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SOME ISSUES OF CORRELATION BETWEEN INTERNATIONAL STANDARDS OF JUSTICE AND CRIMINAL PROCEDURE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN

S.E. Ibragimova*

UZBEKISTAN

ABSTRACT

The article examines a number of issues that arise when analyzing the relationship between international standards of justice and criminal procedure legislation of the Republic of Uzbekistan. The possibility of strengthening judicial control over the investigation is being clarified, and a number of proposals are being made to amend the current criminal procedure legislation. It should be especially noted that such a judge does not participate either in the preliminary investigation or in the examination of the criminal case on the merits, i.e. making a decision on the guilt or innocence of the defendant. Unless otherwise established by treaties and agreements concluded by the Republic of Uzbekistan with other states. Note, however, that the said Resolution calls on states to join and ratify treaties in this direction and take into account the already existing international legal practice [3]. Accordingly, the recommendatory, non-mandatory nature of the standards is emphasized. It seems that these statements, in addition to the assumption of a direct infringement of state sovereignty, allow us to assume an automatic, thoughtless transfer to the law enforcement practice of state bodies, any provisions of international acts, even if they are arbitrarily referred to as regulating human rights.

KEYWORDS: *International Standards, Justice, Criminal Procedure Legislation, Investigation, Judicial Control over Inquiry and Investigation.*

INTRODUCTION

In his Message to the Parliament on December 29, 2020; The President of the Republic of Uzbekistan Sh.M. Mirziyoyev especially noted that “Justice is a solid foundation of statehood. The judiciary plays a decisive role in ensuring justice and the rule of law”[1].

In this regard, the ratio of international standards of justice and our national criminal procedural legislation seems to be important.

In particular, the Republic of Uzbekistan, recognizing the priority of international law, specifies in the Criminal Procedure Code that criminal proceedings are conducted in accordance with the legislation in force at the time of the inquiry, preliminary investigation and trial of the case, regardless of the place of the crime. Unless otherwise established by treaties and agreements concluded by the Republic of Uzbekistan with other states.

In his previous publications [2], the author has repeatedly dwelt on the importance of determining whether international standards for the protection of human rights (including in the administration of justice) relate to peremptory or alternative norms.

So, in the Resolution of the UN General Assembly "Establishment of international standards in the field of human rights", adopted at the 97th plenary meeting on December 4, 1986. (No. 41/120) emphasizes that these standards are set by the General Assembly, other UN bodies and specialized agencies. It also notes the leading role of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights in this system.

Taking into account the content of the aforementioned international acts, it is not difficult to correlate the international standards for the protection of human rights established by them with international standards for the administration of justice (primarily aimed at protecting the rights of the individual).

Note, however, that the said Resolution calls on states to join and ratify treaties in this direction and take into account the already existing international legal practice [3]. Accordingly, the recommendatory, non-mandatory nature of the standards is emphasized. In fact, the concept of "standard" is embedded in its definition as a benchmark, the goal of developing legislation, for possible approximation to this benchmark, taking into account the specifics of the state.

We believe it is possible to agree with the opinion of E.V. Medvedev that: "The purpose of establishing standards of justice is to unify the activities of national judicial bodies in terms of compliance with the requirements for considering cases under their jurisdiction. Accordingly, the purpose of their implementation in national legal systems is to ensure the implementation of guaranteed human rights and freedoms in the field of justice, namely: equality of all before the law and the court, providing each interested person with equal procedural opportunities to restore violated or contested rights in accordance with the law in court, during which the generally recognized principles of a fair trial are observed"[4, p. 18].

Let us note in passing that the aforementioned unification of the activities of national judicial (and also, note - and other law enforcement) bodies is a goal, but not an imperative, taken a priori.

Some researchers emphasize (perhaps subconsciously) the influence on the formation and definition of international standards on the part of individual states, whose opinion becomes decisive in this direction.

Thus, according to I.B. Glushkova, "... a feature of the development of modern legal systems is not only the influence of generally recognized norms and principles of international law on the

domestic legislation of states, but also the reverse process, within which changes in generally recognized norms and principles of international law take place under the influence of legislation of a number of democratic states, the main value of which proclaimed human rights ". [5, p. 17].

In addition to the rather controversial and vague formulation of "democratic states", the assertion that the legislation of these states should really influence the process of forming international standards and, accordingly, serve as a model of behavior for other sovereign states, raises reasonable doubts.

According to M.V.Baglai: "… the wording" generally recognized principles and norms of international law "is fraught with many ambiguities, since there is no generally accepted definition of these principles and norms in the world. These are the principles of the UN Charter and some others, but even the official recognition of any norm (that is, by the overwhelming majority of states) does not give rise to the obligation of each state to comply with it, if this norm has not found its confirmation in domestic law, an act of ratification or in an international treaty" [6, c.68].

