**Mg © Carolina Cabezas Cáceres**

Universidad de Las Américas, Chile

**Dr. Andrea Mutolo**

Universidad Autónoma de la Ciudad de México, México

**Editor**

**Drdo. Juan Guillermo Estay Sepúlveda**

Editorial Cuadernos de Sofía, Chile

**Editor Científico**

**Dr. Luiz Alberto David Araujo**

Pontificia Universidade Católica de Sao Paulo, Brasil

**Editor Brasil**

**Drdo. Maicon Herverton Lino Ferreira da Silva**

Universidade da Pernambuco, Brasil

**Editor Europa del Este**

**Dr. Aleksandar Ivanov Katrandzhiev**

Universidad Suroeste "Neofit Rilski", Bulgaria

**Cuerpo Asistente**

**Traductora: Inglés**

**Lic. Pauline Corthorn Escudero**

Editorial Cuadernos de Sofía, Chile

**Traductora: Portugués**

**Lic. Elaine Cristina Pereira Menegón**

Editorial Cuadernos de Sofía, Chile

**Portada**

**Lic. Graciela Pantigoso de Los Santos**

Editorial Cuadernos de Sofía, Chile

**COMITÉ EDITORIAL**

**Dra. Carolina Aroca Toloza**

Universidad de Chile, Chile

**Dr. Jaime Bassa Mercado**

Universidad de Valparaíso, Chile

**Dra. Heloísa Bellotto**

Universidad de Sao Paulo, Brasil

**Dra. Nidia Burgos**

Universidad Nacional del Sur, Argentina

**Mg. María Eugenia Campos**

Universidad Nacional Autónoma de México, México

**Dr. Francisco José Francisco Carrera**

Universidad de Valladolid, España

**Mg. Keri González**

Universidad Autónoma de la Ciudad de México, México

**Dr. Pablo Guadarrama González**

Universidad Central de Las Villas, Cuba

**Mg. Amelia Herrera Lavanchy**

Universidad de La Serena, Chile

**Mg. Cecilia Jofré Muñoz**

Universidad San Sebastián, Chile

**Mg. Mario Lagomarsino Montoya**

Universidad Adventista de Chile, Chile

**Dr. Claudio Llanos Reyes**

Pontificia Universidad Católica de Valparaíso, Chile

**Dr. Werner Mackenbach**

Universidad de Potsdam, Alemania

Universidad de Costa Rica, Costa Rica

**Mg. Rocío del Pilar Martínez Marín**

Universidad de Santander, Colombia

**Ph. D. Natalia Milanesio**

Universidad de Houston, Estados Unidos

**Dra. Patricia Virginia Moggia Münchmeyer**

Pontificia Universidad Católica de Valparaíso, Chile

**Ph. D. Maritza Montero**

Universidad Central de Venezuela, Venezuela

**Dra. Eleonora Pencheva**

Universidad Suroeste Neofit Rilski, Bulgaria

**Dra. Rosa María Regueiro Ferreira**

Universidad de La Coruña, España

**Mg. David Ruete Zúñiga**

Universidad Nacional Andrés Bello, Chile

**Dr. Andrés Saavedra Barahona**

Universidad San Clemente de Ojrid de Sofía, Bulgaria

**Dr. Efraín Sánchez Cabra**  
*Academia Colombiana de Historia, Colombia*

**Dra. Mirka Seitz**  
*Universidad del Salvador, Argentina*

**Ph. D. Stefan Todorov Kapralov**  
*South West University, Bulgaria*

**COMITÉ CIENTÍFICO INTERNACIONAL**

**Comité Científico Internacional de Honor**

**Dr. Adolfo A. Abadía**  
*Universidad ICESI, Colombia*

**Dr. Carlos Antonio Aguirre Rojas**  
*Universidad Nacional Autónoma de México, México*

**Dr. Martino Contu**  
*Universidad de Sassari, Italia*

**Dr. Luiz Alberto David Araujo**  
*Pontificia Universidad Católica de Sao Paulo, Brasil*

**Dra. Patricia Brogna**  
*Universidad Nacional Autónoma de México, México*

**Dr. Horacio Capel Sáez**  
*Universidad de Barcelona, España*

**Dr. Javier Carreón Guillén**  
*Universidad Nacional Autónoma de México, México*

**Dr. Lancelot Cowie**  
*Universidad West Indies, Trinidad y Tobago*

