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Fair Trial in Criminal Matters: UN Standards and Factors of Transformation of its Russian Model[1]

Tymoshenko Andrey,
PhD in Law, University Professor,
Prosecutor's Office of the Russian Federation
E-mail: antim1@yandex.ru

Abstract. *Based on an analysis of international standards in the field of justice discussed at the 13 UN Congresses on Crime Prevention and Criminal Justice since 1950, the article examines the characteristics of the "ideal" model of a fair criminal process from the point of view of the world community. In the context of a fairly broad understanding of the sign of justice, both at the level of national law enforcement bodies and in the context of the application of international acts by various intergovernmental organizations, it is quite important to isolate the key signs of justice.*

The author studied not only the International Conventions and Declarations discussed at the Congresses, but also their working documents, which made it possible to more accurately determine the desired vector of development of national legislation in its movement toward building a more just criminal process.

The conclusions drawn in the work based on the results of the study can be used in lawmaking, as well as be the subject of scientific discussion of the acceptability of the recommendations of the international community for the purposes of effective lawmaking and law enforcement.

The author also proposes to take into account the identified factors affecting the fairness of legal proceedings when building scenario analysis models regarding the future transformation of the judicial system in connection with its global digitalization.

Keywords: *criminal proceedings, generally recognized principles and norms of international law, human rights, digitalization, transformation of the judicial system, justice, the right to a fair trial.*

In the increasingly accelerating development and digitalization of global processes, associations and public entities have become vital in ensuring the stability of the existing order of relations between individuals.

In line with such an order, the state performs its general function of preserving the integrity of society through laws [1, p. 16–17].

Society, particularly the individuals comprising it, is saved from destruction through the prohibition of the most dangerous acts. Since Antiquity, criminal manifestations have been considered socially conditioned and not dependent on the will of an individual politician. In particular, Cicero noted the possibility of approving any law (and even indulging the whims of the cruel Emperor Sulla); however, such a law will be unreasonable and negligible and will thus be revealed as unfair [2].

By the beginning of the 21st century, this circumstance, together with the active development of the economic and political processes uniting the world, led to the emergence of largely similar criminal legislations affecting the key problems in modern humanity, including organized crimes, terrorism, crimes against humanity, drug trafficking, legalization of criminal proceeds, and others[2].

In support of this trend, we note that the United Nations (UN) Office on Drugs and Crime has developed an international classification of crimes for statistical purposes with the consideration of more than 1,200 criminal acts in many countries worldwide[3]. The work of various UN bodies established under the UN Program, including the ECOSOC Functional Commission on Crime Prevention and Criminal Justice and the United Nations Interregional Crime and Justice Research Institute, contributes to the unification of criminal legislation.

[1] This study carried out under RFBR research financial support project number 18-29-16151.

[2] See the fundamental work: Lemonik. M. M. [3, p. 4]. Somewhat aside are the issues of the application of responsibility for religious crimes, for example, in some countries of Islamic law based on the norms of Sharia [4, p. 16-17].

[3] United Nations Survey of Crime Trends and the Functioning of Criminal Justice Systems in 2018 (UN-CTS, 2018) / / Official Website of the United Nations Office on Drugs and Crime. URL: https://www.unodc.org/unodc/ (accessed 24.04.2020).

In this regard, a logical continuation of the unification of criminal legislation and criminal law is to introduce to a single model the procedures adopted when establishing the circumstances of committed acts. Naturally, the recommendations of the UN point to the need to pay attention not only to the development of adequate measures to prevent crimes but also to the universalization of criminal procedures to ensure its fairness[4].

The development of the most optimal model of legal proceedings for testing in the context of globalization and the accompanying digitalization of all spheres of society is impossible without considering international experience [29].

Emphasis must be placed on the key requirements of the organization of production on criminal cases in universally recognized international legal acts formulated based on fairness in the context of the recognition of access to justice as a human right; this specific context is aimed at protecting the minimum due process rights (see Article 6 of Regional International Act — the European Convention for the Protection of Human Rights and Fundamental Freedoms) and ensuring the functioning of a competent, independent, and impartial court (Article 14 of the International Convention on Civil and Political Rights).

This study examines the key requirements for judicial fairness imposed by the UN. The observance of these requirements will allow the de jure count on the possibility of declaring compliance with the principles of international law. Moreover, the study of the circumstances of the adoption of these principles is to warn against the attempts to extensively interpret the fairness category in the enforcement process and in the organization of diplomatic negotiations.

At present, the primary document establishing the universally recognized principles and norms of international law is the Universal Declaration of Human Rights of 1948.[5]

The provisions of this document clearly establish everyone's right to a fair trial. This message is highly universal and broad in terms of content. Therefore, its formulation requires the simultaneous use of several independent articles and the guarantee of the proper legal status of each individual:

Every person, to determine their rights and obligations and to establish the validity of the criminal charge brought against them, has an equal right to have their case heard publicly and in compliance with all the requirements of justice by an independent and impartial court (Article 10).

