

Some issues of international legal standards compliance in the area of individual rights in criminal proceedings of the Republic of Kazakhstan

Kuanaliyeva Guldana Amangeldiyevna^{a*}

Doctor of Law, Associate Professor of Customs, Financial and Environmental Law Department in Al-Farabi Kazakh National University, Almaty, the Republic of Kazakhstan

Abstract

This article discusses the issue of international legal standards compliance in the area of individual rights in criminal proceedings of Kazakhstan. It provides analysis on special importance of international law in the criminal justice system in Kazakhstan, as well as the gaps in Criminal Procedural Law of the Republic of Kazakhstan.

Keywords: human rights and freedom, human rights violation, international standards and international legal principles.

Introduction

In recent years, Kazakhstan's society has talked and written a lot about human rights, it has been actively discussed at all levels, from the President of the Republic of Kazakhstan to the ordinary citizens, even those who constantly violate those rights willingly talk about this issue. Attention to this issue has increased significantly, in particular due to the fact that Kazakhstan is increasingly demonstrating commitment to the rule of law and international standards in the field of human rights. The country acceded to the International Covenant on Civil and Political Rights, 1966.

As noted in the Concept of Legal Policy of the period from 2010 to 2020, approved by the Decree of the President of the Republic of Kazakhstan on 24 August 2009 № 858, "the most important link in the legal policy of the state is criminal policy, the improvement of which is done by a complex, interconnected correction of criminal law, criminal – procedural law, and enforcement of the law" (Concept of Legal policy of the Republic of Kazakhstan for the period from 2010 to 2020, 2009). All this requires a radical reconsideration of established conceptions of the mechanism of the rights of individuals.

Position occupied by the human rights culture of the society in general, in the political culture in particular, is largely determined by the nature of the political regime, the level of socio-economic development of the country, the laws and the historical traditions and the mentality of citizens. The entire history of mankind, in fact, is accumulated and reflected in the security of the person - that is, in human rights.

Among the spiritual values of the modern world, human rights occupy one of the most important places. In addition, the situation with human rights is an important indicator for the Republic of Kazakhstan, oriented towards the democratic legal values that should be the most important factor in the development strategy of Kazakhstan.

The Constitution of the Republic of Kazakhstan in 1995, proclaimed the man, his life, rights and freedom to become the supreme value of the state (The Constitution of the Republic of Kazakhstan, 1995). By taking the course towards building the rule of law, Kazakhstan has established one of the top priorities of his government activity recognition, respect and protection of the rights and freedom of a person and a citizen. However, in practice, including the leading Western European countries, what is written in the law is one thing, but law enforcement is sometimes quite different.

Before turning to the international principles and standards in the field of individual rights, it is necessary to highlight some of the conceptual problems of the criminal process in general, which have other - private problems (including the problem of equal opportunity for both, the prosecution and defense).

Analysis of legislation and law enforcement practice in Kazakhstan shows that the new Code of Criminal Procedure of the Republic of Kazakhstan (CCP RK), adopted in 1997, and aimed at improving the legislation with regard

* Kuanaliyeva G. Tel: + 7 701 94 000 97

E-mail: kuanalieva.guldanakz@mail.ru

to the international criteria, did not become a major step forward, fundamental changes have taken place. CCP did not only not solve issues, but complicated the criminal procedure issues even more.

In practice, the international standards are not applied this way, the basis of transformation and rationalization of the system of criminal procedure relations. As you know, the Constitution of the Republic of Kazakhstan, states: "International treaties ratified by the Republic shall have priority over the laws and are applied directly ..." (paragraph 3 of Art. 4). A major problem is the lack of awareness of legal practitioners on the availability and content of the international standards in the field of human rights. For example, not all final decisions of the European Court of Human Rights (Kazakhstan, as it is known, "signed" the Convention for the Protection of Human Rights and Fundamental Freedoms) which found a violation of the European Convention on Human Rights by Kazakhstan, are translated into Russian and Kazakh languages and publicized officially.

Unfortunately, the essence of the criminal justice system is still the fight against crime, and not the protection of the rights and lawful interests of individuals.

The trial court did not become an independent and central figure in the criminal process. It is administered by a higher court like it used to. There is even a saying among the judges: "If you do not know how to pass a judgment, pass it by law!" The problem is that very often the judges know what judgment to pass. The "pompous" court buildings and lush gowns is not the judiciary. The court must be fair and independent. The basis of the new Code of Criminal Procedure is still former "Soviet" principles, with the introduction of some of the principles and provisions of the legislation borrowed from progressive countries. The fundamental changes in existing legal framework have not occurred, and the ideas formed in the stereotypes of justice hamper the development of criminal justice.