**Dra. Isabel Cruz Ovalle de Amenabar**  
*Universidad de Los Andes, Chile*

**Dr. Rodolfo Cruz Vadillo**  
*Universidad Popular Autónoma del Estado de Puebla, México*

**Dr. Adolfo Omar Cueto**  
*Universidad Nacional de Cuyo, Argentina*

**Dr. Miguel Ángel de Marco**  
*Universidad de Buenos Aires, Argentina*

**Dra. Emma de Ramón Acevedo**  
*Universidad de Chile, Chile*

**Dr. Gerardo Echeita Sarrionandia**  
*Universidad Autónoma de Madrid, España*

**Dr. Antonio Hermosa Andújar**  
*Universidad de Sevilla, España*

**Dra. Patricia Galeana**  
*Universidad Nacional Autónoma de México, México*

**Dra. Manuela Garau**  
*Centro Studi Sea, Italia*

**Dr. Carlo Ginzburg Ginzburg**  
*Scuola Normale Superiore de Pisa, Italia*  
*Universidad de California Los Ángeles, Estados Unidos*

**Dr. Francisco Luis Girardo Gutiérrez**  
*Instituto Tecnológico Metropolitano, Colombia*

**José Manuel González Freire**  
*Universidad de Colima, México*

**Dra. Antonia Heredia Herrera**  
*Universidad Internacional de Andalucía, España*

**Dr. Eduardo Gomes Onofre**  
*Universidade Estadual da Paraíba, Brasil*

**Dr. Miguel León-Portilla**  
*Universidad Nacional Autónoma de México, México*

**Dr. Miguel Ángel Mateo Saura**  
*Instituto de Estudios Albacetenses "Don Juan Manuel", España*

**Dr. Carlos Tulio da Silva Medeiros**  
*Diálogos em MERCOSUR, Brasil*

**+ Dr. Álvaro Márquez-Fernández**  
*Universidad del Zulia, Venezuela*

**Dr. Oscar Ortega Arango**  
*Universidad Autónoma de Yucatán, México*

**Dr. Antonio-Carlos Pereira Menaut**  
*Universidad Santiago de Compostela, España*

**Dr. José Sergio Puig Espinosa**  
*Dilemas Contemporáneos, México*

**Dra. Francesca Randazzo**  
*Universidad Nacional Autónoma de Honduras, Honduras*

# REVISTA INCLUSIONES

REVISTA DE HUMANIDADES  
Y CIENCIAS SOCIALES

**Dra. Yolando Ricardo**

*Universidad de La Habana, Cuba*

**Dr. Manuel Alves da Rocha**

*Universidade Católica de Angola Angola*

**Mg. Arnaldo Rodríguez Espinoza**

*Universidad Estatal a Distancia, Costa Rica*

**Dr. Miguel Rojas Mix**

*Coordinador la Cumbre de Rectores Universidades  
Estatales América Latina y el Caribe*

**Dr. Luis Alberto Romero**

*CONICET / Universidad de Buenos Aires, Argentina*

**Dra. Maura de la Caridad Salabarría Roig**

*Dilemas Contemporáneos, México*

**Dr. Adalberto Santana Hernández**

*Universidad Nacional Autónoma de México, México*

**Dr. Juan Antonio Seda**

*Universidad de Buenos Aires, Argentina*

**Dr. Saulo Cesar Paulino e Silva**

*Universidad de Sao Paulo, Brasil*

**Dr. Miguel Ángel Verdugo Alonso**

*Universidad de Salamanca, España*

**Dr. Josep Vives Rego**

*Universidad de Barcelona, España*

**Dr. Eugenio Raúl Zaffaroni**

*Universidad de Buenos Aires, Argentina*

**Dra. Blanca Estela Zardel Jacobo**

*Universidad Nacional Autónoma de México, México*

**Comité Científico Internacional**

**Mg. Paola Aceituno**

*Universidad Tecnológica Metropolitana, Chile*

**Ph. D. María José Aguilar Idañez**

*Universidad Castilla-La Mancha, España*

**Dra. Elian Araujo**

*Universidad de Mackenzie, Brasil*

**Mg. Rumyana Atanasova Popova**

*Universidad Suroeste Neofit Rilski, Bulgaria*

## CUADERNOS DE SOFÍA EDITORIAL

**Dra. Ana Bénard da Costa**

*Instituto Universitario de Lisboa, Portugal  
Centro de Estudios Africanos, Portugal*