Everyone has the right to be reinstated by competent national courts in the event of a violation of their rights (Article 8);

No one may be subjected to arbitrary arrest, detention, or expulsion (Article 9);

Every person accused of committing a crime has the right to be considered innocent until his guilt is established by law through a public trial, in which he is provided with all opportunities for protection (Article 11).

If we consider the special legal significance of the Universal Declaration, which, according to N.A. Lipkina, does not formulate specific rules of conduct but cites usually legal norms or norms of general international law, then its subsequent development in other acts of international law is not only welcome but also actively implemented [5, p. 63]. One can note that the ideas laid down in the Declaration have become the preamble of many recognized universal international treaties. Therefore, the legal force of this document is indisputable.

The guarantees of individual rights are undoubtedly inherent and cannot be overcome under any circumstances. In this context, the decision of regional bodies for the protection of civil rights (e.g., the European Court of Human Rights in the case "Nait-Liman v. Switzerland," in accordance with paragraph 108) recognizes that any norm of the general international law (i.e., the prohibition of collective expulsion and torture) cannot be resolved with reference to state sovereignty, leading to the non-obvious state responsibility for violations by other national governments[6].

The Chairman of the Constitutional Court of the Russian Federation V. Zorkin also provided a high assessment of the Universal Declaration of Human Rights, pointing out that it is "the first universal international act in which the states of the world community agreed, systematized and proclaimed the fundamental rights and freedoms that should be granted to every person on Earth" [6].

The extremely general nature of this document is also highlighted in the doctrinal literature. Thus, in the classic work on international law, the point of view on the assignment of the Declaration to the collection of the norms of jus cogens is reasonably given [7].

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[4] Established in accordance with ECOSOC Resolution 1992/1 of 06.02.1992, the Commission on Crime Prevention and Criminal Justice is obliged to be guided in its activities by ECOSOC Resolution 1992/22 of 30.07.1992, which defines among its priorities not only the search for methods to combat transnational and domestic crime, but also the dissemination of fair judicial procedures (official website of the United Nations Office on Drugs and Crime). URL: https://www.unodc.org (date accessed: 22.01.2020).

[5] Universal Declaration of Human Rights. Adopted by the UN General Assembly on 10.12.1948 / / Rossiyskaya Gazeta. 1995. 5 Apr. No. 67.

[6] Decision of the ECHR of 05.03.2018 on complaint No. 51357/07 / / SPS ConsultantPlus.

The development of the ideas laid down in the Universal Declaration of Human Rights and Fundamental Freedoms is reflected in the adoption of the International Covenant on Civil and Political Rights on December 16, 1966, during the 1496th plenary meeting of the UN General Assembly in accordance with Resolution 2200 (XXI)[7].

States also have mutual claims against one another. Professor E. A. Lukasheva, a modern researcher of this international treaty and a recognized expert in the field of international law, rightly notes the main reason for the contradictions between the Great Powers regarding the development and adoption of the International Covenant: it is "the incompatibility of two concepts of human rights—liberal and socialist" [8, p. 16].

Meanwhile, this study pays special attention to the priority of liberal rights on the basis of the traditions of Western philosophy, as expressed in the works of great thinkers, including J.J. Rousseau, S.L. Montesquieu, G. Grotius, B. Spinoza, T. Hobbes, and J. Locke.

However, this approach undoubtedly diminishes the importance of the influence of the socialist camp on the development of international law in terms of establishing guarantees for the realization of individual rights.

According to the founders of Marxism — Leninism, the main claim that can be made with regard to the value system of a capitalist society is the actual inaccessibility of the proclaimed equal access of everyone to public goods.

Thus, V.I. Lenin wrote: "Democracy for the insignificant minority, democracy for the rich — that is the democracy of capitalist society. If we take a closer look at the mechanism of capitalist democracy, we will see everywhere, and in the 'small,' supposedly small, details of the electoral right … restrictions of democracy" [9, p. 88].

One might say that the source of the methodological conflict between the Soviet Union and the West is the accusation of the latter with regard to the demonstrative proclamation of unsecured rights and freedoms.

Largely as a result of this circumstance, the Pact was ratified by the USSR only in 1973, i.e., more than six years after its adoption.

An analysis of the text of this universal international treaty highlights the need to emphasize the enormous attention paid to ensuring proper judicial procedures and protecting the rights of citizens at the expense of all the legal tools available to the government.

In accordance with the Covenant, states have sought to create conditions for any person who claims a violation of his or her legitimate interests to seek legal protection from state authorities, including competent judicial authorities (Article 2).

Along with the court, as a key defender of violated rights, the system of other state authorities is called here. Given the special status of the judiciary, the participating states are called upon to fulfill their obligation to "develop the possibilities of judicial protection." Apparently, this approach speaks about the initial vulnerability of the court in comparison with the executive power requiring restrictions; however, the approach does not prevent us from insisting on the priority of the human rights function for national governments that is almost the same as that performed by judges.

However, in doctrinal sources, judicial protection still refers to "the most effective ways of legal protection" [10, p. 282].