There is a large field of forensic investigative discretion in the current CCP. In this connection, it is required to regard the quality criteria which the law has to meet (the norm), to be considered "legal" in the sense of international law. Under the European Convention on Human Rights, the criteria of "quality of law" is: the law must meet the requirement of legal certainty and predictability, that is, must be formulated with sufficient precision to enable the persons concerned to foresee, in the circumstances, reasonable consequences that may lead to actions.

Legal certainty of Kazakh Criminal Procedural Law leads to serious disapproval.

There are a number of valuation concepts in the law, as, for example, the "Exceptional cases, extremely difficult, a lot of the criminal cases, cases, pressing imperatives, long time, and so on." Wide scope for discretion of the law enforcer is a breeding ground for corruption. And in terms of where the goal is, the fight against crime unrestricted arbitrary interpretation results accusatory. When the quality of the investigation and administration of justice is reduced because of unprofessional staff of criminal justice, statistics show that nearly 98% of convictions include a large number of innocent prisoners. And it happens despite the fact that today our prisons are overcrowded, and practically do not correct, but rather "cripple" the convicted

The main part

Section 2 of the Constitution of the Republic of Kazakhstan is called "Man and Citizen." It describes the content of the most important rights and freedoms of people in the scope of the Constitution of Kazakhstan.

Civil rights are granted by the state to a man, who is a citizen, citizen of a given state. Human rights are not necessarily associated with citizenship. Moreover, according to the teachings of Montesquieu on the relationship of the individual and the state, which had a significant influence on a modern understanding of human rights, it is that which precedes the law and defines it. Human rights are the primary position with respect to the legal rights or the rights of citizen because legislation does not confer the rights of citizens at their discretion, but only legally executes the already established social relations, which are the most important for the state and human wealth (The Constitution of the Republic of Kazakhstan, 1995).

The modern idea of human rights, as it is well known, appeared in the seventeenth and finally formed in the eighteenth century with ideas of "natural", "inalienable", "given to the individual from the birth" rights, the existence of which limits the supreme power - while the absolute power of the monarch. In the universal concept of human rights, there are different doctrines, philosophies, political, economic, ethical and legal doctrines of many ages and nations, embodied. This concept is a vision of human dignity as the highest value." Anchored by the international regulations, human rights exist regardless of their recognition by any State. They are closely related to the rights of the citizen as the possibilities of its existence and development embodied in domestic law. Recognition and enforcement of ones, and the others is an intrinsic property of any democratic constitution. This definition is fully applied to the Constitution of Kazakhstan, where the formula for human rights with its classical features: "the rights and freedoms enjoyed by everyone from birth, are recognized as absolute and inalienable ..." - has been embodied in twelfth Article

The following principles of international law are most closely related to criminal proceedings:

- the sovereign equality of States;
- non-interference in internal affairs;
- use of force or threat of force;
- faithful implementation by States of their international obligations;

- inter-state cooperation and solidarity of states;
- humanism, respect for human rights and justice..

Thus, according to the principles of sovereign equality and non-interference in the internal affairs, State shall not be entitled to make laws or take actions that distribute its judicial jurisdiction in another state without the consent of the latter. So, for example, it should be considered null and void the results of the proceedings, the investigating authorities committed by one state on the territory of the other, if it is not stipulated in the relevant international agreement. The principle of non-use or threat of force means that no state may seek the use of its internal law through kidnapping or capturing individuals on the territory of another sovereign state or demand their extradition under the threat of military action, etc. States' implementation of the principle of good faith of international obligations reflected in the fact that the provisions

of the national criminal procedure can not be grounds for refusal to comply with international obligations. If the law has rules that are contrary to the international agreement signed by the State, by virtue of the principle of the norms of the contract, and the law must be brought into line with international obligations. The principle of international cooperation and solidarity among the States is expressed primarily in the broad practice of concluding treaties on mutual legal assistance, including in criminal cases.

Among the generally recognized norms of international law relating to the criminal proceedings, should be the ones establishing:

1. Inadmissibility of the use of torture or cruel, inhuman, degrading treatment or punishment in criminal proceedings, the right to humane treatment and respect for human dignity (Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, 4/11/50 city, the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the 10.12.84, principle 6 Body of Principles for the Protection of All persons under Any Form of Detention or imprisonment any form approved by the UN General Assembly № 43/173 of 09/12/88 G.) (Convention for the Protection of Human Rights and Fundamental Freedoms, 2001).