This point of view is shared by a number of other researchers. So, O.I.Tiunov specifies that the generally recognized norms and principles of international law should be considered norms and standards recognized as binding in the form of international legal customs and international treaties [7, p. 543]. V.D.Zorkin also solidifies with him, who notes that a treaty or customary norm of international law acquires the character of a generally recognized one only if the state as a sovereign participant in international relations and the main subject of international law agrees with this norm and recognizes it legally binding for itself [8 , p. 138]. The same opinion is shared, for example, by S.A. Avakyan [9, p.86], O.E.Kutafin [10, p.38] and others.

It should also be noted that a number of researchers, idealizing international standards, a priori assign them a generally binding, absolutized character, regardless of their perception by the state and its national legislation.

Thus, Professor L.V. Pavlova in an expert report prepared within the framework of the project "Promoting the wider application of international human rights standards in the process of administration of justice in the Republic of Belarus" suggests the following definition of international human rights standards - this is "a set of fundamental rights and freedoms enshrined in international legal documents recognized by the international community as a whole and, by virtue of this, mandatory for implementation in the legal system of each state "[11, p. 216].

Accordingly, it is assumed a priori that international standards are binding on the state, regardless of their perception by the latter, from the embedding of these standards into national legislation.

The previous statement is closely related to the thesis of S.M. Yagofarov on the need "... to recognize as due the situation when any international act expanding the list of statutory rights of an individual automatically acquires the status of a generally recognized norm that does not need any ratification" [12, p. 23].

It seems that these statements, in addition to the assumption of a direct infringement of state sovereignty, allow us to assume an automatic, thoughtless transfer to the law enforcement practice of state bodies, any provisions of international acts, even if they are arbitrarily referred

to as regulating human rights. At the same time, the lack of ratification implies the lack of the state's will to accept such provisions, in fact, their non-recognition (even if only temporary).

As you know, one of the basic principles of international law is the principle of conscientious fulfillment of international obligations. Note that Article 2 of the Charter of the United Nations indicates that the obligations of the Member States of this Organization arise only if they are assumed. At the same time, paragraph 7 of the same article emphasizes that "... the Charter in no way gives the United Nations the right to interfere in matters that are essentially within the internal competence of any state, and does not require Members of the United Nations to submit such cases for resolution in the order of this Charter ... "[13].

The theory of moderate monism, currently dominant in the science of international law, refrains from harsh statements about the imperativeness of the provisions of international law and their unconditional impact on national legislation.

In this regard, V.V. Bogatyrev's point of view seems to be legitimate that "... today states, as the main actors in the international community, while affirming the concept of the primacy of international law, do not at all seek to subordinate the domestic sphere to international law in order to return to theory of international legal monism, but declare a fundamentally new role of international law in an interdependent, largely integral world in the process of regulating interstate relations, based on the recognition of universal human values. ... Adherence to this principle does not mean the recognition of the merger into a single whole of international and national law"[14, p.102].

The position of a number of researchers, according to which an integral condition for adapting international standards is their integration into national legislation [15, p.12; 13, c.18]. Accordingly, the most important in the application, implementation of the concept of "international standards" should be considered their recognition by the state and their "embedding" in national legislation.

It is also important that the perception of international standards by the state depends on the degree of development of society, its mentality, features of historical development and a number of other factors that determine its willingness to accept such standards and apply them in practice.

In this regard, we believe that the above formulation in the Criminal Procedure Code of the Republic of Uzbekistan is insufficiently specific, allowing a fairly arbitrary interpretation.

It would be more acceptable to focus on the prevailing understanding of the essence of international standards, which implies the denial of their imperativeness and presupposes their acceptability only if recognized and implemented by the state.

In this regard, it is proposed to supplement Article 3 of the Code of Criminal Procedure of the Republic of Uzbekistan, part two, thus setting out it in the following edition:

"Proceedings in criminal cases are conducted in accordance with the legislation in force at the time of the inquiry, preliminary investigation and trial of the case, regardless of the place where the crime was committed, unless otherwise provided by treaties and agreements concluded by the Republic of Uzbekistan with other states.

The norms of international law are binding on courts, prosecution bodies, bodies engaged in the fight against crime and other bodies and organizations, if recognized by the Republic of Uzbekistan by ratifying the relevant treaties and agreements concluded by the Republic of Uzbekistan with other states or joining the Republic of Uzbekistan to the corresponding international agreements ".

In addition, as international practice and the experience of other states show, the greatest guarantees of the observance of constitutional rights and individual freedoms in criminal proceedings are ensured by proper judicial control by a specialized judicial body.

So, in particular, the experience of the Federal Republic of Germany, the French Republic and the Italian Republic shows that the introduction of a special position of a judge, who decides on the application of arrest and oversees the observance of the rights and freedoms of the individual during the preliminary investigation, undoubtedly increases the level of proper observance of such rights. and freedoms. It should be especially noted that such a judge does not participate either in the preliminary investigation or in the examination of the criminal case on the merits, i.e. making a decision on the guilt or innocence of the defendant.

A number of international legal documents recognized by our Republic define the basic principles of the administration of justice.