The Constitutional Court of the Russian Federation went even further. It recognized judicial protection as a guarantee against the arbitrariness of legislative and executive authorities, as well as against erroneous court decisions[8]. The converse is as follows: the right to a remedy must be ensured by the competent judicial, administrative, and legislative authorities.

The International Covenant on Civil and Political Rights pays particular attention to the issue of ensuring access to due process for persons detained in connection with their possible involvement in the commission of a crime.

In accordance with Article 9 of the Covenant:

- every person arrested or detained on charges of committing a crime is urgently brought before a judge or other official representatives of the judiciary;
- such a person has the right to be tried within a reasonable time or to be released;
- the detention of persons awaiting trial should not be a general rule, and their release may be subject to guarantees of attendance at any stage of the trial and, if necessary, attendance for the execution of the sentence.

Such proceedings have a few requirements (Article 14 of the Covenant): every person with a criminal charge brought against them has the right to a fair and public hearing by a competent, independent, and impartial court established by law.

Thus, the Covenant provides for special requirements for the subject called upon to conduct such proceedings (a court that meets the above

[7] International Covenant on Civil and Political Rights. Adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966 // SPS ConsultantPlus.

[8] See: The Decision of the Constitutional Court of the Russian Federation dated 28.05.1999 No. 9-P "On the check of constitutionality of article 266 and paragraph 3 of article 267 of the Code of RSFSR about administrative offences" // ATP ConsultantPlus.

criteria must be involved), the subject of judicial research (the prosecution must be considered), and for the hearing itself (it must have signs of publicity and fairness).

Special attention is drawn to the enumeration of the qualitative characteristics of the court proceedings guaranteed by an international treaty.

A fair and impartial court of justice may not in itself constitute the desired justice.

Regarding the publicity of the proceedings, the authors of the international treaty under consideration immediately specify that "the press and the public" may not be allowed to attend all or part of the court sessions for reasons of security and protection of private interests. Note that etymologically, the word "public" is close to the concept of "people" (population)[9], the presence of which in the judicial process forms its publicity[10].

The same Article 14 of the Covenant, as in the Universal Declaration of Human Rights, proclaims the principle of the presumption of innocence, followed by certain guarantees for everyone charged to

- be informed in their native language of the nature and basis of the charge against them;
- have sufficient time to prepare their defense and communicate with their chosen defender;
- have the opportunity to attend the court session and defend himself personally or through a lawyer of his own choice or a free lawyer for the purpose;
- interrogate witnesses who testify against him and demand that they be interrogated in accordance with the established procedure, just as they demand that witnesses be called in their own defense;
- have the free assistance of an interpreter if necessary;
- have the right to refuse to testify against oneself or to admit guilt.

At first glance, the listed procedural guarantees of ensuring an individual's rights involved in the sphere of criminal proceedings appear somewhat haphazard and taken out of the context of a single procedural regulation of the procedure for conducting criminal proceedings.

The established guarantees should be expanded by defining the minimum requirements for a "qualified defender" and introducing a ban on the abuse of procedural rights so as to guarantee equal access to justice for victims along with the accused.

However, making further demands during the adoption of an International Covenant is problematic. Its text is formed on the basis of the results of the discussion of the proposals of developers, as well as the delegates of UN member states representing completely different legal systems. The refusal of these states to accept a single International Covenant on Human Rights is not accidental, but the division of one International Covenant into two (on civil and political rights and on economic, Social, and cultural rights) is a consequence of the above-mentioned dispute over the two concepts of human rights[11].

The Covenant opens the way for dialog and provides an opportunity to refer to its provisions as full-fledged norms of international law.

The ideas set out in the International Covenant are actively adopted by other international organizations and groups of states. For example, in 1980, the Universal Islamic Declaration of Human Rights was adopted, and it almost completely repeats and strengthens the provisions we have mentioned regarding the right of everyone to access justice; it proclaims not only the right but also the duty of everyone to protest against the injustice of justice [12, p. 6]. However, we are forced to make a reservation about the trend observed by international lawyers of de-universalization in the introduction of the idea about the international protection of human rights. The phenomenon of striving for "Asian values," the refusal of citizens of the countries of the Asia-Pacific region to apply to the court, and the preference for mediation makes us think about the conditionality and some formality of the international recognition of the values of the Covenant [14, p. 83–85].

In addition, the lack of priority of international law over national legislation demonstrated by the United States[12] does not inspire confidence in the universal applicability of UN standards to access to justice.

Nevertheless, through the very logic of applying the general rules of international law enshrined in the International Covenant, one can conclude about the absence of any direct violation of the guarantees of the right to a fair trial protected under it.

[9] In Russia, it has been used since the time of Peter I also in the meaning of "common people" [11].

[10] The outdated meaning of the term "publicity" is associated with the presence, the existence of the public. See the Explanatory Dictionary of D. N. Ushakov online. URL: http://ushakovdictionary.ru (date accessed: 05.11.2017).