2. The ban on extradition of a person to another State if: a) there are substantial grounds for believing that he would be subjected to torture or death penalty, and b) the offense of which is regarded as a political offense or has reasonable grounds to believe that the request for extradition is the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or for another crime other than the one that was specified in the request (Article 3 of the European Convention on Extradition. Strasbourg, 13.12.57 g.) (European Convention on Extradition, 1957).

3. Inadmissibility of arbitrary arrest or detention: "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as is established by law" (Article 9 of the International Covenant on Civil and Political Rights. New York, 19.12. '66, and Art. 5 of the Convention for the Protection of Human Rights and Fundamental freedoms).

4. The right of an arrested or detained for judicial review of the lawfulness of arrest or detention promptly, meaning without undue delay, within a reasonable period of time (Article 9 of the International Covenant on Civil and Political Rights, paragraph 3 of Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, § 3 of Art. 5 of the CIS Convention on the Rights of the Freedom rights, principles 11, 32 Body of Principles for the Protection of All persons under detention or imprisonment in any form whatsoever) (The International Covenant on Civil and Political Rights. , 1966).

5. The right of a detained or arrested to have the application requests notifying family members or other persons of his choice of their detention or arrest, and the place in which it is contained, the right to family visits and correspondence with them (principles 16, 19 Body of Principles for the Protection of All Persons detention or imprisonment any form) (Convention for the Protection of Human Rights and Fundamental Freedoms, 2001).

6. The right of a detained or arrested to carry out the medical examination (Principles 24-26 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment any form).

7. Prohibition on the use of such methods to the detainee, which impair his capacity of decision or his judgment, including the prohibition on abuse of the detained in order to obtain his testimony against himself or herself or any other persons (Principle 21 of the Body of Principles for the Protection of All Persons detention or imprisonment in any form whatsoever) (Convention for the Protection of Human Rights and Fundamental Freedoms, 2001).

8. Prohibition on the imposition of unjustified restrictions on detained or arrested, if it is strictly required for the purpose of the detention arrest (Principle 36 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment any form) (Convention for the Protection of Human Rights and Fundamental Freedoms, 2001).

9. The right to compensation for anyone who has been the victim of unlawful arrest or detention or direct condemnation (vv. 9, 14 of the International Covenant on Civil and Political Rights, § 4 of Art. 5 CIS

Convention on Human Rights and Fundamental Freedoms) (The International Covenant on Civil and Political Rights, 1966)

10. The right of the accused to be informed of an arrest in a language which he understands of the nature and cause of the accusation against him (paragraph 3 (a) of Art. 14 of the International Covenant on Civil and Political Rights, § 3 (a) of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the principle of 10 CFR principles of human rights and fundamental freedoms; principle 10 Body of Principles for the protection of human rights and fundamental freedoms, principle 10 of the Body of principles for the Protection of All Persons under detention or imprisonment in any form whatsoever) (Convention for the Protection of Human Rights and Fundamental Freedoms, 2001).

11. The right of everyone charged with a criminal offense shall to be presumed innocent until his guilt is proven according to the law, that is, presumption of innocence (Article 11 of the Universal Declaration of Human Rights, § 2 of Art. 14 of the International Covenant on Civil and Political Rights, § 2, Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, § 2, Art. 6 of the Convention on the Rights of the CIS and Fundamental Freedoms).

12. Person's right to a fair and transparent review of the charge against him, without undue delay, in full equality by a competent, independent and impartial tribunal established by law (Article 10 of the Universal Declaration of Human Rights, adopted by the Third Session of the UN General Assembly, the 10.12.48 § 1 of Art. 14 of the International Covenant on civil and political Rights, § 1 of Art. 6 of the Convention for the Protection of human Rights and Fundamental freedoms, section 1, Art. 6 CIS Convention on human Rights and Fundamental freedoms).

13. To have enough time and facilities to prepare his defense and to defend himself in person or through his own choosing of a defender (Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms Section 3 (d) of Art. 14 of the International Covenant on Civil and Political Rights; n. 3 (b) of Art. 6 of the Convention for the Protection of human Rights and Fundamental freedoms) (The International Covenant on Civil and Political Rights, 1966).