**Dra. Alina Bestard Revilla**

*Universidad de Ciencias de la Cultura Física y el  
Deporte, Cuba*

**Dra. Noemí Brenta**

*Universidad de Buenos Aires, Argentina*

**Ph. D. Juan R. Coca**

*Universidad de Valladolid, España*

**Dr. Antonio Colomer Vialdel**

*Universidad Politécnica de Valencia, España*

**Dr. Christian Daniel Cwik**

*Universidad de Colonia, Alemania*

**Dr. Eric de Léséulec**

*INS HEA, Francia*

**Dr. Andrés Di Masso Tarditti**

*Universidad de Barcelona, España*

**Ph. D. Mauricio Dimant**

*Universidad Hebrea de Jerusalén, Israel*

**Dr. Jorge Enrique Elías Caro**

*Universidad de Magdalena, Colombia*

**Dra. Claudia Lorena Fonseca**

*Universidad Federal de Pelotas, Brasil*

**Dra. Ada Gallegos Ruiz Conejo**

*Universidad Nacional Mayor de San Marcos, Perú*

**Dra. Carmen González y González de Mesa**

*Universidad de Oviedo, España*

**Ph. D. Valentin Kitanov**

*Universidad Suroeste Neofit Rilski, Bulgaria*

**Mg. Luis Oporto Ordóñez**

*Universidad Mayor San Andrés, Bolivia*

**Dr. Patricio Quiroga**

*Universidad de Valparaíso, Chile*

**Dr. Gino Ríos Patio**

*Universidad de San Martín de Porres, Perú*

**REVISTA  
INCLUSIONES**  
REVISTA DE HUMANIDADES  
Y CIENCIAS SOCIALES

**Dr. Carlos Manuel Rodríguez Arrechavaleta**  
*Universidad Iberoamericana Ciudad de México, México*

**Dra. Vivian Romeu**  
*Universidad Iberoamericana Ciudad de México, México*

**Dra. María Laura Salinas**  
*Universidad Nacional del Nordeste, Argentina*

**Dr. Stefano Santasilia**  
*Universidad della Calabria, Italia*

**Mg. Silvia Laura Vargas López**  
*Universidad Autónoma del Estado de Morelos, México*

**CUADERNOS DE SOFÍA  
EDITORIAL**

**Dra. Jaqueline Vassallo**  
*Universidad Nacional de Córdoba, Argentina*

**Dr. Evandro Viera Ouriques**  
*Universidad Federal de Río de Janeiro, Brasil*

**Dra. María Luisa Zagalaz Sánchez**  
*Universidad de Jaén, España*

**Dra. Maja Zawierzeniec**  
*Universidad Wszechnica Polska, Polonia*

Editorial Cuadernos de Sofía  
Santiago – Chile  
Representante Legal  
Juan Guillermo Estay Sepúlveda Editorial



## Indización, Repositorios y Bases de Datos Académicas

Revista Inclusiones, se encuentra indizada en:





REX



UNIVERSITY OF  
SASKATCHEWAN



Universidad  
de Concepción

BIBLIOTECA UNIVERSIDAD DE CONCEPCIÓN



**JUDICIAL DEBATE IN CRIMINAL PROCEEDINGS AS A WAY OF EXPRESSING  
THE INTERESTS OF THE PARTIES TO THE CONFLICT**

**Dr. Gyulnaz Eldarovna Adygezalova**

Kuban State University, Russia  
ORCID ID: 0000-0003-3682-2121  
gyulnaz\_2000@mail.ru

**Ph. D. (C) Tatyana Valerievna Faroi**

Kuban State University, Russia  
ORCID ID: 0000-0001-8839-5593  
tfaroi@mail.ru

**Ph. D. Dina Evgenjevna Mikhel**

Kuban State University, Russia  
ORCID ID: 0000-0001-9116-5748  
michel-di@mail.ru

**Ph. D. (C) Husen Manaevich Lukozhev**

Kuban State University, Russia  
ORCID ID: 0000-0001-7984-6356  
lukogev@yandex.ru

**Fecha de Recepción:** 09 de enero de 2020 – **Fecha Revisión:** 19 de febrero de 2020

**Fecha de Aceptación:** 29 de febrero de 2020 – **Fecha de Publicación:** 01 de abril de 2020

**Abstract**

The purpose of this work is to study judicial debate as an independent stage of criminal proceedings, which has its procedural goals and objectives, as well as techniques and methods for their solution. General scientific methods were used in the course of the study, including historical, comparative, and logical. The formal legal method was used as well. The study has shown that the legal definition of judicial debate as an independent stage of criminal proceedings, clearly defining the form and content of judicial debate, is necessary. At present, the legislator only points out what judicial debate consists of.