[11] It is sufficient to say that when adopting a less specific and voluminous document of the Universal Declaration of Human Rights, almost all its provisions were put to the vote, it was repeated more than 1,400 times (see the work of E. V. Baryshev [12]).

[12] We are talking about the well-known principle in American law "the latest expression of the sovereign will" (the latest expression of the sovereign will), in the implementation of which the law is important (and an international treaty has a status not higher than the law), adopted later (the decisions of the US Supreme Court in the case of Head Money (1884) and Whitney v. Robertson (1888) — cit.by: work of Osminin B. I. [15, p. 239]).

Without notifying the person brought to justice about the substance of the charge, the necessary level of mastery of the case materials by the defender or the accused is not likely to be achieved. In this way, their ability to participate in the study of evidence may not be adequate.

Similarly, the examination of witnesses provides the court with an opportunity to thoroughly examine the evidence obtained. The assumption is that in the classic adversarial process, where the prosecution acts one-sidedly, the latter may not refrain from providing evidence in a somewhat narrowed form. Nothing prevents the prosecutor from keeping silent about any facts that are important for the assessment of the evidence presented to him. Only a defense lawyer pursuing the opposite goal (to achieve the acquittal of his client) is able to expand the perspective of the court, thus ensuring the comprehensiveness of the study of evidence [30].

In accordance with Article 14, Paragraph 3 of the Covenant, the access to proclaimed guarantees must be based on "full equality." In this sense, this rule corresponds to the rule of Article 26 of the Covenant, which establishes the principle of equal protection of everyone under the law.

In its original meaning, the concept of "aequitas" (justice) in classical Roman law was understood by historians Titus Livius and Carnelius Tacitus as "equality" [16, p. 63].

Article 14 of the Covenant, which we have already considered, also provides for the need to observe a reasonable period of legal proceedings, which is not directly related to the right to protection because a long trial only detracts from the educational significance of legal proceedings and thus makes such proceedings a routine procedure. At the same time, delaying the process does not exclude the possibility of providing appropriate remedies for the accused.

Similarly, the reference in Article 14 of the Covenant to the need to ensure a special procedure for criminal proceedings against minors, with consideration of their age and providing for the adoption of measures for their re-education, calls for a change not only in the quality of the entire criminal process but also in the realization of the right to protection of the suspect, that is, the accused and the defendant.

In other words, these guarantees form a single right of any citizen to a fair trial that is protected under an international treaty of the Russian Federation.

According to the same logic, a trial is not considered fair if the right of the convicted person to review the sentence by a higher court is infringed, along with the rights to rehabilitation in case of a judicial error (Article 14, Paragraph 6 of the Covenant). This description is contrary to the very nature of justice and does not comply with the principle of non bis in idem — you cannot be tried twice for the same thing — in accordance with the criminal procedure law (Article 14, Paragraph 7 of the Covenant)[13].

Thus, in accordance with the principles enshrined in the International Covenant on Civil and Political Rights, the right to a fair trial of criminal cases involves such a procedure that not only guarantees the right to protection but also provides a special judicial procedure. In such procedure, the interests of the individual defendant are considered and established on the basis of the necessary evidence pertaining to the circumstances of the offense in full.

However, proclaiming the rule is not enough as the main task is to ensure its real implementation. From this point of view, the Covenant compares favorably with previously adopted acts of international law in view of other specific approaches to the formulation of the criteria of judicial fairness enshrined in it.

The versatility of the legal phenomenon under consideration has forced the international community to continue working to determine the criteria for the fairness of legal proceedings.

The main platform for discussing this issue is traditionally the UN Congresses on the Prevention of Crime and the Treatment of Offenders.

The literature suggests that the positions developed at these Congresses regarding the interpretation of the norms of international law and the preparation of specific responses to the challenges of our time turn into international legal customs, which eventually become norms of law following their inclusion in binding international treaties or implementation in domestic legislation[14].

Let us pay attention to the landmark meetings of the UN Congresses, in which issues about ensuring the fairness of justice were discussed.

The **Fifth Congress** on the Prevention of Crime and the Treatment of Offenders (Geneva, Switzerland, 1975) was the most effective in this regard.

The leitmotif of the delegates' speeches was the need to consider the social factors in the organization of the fight against crime. In the

[13] This procedural clause in a fundamental or generally recognized international treaty makes it possible, in our opinion, to use administrative prejudice in the formation of grounds for bringing perpetrators to criminal responsibility. Moreover, the tradition of classifying "administrative" offenses as such, not because of their legal nature, but because of a different system of punishment, prevailed for a long time in Europe and was familiar to Russian pre-revolutionary legislation (see the work of L. V. Golovko [17]).

[14] For example, M. V. Skirda believes that the documents of the Congresses turn into the norms of the so-called "soft" law, which are of an ordinary nature [18].

course of the work, direct references to the science of behavior — behaviorism — were actively used to assess the activities of criminals. This trend was evaluated by Soviet criminologists, who then found a vivid expression in the well-known collective monograph of leading criminologists in collaboration with the highly qualified and recognized geneticist N.P. Dubinin [19].