14. The right to be provided with qualified legal assistance from a competent lawyer (paragraph 6 of the Basic provisions on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime. New York, August 1990) (The main provisions of the role of lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime, 1990).

15. The right to present the accused or the suspect with a defender and an interpreter when he does not have enough money to pay for them (paragraph 2 of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, § 3 (d) of Art. 14 international Covenant on Civil and political Rights).

16. The defendant's right to question witnesses against him and obtain the attendance and examination of witnesses under the same conditions as the witnesses witnessing against him have (paragraph 3 (e) of Art. 14 of the International Covenant on Civil and Political rights, § 3 (d) of Art. 6 of the Convention for the Protection of human Rights and Fundamental freedoms).

17. Prohibition on forcing a person to testify against himself or to confess guilt and the person's right to refuse to give such testimony (paragraph 3 (g) of Art. 14 of the International Covenant on Civil and Political Rights).

18. The right to review the sentence by a higher tribunal according to law 9, paragraph 5, Art. 14 of the International Covenant on Civil and Political Rights).

19. Rule «non bis in idem» («not twice for the same thing" - Lat.), the prohibition of double jeopardy against a person criminally responsible for an offense, for which he has already been finally convicted or acquitted (Sec. 7, Art. 14 of the International Covenant on Civil and Political Rights) (The International Covenant on Civil and Political Rights, 1966).

International treaties regarding matters of criminal procedure, may find consolidation as generally recognized principles and norms and rules, and the rules governing the relations only of participating entities. Depending on the number of contracts are multilateral and bilateral, Composition and level of the participants may be different. The highest value for the criminal proceedings have agreements on legal assistance, specifying how a judicial and investigative bodies of the different countries in the prosecution of persons who are outside the states where the crimes were committed, the execution of Letters of procedural actions, etc. There Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, signed in Minsk on 22/01/93, the (effective 12/10/94 g). A large number of interdepartmental agreements on cooperation in the fight against crime concluded with law enforcement agencies of other states by the Ministry of Internal Affairs and the Prosecutor General of the Republic of Kazakhstan.

The Conclusion

Generally accepted international principles and norms exist in the form of norms established by international treaties, and in the form of legal practices that make up the so-called general international law. Statute of the

International Court of Justice on 26.06.45, the custom is defined as evidence of "general practice accepted as law" (paragraph 1 «b» Art. 38).

Usual rate becomes an attachment to general international law as a result of its recognition, if not by all, then by the majority of states, representing the main political and legal systems. Modern international law usage acquires formal definition, as the generally recognized principles and norms are usually reflected in multilateral conventions and agreements, and also - in the other instruments of international law: the declarations, resolutions of international bodies and organizations, conferences, and the decisions of international courts and etc. The authority of these documents is particularly high.

Feature of the formation of modern customary international law in the field of criminal justice has a growing influence on them by so-called recommendation standards or international standards, the development of which the United Nations Congress on the Prevention of Crime and the Treatment of Offenders plays the main role. Congress documents are usually supported by resolutions of the General Assembly. Among them, the Code of Conduct for Law Enforcement Officials (1979), Basic principles of judicial independence (1985), the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly (1985), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment in any form whatsoever (1988), Summary of the role of lawyers (1990) and others. Justification is whether a norm accepted and cannot always be easy. As proof of the universally recognized norms of nature can be: a) fixing the norm in international documents, and b) the lack of protests against its universally recognized character, and c) the actual recognition of standards (the so-called transformation) legislation sufficiently representative number of States (Umarhunov, 2001).

Each of the parties participating in the investigation (citizen of the Republic of Kazakhstan, as well as a foreigner or a stateless person) is a person, whose a dignity and inalienable rights are owned by birth. State laws may impose restrictions on the rights of the sole purpose of recognition and respect for the rights of others and of meeting the just requirements of morality and public order in a democratic society.

Ensuring the rights of participants in the investigation, under the Constitution of Kazakhstan, shall meet the conception of the man, his life, rights and freedoms as the highest value and in accordance with international principles and norms (standards) in the field of human rights.

Kazakhstan's integration into the world community, chairmanship in the OSCE (2010) requires careful study of international standards of human rights, consideration of the rights of participants in criminal proceedings in foreign countries. Human rights and freedoms - these are universal legal values, which are characterized by the establishment of common international legal standards for the protection of individual rights. Contemporary international law has recognized and, therefore, is binding on all states for defining the fundamental rights and freedoms of the individual who is in the area of criminal procedure relations.

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