**Keywords**

Judicial proceedings – Criminal proceedings – Judicial debate – Replica – Legal conflict

**Para Citar este Artículo:**

Adygezalova, Gyulnaz Eldarovna; Faroi, Tatyana Valerievna; Mikhel, Dina Evgenjevna y Lukozhev, Husen Manaevich. Judicial debate in criminal proceedings as a way of expressing the interests of the parties to the conflict. Revista Inclusiones Vol: 7 num Especial (2020): 319-327.

Licencia Creative Commons Attribution Non-Comercial 3.0 Unported

(CC BY-NC 3.0)

Licencia Internacional





## Introduction

The relevance of the research topic is due to the legal development of modern society and state. Legal conflicts and resolving them are becoming increasingly important issues. Naturally, the most obvious and direct way to resolve legal conflicts is the judicial process. Along with it, alternative methods of resolving legal conflicts are actively developing. Despite the existence of the institution of reconciliation of parties in the modern Russian criminal process, the central place in resolving criminal legal and criminal procedural conflicts is still occupied by judicial proceeding. In this regard, the issue of judicial debate, which is the final stage of criminal proceedings, which fully reflects the interests and arguments of the parties, is of particular importance for legal conflict resolution and criminal proceedings.

Many Russian jurists are engaged in problems of judicial debate, among them one can name I.J. Fojnickij, S.I. Viktorskiy, I.D. Perlov, E.A. Matvienko, M.S. Strogovich, T.G. Morshchakova, N.Ya. Kalashnikova, V.M. Lebedeva, T.Ya. Habrieva, and many others.

The question of how to express the interests and positions of the parties becomes even more relevant in connection with the conduct of judicial reform in Russia and the growing scientific and practical interest in ways of resolving legal conflicts<sup>1</sup>.

## Proposed Methodology

### General description

This study was conducted mainly using methods that are traditionally referred to as general scientific. First of all, this is the historical method that allowed tracing the evolution of the views of scholars engaged in the study of the stages of criminal proceedings. Also, the comparative method was used, with the help of which it became possible to identify common features in the concepts of processualists concerning judicial debate. It is impossible to conduct theoretical and legal research without the use of several logical methods: analysis, synthesis, induction, deduction, etc. The legal nature of the study led to using the formal-legal method, without which it is impossible to study the rules of law.

### Algorithm

The results of the study include the following:

The absence of a clear normative definition of the stages of criminal proceedings has been revealed, despite some mention in the law of the stages of the criminal process. Given the absence of the legal definition of judicial debate, the views of scholars and their proposed definitions have been analyzed, in which two general elements have been disclosed: form and content of judicial debate.

---

<sup>1</sup> G. E. Adygezalova, "Case law school as a way of law rationalization", *Man in India* Vol: 96 num 12 (2016): 5463–5470; G. E. Adygezalova y P. M. Kurdyuk, "Trends in the «Living» Law Development in Russia: The Lawmaking of Other Authorities", *Journal of Advanced Research in Law and Economics: scientific journal* num 9 Vol: 31 (2018): 15-19 y G. E. Adygezalova, "Sociological jurisprudence, and legal realism as a basis for the development of judicial law-making", *Journal of Advanced Research in Law and Economics: scientific journal* num 9 Vol: 35 (2018): 1528-1533.

Criteria for distinguishing stages of criminal proceedings are doctrinally identified, among which the main ones are the existence of independent procedural goals and objectives, as well as its order and set of techniques and methods for achieving goals and objectives.

The content of judicial debate consists of speeches of the parties, so the court (and, if necessary, remarks of the participants to the debate) is the only way for the party to express its position, whatever the circumstances of the criminal case. The parties do not commit any other procedural actions in judicial debate. Thus, the specificity of techniques and methods for solving procedural problems facing the court and the parties in judicial debate is the basis for the allocation of debate as an independent part of the judicial proceeding.