The depth of reasoning demonstrated at the Congress regarding the organization of proper criminal proceedings is striking. The following are selected excerpts from the relevant working paper[15]:

Legal aid should be made available to the poorest people, especially in countries that have been freed from colonial dependence;

Individual legal institutions for the administration of justice (for example, the jury trial) should not be blindly borrowed from developed countries because the resulting delay in the process only embitters the population, turning it against the judicial system;

The transfer of criminal cases of minor crimes to nonjudicial bodies ("community court," "friendly court") should only be welcomed, as it allows better, taking into account local traditions, to contribute to the prevention of crime;

Criminal law should not be "drawn up" arbitrarily or without considering local traditions;

At all stages of the process (judicial and pretrial), the criminal case must be treated critically, each time considering the grounds for termination of the associated proceedings;

Excessive publicity of the trial or the active coverage of it in the press can negatively affect the impartiality of judges;

A person brought to criminal responsibility does not have any negative features that justify a dismissive attitude toward him; on the contrary, according to studies conducted in the United States, almost everyone at a certain age commits crimes, thereby indicating the absence of any global deviations in criminals.

However, the most interesting topic discussed at the Congress was the violence that is committed against convicts to obtain confessions from them. In the scandal that broke out in Uruguay in the 1970s, American advisers clearly introduced the practice of local police torture of political prisoners; hence, taking concrete steps to prevent such action in the future became necessary [20, p. 307].

The Congress approved the Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[16].

The Declaration was the result of the international community's understanding of the harmfulness of the humiliation of citizens' human dignity in the course of criminal prosecution by the state acting through its representatives. Thus, in accordance with Article 1 of this document, torture is "any act by which a person is intentionally subjected to severe pain or suffering, physical or mental, by or at the instigation of an official, in order to obtain information or confessions from him or from a third person, to punish him for actions he has committed or is suspected of committing, or to intimidate him or others." Hence, any action of an official authority, including an investigator, prosecutor, or judge[17], that causes pain or suffering for the person brought to criminal responsibility for the good purpose of establishing the circumstances of the act is considered as inadmissible for the purposes of ensuring the fairness of the proceedings. Some time ago, Ya. Foynitsky pointed out the danger of investigators' unlimited power over the accused when "inspired by the best intentions, he (the investigator — A. T.) almost imperceptibly crosses the border of necessity" [21, p. 6].

In accordance with the obligation set out in Article 6 of the Declaration, states must constantly review the "interrogation methods and practices" of various individuals to prevent torture and other cruel, inhuman, or degrading treatment or punishment.

Article 9 of the Declaration is particularly specific: an impartial investigation of possible abuses by law enforcement agencies should be organized even in the absence of a corresponding complaint from the victim.

The direct legal procedural consequence of the use of torture in any form is the impossibility of using the confessions of the accused (suspect) as evidence.

These and other ideas formed the basis of the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted on December 10, 1984.[18]

[15] See: Working paper of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders "The role of criminal law, the administration of justice and other forms of public control in crime prevention" // UN Document A/CONF. 56/4.

[16] Adopted in accordance with UN General Assembly Resolution No. 3452 (XXXX) of 09.12.1975 // SPS ConsultantPlus.

[17] The author, for example, is aware of a case of direct physical influence by a judge on a witness questioned in a court session under a pseudonym. The judge, having granted the request of the defense party to disclose the true identity of this participant in the criminal proceedings, personally tried to remove the witness from the cabinet where he was placed to ensure that he was not visually observed by persons present in the courtroom (materials of the Prosecutor General's Office of the Russian Federation).

[18] Adopted by UN General Assembly Resolution No. 39/46 of 10.12.1984.

We emphasize that Article 15 of the Convention specifically stipulates the rule on the inadmissibility of evidence given under torture, even in the course of pretrial proceedings, in a court session.

Part II of the document guarantees the possibility of considering any complaints about violations of the Convention in a specially created body consisting of experts, that is, the Committee against Torture (consisting of 10 people with high moral qualities and recognized competence).

A report on the use of torture is subject to consideration by the Committee if other interstate protection procedures are not applied (at the time of examining the admissibility of the treatment) against the applicant, as well as if domestic remedies have been exhausted[19].

As a general rule, the Committee's jurisdiction is limited to the examination of reports of torture received from states' parties to the said international treaty.

However, each contracting party may recognize the Committee's authority to deal directly with complaints from its citizens[20].

When resolving appeals, the Committee actively refers to its own practice of assessing the situation in a country that is an alleged violator of the Convention against Torture. It also uses the official reports of the UN General Assembly.

For example, while considering the message "Inass Abishou v. Germany," the Committee pointed out that it was inadmissible to extradite the complainant to Tunisia because of "the existence in the country of a consistent pattern of gross, flagrant and mass human rights' violations"21.

A significant number of cases considered by this UN treaty body against national governments relate to the extradition of prosecuted persons to "disadvantaged countries." Therefore, supporting information about the Committee's activities is important in building the body's position with regard to the reliability of a particular judicial system.

