

### F1 Cross Examination and Direct Examination in Criminal Procedure Discussions in Turkey

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After attending this presentation, attendees will better understand the cross-examination criminal procedure in Turkey.

This presentation will impact the forensic science community by explaining the lawyer's role in cross examination and criminal law.

An important innovation brought to the criminal court by the Turkish Criminal Procedure Code (TCPC) No. 5271 is the vested right of parties to ask questions. The right to ask questions, which is prevalent in the Anglo-Saxon legal systems, increases the role of participants or defense attorneys, who are tasked with presenting material facts, and imposes vital responsibilities on the attorneys who are perceived as merely inactive participants at trial. Article 201 in the TCPC clearly states that the attorneys and the public prosecutor can be asked questions on the condition that they keep to the trial discipline. In practice, it is observed that witnesses, perpetrators, and attendants are examined by and address their questions to the judge, merely waiting for his queries; however, TCPC Article 201 decisively ensures that the judge cannot interfere except in the case of an objection and the expediency of the objection.

In the TCPC, the same form of the procedure in Article 166 (to determine who will take the floor) is pursued for asking questions as in Article 201. This study discusses the notions of cross-examination and direct examination, how practicable these are, and the problems faced in practice, along with their solutions. The similarity of posing a direct question to cross examination, which has taken place in Turkish law with Article 201 of the Code of Criminal Procedure, and its place in the accusation system will be taken into consideration. Article 201 of the Code of Criminal Procedure is not a cross-examination method, but only a questioning procedure. It is an application that provides the possibility for participation of the parties to the judge's examination.

If the goal of the criminal procedure is to reach the material fact, it is necessary to investigate the historical development of the concrete case since it is possible to forget events in the period of time between when the concrete fact that took place during the event, which will be deemed as a crime, and the investigation of the material fact. Additionally, evidence not attained or changed by the parties can complicate reaching the fact. In this context, the statements of the parties and parties' witnesses or public witnesses are very important. In Turkey, which adopted the accusation system, the goal is to have the true facts explained by the subjects, which will be put forward through statement examination.

It can be evidenced in the application, that cross-examination, which is one of the necessities of the right to a fair trial, has no real response in Turkish law. In order to reach the real function of direct questioning, the judges have significant responsibilities. Changing the law for justice depends on the realization of all facts of the right to a fair trial. It is evident that Article 201 of the Code of Criminal Procedure does not comply with the cross-examination system. The most appropriate system to the nature of the institution is the accusation system. Although the criminal procedure in Turkey begins with the accusation, there is also a mixed system. This case is an example that there is no cross-examination in the real sense. There are obstacles before the successful application of direct questioning, such as technical infrastructure deficiencies and an insufficiency of the judgment periods.

Courses are provided to law students so they can develop the necessary questioning skills for the legal profession. Through these courses, the contribution of lawyers, who are important participants of the cross-examination system, can be increased. The application of questioning methods cannot be learned by theories as practical trial and doctrinal education are not provided in law faculties. This situation negatively affects the profession of new graduates who want to practice law.

**Cross Examination, Forensic Science, Law**