The parties analyze, summarize, and evaluate the totality of evidence already examined and verified at the court session in judicial debate, formulating on this basis the necessary conclusions for the upcoming court decision. This separates the debate from the judicial investigation, making it an independent part of the judicial proceeding. It is in judicial debate that the interests of the parties to the conflict, as well as their internal attitude both to the conflict situation and to the evidence presented and examined in court, can be expressed most fully and argumentatively.

Given the absence of a legal definition of judicial debate, it seems appropriate to formulate one and enshrine it in the rules of law. The debate in court (judicial debate) is an independent part of the judicial proceeding. It occurs after the end of the judicial investigation and consists of the speeches of the prosecutor and the defense counsel, as well as the possible subjects of judicial debate specified in part 2 of Article 292 of the Russian Federation Code of Criminal Procedure. They – each from their point of view – summarize the judicial investigation and express and justify their position in the conflict and their interests, analyzing, summarizing, and evaluating the totality of the evidence examined at the hearing. They also make necessary conclusions from them about evidence or lack of evidence, qualification of the crime, and the degree of punishment of the defendant for the upcoming decision of the case by the court.

## Result Analysis

The procedural dispute of the parties goes on throughout the process in the framework of adversarial criminal proceedings. However, it is in judicial debate that this dispute gets its full and open expression. At this stage of the process, the points of view of the parties are finally determined and argued and the court is presented with the opposing positions of the prosecution and defense. In studying the question, it is impossible not to refer to the meaning of the term "debate". According to the dictionary of V.I. Dal, the word "debate" means a contest, fight, dispute, struggle<sup>2</sup>. In the Dictionary of the Russian language by S.I. Ozhegov, the following meanings of the term "debate" are indicated: discussion, public dispute on any issues<sup>3</sup>. Thus, debate is a public argument on certain issues.

<sup>2</sup> V. I. Dal, Explanatory Dictionary of the Live Great Russian Language: Modern writing: In 4 vol. (Moscow: Publisher Wolf, M.O., 1994).

<sup>3</sup> S. I. Ozhegov, Dictionary of the Russian language (Moscow: Sovetskaya Entsiklopediya, 1972), 536.

There was no strict definition of judicial debate concept in the pre-revolutionary Russian theory of the criminal process, as well as in the criminal procedure legislation of this period. Thus, I.J. Fojnickij characterizes debate in court as follows: "The final debate in court (Articles 735-749 of the Charter of Criminal Procedure) completes the judicial investigation and has the task of delivering each party the full opportunity to express their arguments based on the totality of evidence verified by the judicial investigation and to refute the construction of the opposing party. Their content is formed by both factual and legal evidence and arguments ... Debate consists of the speech of the prosecutor or private prosecutor, the explanation of the civilian in case of plaintiff, and, finally, the speech of the defense attorney"<sup>4</sup>.

S.I. Viktorskiy notes that the speakers of judicial debate systematize the evidence and investigate the defendant's behavior in their speeches, which end the judicial investigation<sup>5</sup>.

There was no legal definition of judicial debate in the criminal procedure legislation of the Soviet period. In the theory of the criminal process of this period, the concept of debate in court was defined in different ways by different authors. Thus, I.D. Perlov and E.M. Matvienko noted judicial debate as an independent part of the judicial proceeding, during which, its participants summarize the results of the judicial investigation, state their conclusions and proposals, and formulate their final procedural position"<sup>6,7</sup>.

In our opinion, the main advantage of these formulations is the disclosure of the content of judicial debate concept based on establishing the necessary ratio of its form and content, i.e. an indication that this is an independent part of the judicial proceeding, and the determination of its content in the form of oral statements by the parties summing up the judicial proceeding.

M.S. Strogovich gives a clearer notation: "Judicial debate is the speeches of the parties, the main place in which is occupied by the prosecutor's accusatory speech and the defense speech of the attorney"<sup>8</sup>.

Doctrinal designation of judicial debate, in our opinion, is necessary for understanding the practical significance of this stage. In addition, it must be universally recognized and well defined. The approach to judicial debate as an independent stage of the judicial proceeding may be controversial, as it is not explicitly stated in the Russian Federation Code of Criminal Procedure of 2001.