Thus, in accordance with Paragraph N of the Report of the Committee against Torture on its work in 2016–2017, the Committee actively cooperates with nongovernmental organizations, such as the Danish Institute against Torture "Dignity" and the international organization "For Fair Trials"[22].

In conditions neglecting the procedural status of the person involved in the sphere of criminal proceedings, the creation of information provides reasons for asserting the existence of mass facts about the ill-treatment of citizens by the authorities, and reputational threats can be created in the system of criminal proceedings in a particular country. For example, the methodological manual for civilians on the preparation of relevant appeals distributed under the auspices of the Committee against Torture emphasizes the purely informational significance of such statements: "the only way to increase the effectiveness of measures to prevent human rights violations by the international community is to provide it with the necessary information" [22, p. 9].

Therefore, law enforcement agencies and representatives of the judiciary have a special task: to pay close attention to ensuring the accessibility of judicial processes to the media, as well as their compliance with special requirements, which include, among other things, creating conditions for their educational impact on the population through publicity.

Another important consideration is the lecture given by the Director of the Canadian Association of Criminology and Correctional Practice, W. McGrath, at the Congress. The speaker touched upon the problem of introducing moral norms into the practice of criminal proceedings, which we have already raised. In his opinion, the emphasis on rationalism, the creation of strict rules that establish administrative or criminal liability, does not allow for the prevention of crime. Nevertheless. the existing difficulties could be resolved by creating "a strong philosophical foundation that gives due importance to moral responsibility, as well as to the rights of the individual"[23].

In this context, the Fifth UN Congress, for the first time, expressed the need for supranational regulation of law enforcement agencies: the proposal to develop an international code of police ethics so as to provide "guardians of order" with additional restrictions on the exercise of their official

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[19] This rule does not apply in cases where the application of these measures is unnecessarily delayed or unlikely to provide effective assistance to a person who is a victim of a violation of this Convention, and therefore it is not necessary to go through all the judicial procedures for resolving a criminal or administrative case.

[20] USSR recognized the competence of the Committee against torture in accordance with the Decree of the Supreme Soviet of the USSR dated 05.07.1991 No. 2307-1 "About removal of reservations to articles 20 and recognizing the competence of the Committee against torture under articles 21 and 22 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment" (SPS Consultant plus).

[21] Communication No. 430/2010. The decision taken by the Committee 21.05.2013 // Review of court practice of the Supreme Court of the Russian Federation for the fourth quarter of 2013 (app. The Presidium of the Supreme Court 04.06.2014). SPS ConsultantPlus.

[22] Report of the Committee against Torture adopted at the 72nd Session of the UN General Assembly (document No. A / 72/44, GE. 17-10174) / / Official website of the Committee against Torture. URL: www.tbinternet.ohchr.org (date accessed: 20.08.2017).

[23] Report on the outcome of the Fifth United Nations Congress on Crime Prevention and Regimes for Offenders (Geneva, 1-12 September 1975)/ / UN Document A / CONF. 56/10. P.132.

powers was approved[24]. A noteworthy aspect of this code is the need to formulate separate rules that would allow for the immediate dismissal of police officers for violating the code of ethics. In general, the document should be a "strong incentive to respect the rights of citizens" and the manifestation by authorized officials of the necessary foresight to their behavior.

Despite the achievements in the discussion of certain aspects of judicial justice at the level of the UN Congresses on the Prevention of Crime and the Treatment of Offenders, the problem of ensuring the right to a fair trial, as a complex phenomenon, was still considered at **the Sixth UN Congress** held in Caracas on August 25–September 5, 1980. The Caracas Declaration[25], the final document adopted as a result of the international conference, emphasizes the need to establish a policy in the field of criminal justice and build a justice system so that "it was based on the principles of guaranteeing equality of all before the law without any discrimination, effectiveness of the right of counsel and the presence of a judiciary capable of ensuring quick and fair administration of justice, as well as provide maximum security and protection of the rights and freedoms" (p. 6).

A literal interpretation of this provision leads to the idea that no exhaustive list details the signs of justice in criminal proceedings, and those mentioned (equality, nondiscrimination, inadmissibility of bureaucracy) do not individually and collectively guarantee justice.

The Declaration (Paragraph 5) also calls for the inclusion of the most qualified persons in the staff of the administration of justice. These persons are able to perform their tasks regardless of personal interests and the interests of any group.

Twenty-five years after the adoption of this act of international law, the subsequent UN Congress on Crime Prevention and Criminal Justice noted that the Caracas Declaration, for the first time, called on the international community not to impose uniform standards of justice on all countries without exception. The specific social, cultural, standard, and economic living conditions of the population in a particular country need to be considered. The process should be gradual, and the specified model should be applied as obstacles to its implementation are removed[26].

In other words, the fairness of proceedings may also be affected by other actions that clearly jeopardize compliance with the norms of criminal procedure law that guarantee a single procedure for criminal proceedings.