Among others, within the framework of this publication, it should be noted that there are international norms regarding judicial control over pre-trial proceedings. Thus, the reference to such norms is contained in articles 8 and 10 of the Universal Declaration of Human Rights; in article 9 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988; in articles 3, 9, 14 of the International Covenant on Civil and Political Rights; The Basic Principles on the Independence of the Judiciary; Guidelines on the Role of Prosecutors; article 3 of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules); Recommendations of the UN Human Rights Committee on specific cases; The Universal Declaration on the Independence of Justice (Montreal Declaration) and other generally recognized norms of international law.

In general, our criminal procedural legislation has successfully implemented international standards in this area.

Meanwhile, the analysis of the procedure for applying preventive measures established by Chapter 28 of the Criminal Procedure Code of the Republic of Uzbekistan, taking into account the clarification given by paragraph 26 of the resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated November 14, 2007 No. stages of pre-trial proceedings , allows us to conclude that there is insufficient provision of the internationally recognized principle of objectivity in the consideration of cases by the courts.

In particular, the above-mentioned principle is fully correlated with the provision that the use of such serious restrictions on constitutional rights and freedoms of the individual as detention or house arrest as a preventive measure is possible only by the court (judge), in compliance with the adversarial principle.

However, the assumption contained in the above-mentioned paragraph 26 of the Resolution of the Plenum of the Supreme Court of November 14, 2007 No. 16 seems to be a real limitation of the principle of objectivity.

Thus, the aforementioned clarification of the Plenum of the Supreme Court directly indicates that the law allows a judge who has issued a ruling on the application of a preventive measure in the form of detention or extension of the term of detention to participate in the consideration of a criminal case against the same person on the merits. ...

It seems that under such circumstances the judge is unable to go beyond the bounds of a decision once made; will actually be forced, in order to substantiate it, to consider the case on the merits with an accusatory bias. Among lawyers, this phenomenon has a very definite name: “to justify the sanction.” It is worth noting that even if a sanction is given by another judge of the same court, there is a danger of the so-called “mutual guarantee”, when actions to justify the sanction” will be carried out of friendly relations, orientation towards the principle of reciprocity, etc.

It should also be taken into account that the alleged further expansion of the powers of judicial control at the stage of investigation (inquiry and preliminary investigation), while maintaining the existing situation - the decision of this issue by the judges (court), further considering the criminal case on the merits, will not sufficiently ensure proper observance individual rights and freedoms.

The solution of this problem, ensuring even more proper observance of the principles of objectivity and real adversarial nature of the criminal process at all its stages, recognized by the Republic of Uzbekistan, is seen in the introduction of the institution of a judge to ensure judicial control over the investigation.

Note that the introduction of the term “investigating judge” (as is customary in some countries) would not fully correspond to the essence of the activity of this participant in the criminal process, since it implies confusion of concepts according to the principle of analogy (in a number of countries, as you know, the investigating judge is including, even carrying out a number of investigative actions, which, in our opinion, would reduce the level of judicial control).

Accordingly, the term “judge to ensure judicial control of the investigation”, despite its seeming cumbersomeness, seems to be closer to the essence.

In this regard, we propose the introduction of a number of additional articles into the Criminal Procedure Code of the Republic of Uzbekistan, defining the status and specific terms of reference of the mentioned participant in the criminal process.

In particular, it is proposed to supplement the Code of Criminal Procedure of the Republic of Uzbekistan with Article 311: Judge to ensure judicial control over the investigation.

“Control over the proper observance of the rights and freedoms of citizens during the inquiry and preliminary investigation, including when applying preventive measures, is carried out by a judge to ensure judicial control over the investigation.

The powers of the judge to ensure judicial control of the investigation include: consideration of a motion, complaint and protest on issues related to the application of a preventive measure in the form of detention or house arrest or the extension of the period of detention or house arrest with

the obligatory notification of the court that issued the ruling on application of a preventive measure; consideration of the issue of accepting bail, consideration of a petition to suspend the validity of a passport (travel document), consideration of petitions to remove the accused from office, to place a person in a medical institution or to extend the term of stay of the accused in a medical institution, to exhume a corpse, to seize and search , on the arrest of postal and telegraphic items, on the wiretapping of negotiations conducted from telephones and other telecommunication devices, on the removal of information transmitted through them ".

In this regard, the author also proposed appropriate changes to other articles of the Criminal Procedure Code of the Republic of Uzbekistan.

It is also proposed to place a special emphasis on strengthening judicial control in this direction, specifying that the actions and decisions of the inquiry officer, investigator and prosecutor may be appealed to a judge to ensure judicial control over the investigation.

We especially consider it necessary to note that judges to ensure judicial control over the investigation should be part of an independent structure of the judicial authorities, with mandatory delimitation from the current system of courts in criminal cases.

We believe that the introduction of this institution will allow in practice to ensure further strengthening of judicial control over the investigation of criminal cases in order to properly ensure the rights and freedoms of citizens.

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