Section 9 of the Russian Federation Code of Criminal Procedure, devoted to the judicial proceeding in the first instance, contains the following chapters: Chapter 33 General procedure for preparation for the court hearing; Chapter 34 Preliminary hearing; Chapter 35 General conditions of a judicial proceeding; Chapter 36 Preparatory part of the court session; Chapter 37 Judicial investigation; Chapter 38 Debate in court and the last word of the defendant; Chapter 39 Sentencing.

<sup>4</sup> I. J. Fojnickij, *Course of criminal proceedings* (SPb: Alpha, 1996), 446-447.

<sup>5</sup> S. I. Viktorskiy, *Russian criminal proceeding: textbook* (Moscow: Gorodets, 1997), 394.

<sup>6</sup> E. A. Matvienko, *Court speech*. (Minsk: Vysheyschaya. shkola, 1972), 5.

<sup>7</sup> I. D. Perlov, *Judicial proceeding in the Soviet criminal process* (Moscow: Gosyurizdat, 1957), 8.

<sup>8</sup> M. S. Strogovich, *Course of the Soviet criminal process*. V. II: *The procedure for criminal proceedings under the Soviet criminal procedure law* (Moscow: Nauka, 1970), 307.

However, the legislator has not designated judicial debate as a stage of criminal proceedings. In general, the concept of the stage is mentioned infrequently in the Code of Criminal Procedure. For example, it refers to the stage of the preliminary hearing, the stage of preparation for the judicial hearing, or judicial proceeding itself. At the same time, the internal structure of the process implies its division into stages. The criteria for this division may be different. If the stage is traditionally understood as a separate part of the criminal proceedings aimed at achieving specific tasks inherent only to it, then it is possible to identify the following main features of the stage (including the stage of judicial proceedings in the court of the first instance): the purpose and objectives of the stage; the list of procedural actions characteristic of this stage, that is, its content; the final procedural act that completes the stage. If one adheres to the Russian Federation Code of Criminal Procedure, the judicial proceeding consists of independent stages: preparatory part, judicial investigation, judicial debate, last word of the defendant, sentencing.

It should be noted that the Code does not point directly to the form: judicial debate is not designated as either a stage or a phase. However other independent stages are defined only meaningfully; therefore, it cannot be argued on this basis that judicial debate is not an independent stage of the judicial proceeding.

Neither Article 5, nor Article 292, nor Article 336 of the Russian Federation Code of Criminal Procedure contain a definition of the debate concept. In part 1 of Article 292 of the Russian Federation Code of Criminal Procedure, there is only an indication that the debate in court consists of the speeches of the prosecutor and the defense counsel; in the absence of the latter, the defendant participates in the debate. In addition, part 2 of Article 292 of the Russian Federation Code of Criminal Procedure establishes the circle of subjects of judicial proceedings in a criminal case who are entitled to participate in the debate in court, as well as have the right to petition to participate in the debate. The concept of replica in Article 5 of the Russian Federation Code of Criminal Procedure is presented. This is a remark of the participant in the debate in court regarding what was said in the speeches of other participants.

Revealing the content of the concept of judicial debate, it is impossible not to touch upon the question of their place in the process (system) of judicial proceedings. The Russian criminal procedure proceeds from the fact that before the court does not directly examine all the evidence in the criminal case with the participation of the parties, except for the cases provided for in Section 10 of the Russian Federation Code of Criminal Procedure (part 1 of Article 240 of the Russian Federation Code of Criminal Procedure), the parties still have no opportunity to finally determine their attitude to the prosecution. Only on the basis of a direct study of the totality of evidence available in a criminal case, they can come to final and definite conclusions, formulate their arguments and considerations, and substantiate their position in the case.

In passing, we note that a substantive analysis and comparison of Articles 87, 240, 244, 246, 248, and 274 of the Russian Federation Code of Criminal Procedure shows that the study of evidence includes both the process of obtaining information (for example, interrogation of witnesses) and verification of the information received (Article 240 of the Russian Federation Code of Criminal Procedure). Verification of evidence is carried out in accordance with Article 87 of the Russian Federation Code of Criminal Procedure by comparing them with other evidence available in a criminal case, as well as establishing their sources and obtaining other evidence confirming or refuting the verified evidence.