Among the issues that promote the fairness of the process, the problem of differentiation of the criminal procedure form was identified by the Congress, which then proposed to establish special rules for juvenile defendants[27].

From the point of view of the delegates of the Sixth UN Congress, the application of relatively lenient special procedures to minors at all stages of proceedings is of fundamental importance for the development of a unified concept of juvenile justice. This feature is associated with the young age of the person being brought to criminal responsibility and requires the relaxation and maximum protection from the impact of the negative "adult" factors of criminal prosecution. In this sense, the procedural rights of a minor are recognized only to the extent that their use allows them to be assisted by an adult representative.

A fundamental feature of the Caracas Declaration is a highly broad view of the problem of juvenile delinquency that is not limited to the development of proper judicial procedures.

The concept of "juvenile justice" also has a "pretrial part" when children are provided with additional social guarantees aimed at preventing them from committing crimes. Although these procedures are not directly related to the construction of a fair process, their non-application has a significant impact on the results of the administration of justice, that is, it does not remove a certain degree of state guilt for omissions in the crime prevention system.

The key guarantee of the implementation of the right under consideration is still ensuring the independence and impartiality of the judicial system.

At the Seventh Congress, this issue was also actively discussed. Hence, the Basic Principles of Judicial Independence were adopted[28].

The preamble to the document recognizes the special status of judges in relation to other state authorities as they make "final decisions on issues of life and death, freedom, rights, duties and property of citizens."

In this regard, judges should be independent of the actions of other bodies and organizations; such independence is ensured primarily by personnel policy:

[24] UN Working Paper "The new role of the police and other bodies in law enforcement, with a particular focus on the changing environment and minimum standards of efficiency" // UN Document A/CONF. 56/5. pp. 53-54.

[25] Adopted on 15.12.1980 by Resolution 35/171 at the 96th Plenary Meeting of the UN General Assembly.

[26] UN Working Paper "Fifty Years of the UN Congresses on Crime Prevention and Criminal Justice: Past achievements and Future Prospects" // A/CONF. 203/15. P. 5.

[27] See UN working paper "Justice and juvenile justice: before and after the Commission of a crime" // A/CONF. 87/5. pp. 10-11.

[28] Approved by UN General Assembly Resolution 40/146 of 13.12.1985 // SPS ConsultantPlus.

- Undoubtedly, judges should have high professional qualifications;
- Important is the compliance with high moral qualities and abilities;
- The procedure for appointing judges should be as transparent as possible so that the above conditions are met;
- A judge can only be removed from office in the absence of any objective opportunity to perform his or her duties;
- The proceedings on bringing judges to justice should be fair, and they should at least imply compliance with these guarantees and exclude their unfounded accusations of committing an illegal and unacceptable act.

A literal reading of the Basic Principles indicates that the developers associated the fairness of judicial proceedings not only with a high level of institutional organization of the judiciary but also with the need to comply with a certain procedure in the administration of justice. Among the fundamental guarantees of such procedural fairness, the following provisions are quite reasonably attributed:

- Court decisions are made solely on the basis of facts and only in accordance with the law;
- When determining the issues to be investigated in a court session, the judge is limited only to the interests of justice, and only the judge determines their nature in each specific case;
- The principle of independence of the judiciary not only grants them powers but also imposes an obligation to ensure the fairness of the conduct of judicial proceedings while respecting the rights of the parties involved.

Principle 5 specifically emphasizes the inadmissibility of the creation of special tribunals, their functioning under the guise of ordinary courts, and the substitution of simplified administrative procedures for the rules of criminal proceedings and the principles of their fair trial.

We should note here that the calls we have already cited from the UN Congresses to refer cases to community or friendly courts do not limit or contradict this principle because such “quasi-elections” are essentially “probations” aimed at preventing the commission of crimes in the future.

Meanwhile, the application of the procedures we outlined herein to such conditions only increases their importance and brings them closer to the judicial authorities. Moreover, it makes the entire justice system not only an important state function but also a body that ensures the educational impact of the law on the population.

An analysis of the Basic Principles on this issue reveals the following prescriptions:

- The distribution of cases among judges is an internal matter of the court administration;
- The promotion of a judge is only made possible by objective factors, including one's abilities, moral qualities, and experience;
- The procedure for removing judges from office must comply with the pre-established rules of judicial conduct;
- The decision to remove or dismiss a judge should be subject to independent review.

Subsequently, in 1989, the Procedures for the Effective Implementation of the Basic Principles of Judicial Independence were adopted to develop these Principles[29].

As the title of the document implies, its main purpose is to ensure the implementation of the rules laid down in the Basic Principles.

To this end, a requirement was introduced for the mandatory publication of the Basic Principles under the rules for the publication of internal state laws. The obligation to ensure adequate funding of the judicial system was also highlighted so as to achieve the economic independence of judicial institutions in general and judges in particular.

The global outcome of the discussion of these issues was reflected in the adoption of the Bangalore Principles of Judicial Conduct in 2002[30]; the Principles are systematized and divided into large subgroups as follows depending on the direction of the regulations: ensuring the independence, objectivity, and honesty of judges; their compliance with ethical standards; their commitment to the principle of equality; and their desire for their own competence and the development of professionalism.

A thorough study of these documents demonstrates one feature of judicial activity: it cannot be unnecessarily searchable in the fight against crime. Given the need to ensure the objectivity of their own position, judges cannot show inappropriate “activism,” including the search for new crimes.

The analysis allows us to identify the permanent signs of a fair trial, which are not subject to change in the organization and implementation of any reforms of judicial and law enforcement systems. Among the key ones are the following:

- Justice should be administered by a body that occupies a special position in the system of the state apparatus — an independent and impartial court acting on the basis of self-government;
- The court decision cannot be final and indisputable, and the proceedings in the second instance court create conditions for ensuring access to justice;
- The form of criminal proceedings should be differentiated depending on the identity of the victim and the accused;

[29] Adopted on 24.05.1989 in accordance with Resolution 1989/60 at the 15th plenary meeting of the United Nations Economic and Social Council.

[30] E/CN.4/2003.

- The ideas of the rule of law and the priority of human rights should certainly be considered at the law enforcement level as they create obstacles to excessive formalism and "callousness" to the aspirations of people in practice;
- Compliance with the principle of fairness in criminal proceedings is as much in the interest of justice as in the interest in ensuring its effectiveness, humanity, and focus on the truth.

Despite the importance of the work done within the framework of the UN to explain the idea of justice in criminal proceedings, it remains quite broad in content, thus creating conditions for its inadequate interpretation by law enforcement agencies at the national and international levels.

The fight against crime is possible only within the framework of the offensive position of law enforcement agencies aimed at establishing all the circumstances of the crime while "armed" with strategically verified tools of criminal policy.

The great Soviet criminologist I.I. Karpets, at the end of his life and after having his views of the Soviet period subjected to ideological revision, regretfully stated that many of the modern excesses of the Stalinist period or the embellishments of the criminal situation in society during the period of N.S. Khrushchev and L.I. Brezhnev came from the excessive politicization of the domestic actions of the authorities, the attempts to explain complex social phenomena with a relatively simplified theory of class struggle, and the need to build a socialist state [23, p. 8].

In the absence of a serious discussion in society about the problems of crime, this situation led to the "moral" self-confidence of the Soviet elite about the "bright future" of the country that eventually reduced its resistance to external aggression [24], as well as internal destructive factors (lack of resistance to the development of radical nationalism in the republics, economic difficulties, etc.) [25,26].

For the problem of combating crime, the issue of ensuring the fairness of criminal proceedings is complex, requiring the development of appropriate international standards, which will only be viable if they are studied by the law enforcement authorities of states and considered at the legislative level of each country.

The above-mentioned signs of a fair judicial system in this sense deserve attention in the context of future changes in society. Global digitalization, which facilitates the work of judges, prosecutors, and investigators in accumulating, processing, and analyzing information that is relevant for use in the process of proving criminal cases, should not detract from the essence of justice as a special type of state activity aimed at ensuring the fulfillment of the general function of the state, which is to preserve the integrity of society.

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Справедливое судопроизводство по уголовным делам: стандарты ООН и факторы трансформации его российской модели[1]

Тимошенко Андрей Анатольевич,
профессор Университета
прокуратуры Российской Федерации,
кандидат юридических наук,
доцент
E-mail: antimı@yandex.ru

Аннотация. *В статье на основе анализа международных стандартов в области правосудия, обсуждавшихся на 13 Конгрессах ООН по предупреждению преступности и уголовному правосудию начиная с 1950 г., рассмотрены характеристики «идеальной», с точки зрения мирового сообщества, модели справедливого уголовного процесса. В условиях достаточно широкого понимания признака справедливости как на уровне национальных правоприменительных органов, так и в условиях применения международных актов различными межправительственными организациями, вычленить ключевые признаки справедливости является достаточно важным.*

Автором исследованы не только Международные конвенции и декларации, обсуждавшиеся на Конгрессах, но и изучены их рабочие документы, что позволило более точно определить желательный вектор развития национального законодательства при его движении в сторону построения более справедливого уголовного процесса.

Выводы, сделанные в работе по результатам исследования, могут быть использованы в законотворческой деятельности, а также являться предметом научного обсуждения приемлемости рекомендаций международного сообщества для целей эффективной правотворческой и правоприменительной деятельности.

Автором также предложено учитывать выявленные факторы, влияющие на справедливость судопроизводства, при построении моделей сценарного анализа, касающихся будущей трансформации судебной системы в связи с ее глобальной цифровизацией.

Ключевые слова: *уголовное судопроизводство, общепризнанные принципы и нормы международного права, права человека, цифровизация, трансформация судебной системы, справедливость, право на справедливое судебное разбирательство.*

[1] Исследование выполнено при поддержке РФФИ в рамках научного проекта № 18-29-16151 мк.

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