Of course, the attitude of the parties to evidence is revealed to a certain extent already during the judicial investigation. Thus, the defense counsel, petitioning, for example, to call new witnesses, experts, and specialists, to demand material evidence and documents, or objecting to similar petitions, on the other hand, expresses their opinion on this evidence. However, it is possible that their opinion regarding the evidence may change in the course of the further judicial proceeding since it is not based on the verification and generalization of all evidence in its entirety and, therefore, is not final.

Thus, in the course of a judicial investigation, a direct investigation of all evidence in a criminal case is carried out, including verification of its relevance, admissibility, and reliability, i.e. verification of compliance of the parties with the procedural rules for collecting evidence (Articles 75, 86, etc. of the Russian Federation Code of Criminal Procedure), relevance of the information constituting the content of the evidence (Articles 73, 159, 171, 305, 307 of the Russian Federation Code of Criminal Procedure), soundness of the source of information (part 3 of Article 56, Article 74, 75, 81, part 4 of Article 146 of the Russian Federation Code of Criminal Procedure), and its reliability.

As for judicial debate, the parties analyze, summarize, and evaluate the totality of evidence already examined and verified at the court session in judicial debate, formulating on this basis the necessary conclusions for the upcoming court decision. This separates the debate from the judicial investigation, making it an independent part of the judicial proceeding. It is in judicial debate that the interests of the parties to the conflict, as well as their internal attitude both to the conflict situation and to the evidence presented and examined in court, can be expressed most fully and argumentatively.

However, it would not be entirely incorrect to explain the independent nature of judicial debate by simply pointing out the special tasks of the court and the parties in this part of the proceedings since, according to the correct remark of I.D. Perlov, "The matter is not only in the special tasks facing the court and the parties in this part of the judicial proceeding, but also in the special methods, procedural technique, and means that are used by the court and the parties to solve these problems"<sup>9</sup>.

Indeed, when conducting a judicial investigation, the court and the parties interrogate the defendant (Article 275 of the Russian Federation Code of Criminal Procedure), victim (Articles 277, 280 of the Russian Federation Code of Criminal Procedure), witnesses (Articles 278, 280 of the Russian Federation Code of Criminal Procedure), and experts (Article 282 of the Russian Federation Code of Criminal Procedure). They inspect material evidence (Article 284 of the Russian Federation Code of Criminal Procedure), locality and premises (Article 287 of the Russian Federation Code of Criminal Procedure), investigative experiments (Article 288 of the Russian Federation Code of Criminal Procedure), identification (Article 289 of the Russian Federation Code of Criminal Procedure), examination (Article 290 of the Russian Federation Code of Criminal Procedure), etc. Collecting, checking, and evaluating evidence in order to establish the circumstances, provided for in Article 73 Code of Criminal Procedure, is impossible without carrying out these procedural actions.

All this is absent in judicial debate so the court (and, if necessary, remarks of the participants to the debate) is the only way for the party to express its position, whatever the circumstances of the criminal case. The parties do not commit any other procedural

---

<sup>9</sup> I. D. Perlov, *Judicial proceeding in the Soviet criminal process* (Moscow: Gosyurizdat, 1957), 8.  
DR. GYULNAZ EL DAROVNA ADYGEZALOVA / PH. D. (C) TATYANA VALERIEVNA FAROI / PH. D. DINA EVGENJEVNA MIKHEL  
PH. D. (C) HUSEN MANAEVICH LUKOZHEV

actions in judicial debate. Thus, the specificity of techniques and methods for solving procedural problems facing the court and the parties in judicial debate is the additional basis for the allocation of debate as an independent part of the judicial proceeding.

Continuing to clarify the place of judicial debate in the court system, attention should be paid to the following point. The judicial investigation involves not only the parties but also the court. This is since the Russian legislator does not rely on the model of the Anglo-Saxon judicial proceeding, where the judge, not participating in the study of evidence, only provides such conditions of criminal proceedings that allow the parties to use their rights in the adversarial process.

Only the parties take part in judicial debate. The court only listens to the speeches of the parties. The procedural activity of the chairman of the court session is limited to the exercise of administrative functions to manage the course of judicial debate.

As for other participants in criminal proceedings – witnesses, experts, and specialists – they do not participate in judicial debate under the current legislation at all. Therefore, the circle of participants of the judicial investigation is wider than the subjects of judicial debate. This is another difference between debate and judicial investigation.

Thus, judicial debate as an independent stage of the judicial proceeding has its purpose and objectives. Bringing by each of the parties their own reasoned and justified position to the court, which reflects the interests of that party (both personal interests and state, public), can be designated as the main goal. The content of judicial debate, that is, the list and procedure, are indicated in the articles of the Russian Federation Code of Criminal Procedure. The end of this stage is indicated by the removal of the court to the deliberation room and the announcement of this to those present in the courtroom.

Given the absence of a legal definition of judicial debate, it seems appropriate to formulate one and enshrine it in the rules of law.

Debate in court (judicial debate) is an independent part of the judicial proceeding that occurs after the end of the judicial investigation and consists of the speeches of the prosecutor and the defense counsel, as well as the possible subjects of judicial debate specified in part 2 of Article 292 of the Russian Federation Code of Criminal Procedure. They – each from their point of view – summarize the judicial investigation, express and justify their position in the conflict and their interests, analyzing, summarizing, and evaluating the totality of the evidence examined at the hearing, as well as making the necessary conclusions about evidence or lack of it, qualification of the crime, and the degree of punishment of the defendant in the upcoming decision on the case by the court.

## **Conclusion**

Judicial debate is a significant final stage of criminal proceedings. At this stage, the parties finally determine their interests and position in relation to the conflict. Having gone through the previous stages, they can change their behavior strategy in the conflict and understand the need for the most optimal way out of it.

As a result of debate, when the entire body of evidence available in the criminal case is subjected to legal analysis from opposite positions, all disputed issues of the case become the subject of comprehensive discussion, and each of the participants in the



process substantiates their demands and proposals and objects to the demands and proposals of the opposing party, it is easier for the court to come to the right conclusions and order a judicial sentence. That is why judicial debate is very important for the formation of the internal conviction of judges and, thereby, for the adoption of a legitimate, justified, and fair sentence.

Debate in court has a certain value for its participants. For each of them, the position of the other becomes clearer and the strengths and weaknesses of their arguments are clarified. Judicial debate allows thoroughly substantiating proposals on the merits of the prosecution, providing additional arguments for subsequent appeal and cassation appeals or submissions on sentences.

In addition, we should not forget about the role of the parties in the implementation by the court of its social and moral purpose. Through the judicial proceeding of specific criminal cases, the court approves and disseminates those universal moral definitions among the general public that make up the truly reasonable content of the law. The debate in court is of particular importance to this task. All this determines the role and place of the debate in the judicial system.

## References

Adygezalova, G. E. y Kurdyuk P. M. "Trends in the «Living» Law Development in Russia: The Lawmaking of Other Authorities". *Journal of Advanced Research in Law and Economics: scientific journal* num 9 Vol: 31 (2018): 15-19.

Adygezalova, G. E. Case law school as a way of law rationalization. *Man in India* Vol: 96 num 12 (2016): 5463–5470.

Adygezalova, G. E. "Sociological jurisprudence, and legal realism as a basis for the development of judicial law-making". *Journal of Advanced Research in Law and Economics: scientific journal* num 9 Vol: 35 (2018): 1528-1533.

Dal, V. I. *Explanatory Dictionary of the Live Great Russian Language: Modern writing: In 4 vol.* Moscow: Publisher Wolf, M.O. 1994.

Fojnickij, I. J. *Course of criminal proceedings.* SPb: Alpha. 1996.

Matvienko, E. A. *Court speech.* Minsk: Vysheyshaya. shkola. 1972.

Ozhegov, S. I. *Dictionary of the Russian language.* Moscow: Sovetskaya Entsiklopediya. 1972.

Perlov, I. D. *Judicial proceeding in the Soviet criminal process.* Moscow: Gosyurizdat. 1957.

Strogovich, M. S. *Course of the Soviet criminal process. V. II: The procedure for criminal proceedings under the Soviet criminal procedure law.* Moscow: Nauka. 1970.

Viktorskiy, S. I. Russian criminal proceeding: textbook. Moscow: Gorodets. 1997.

## CUADERNOS DE SOFÍA EDITORIAL

Las opiniones, análisis y conclusiones del autor son de su responsabilidad y no necesariamente reflejan el pensamiento de **Revista Inclusiones**.

La reproducción parcial y/o total de este artículo debe hacerse con permiso de **Revista Inclusiones**.