



## THE REFLECTION OF INTERNATIONAL STANDARDS ON THE RIGHT TO A FAIR TRIAL IN NATIONAL LEGISLATION AS A MECHANISM FOR A DEMOCRATIC STATE GOVERNED BY LAW

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**ABSTRACT:** - The article contains international standards on the right to a fair trial, international documents, the content of the rights of the defendant to an independent, impartial and competent court, the jurisdiction of the judiciary, the views of leading scholars and experts on the role of courts in a democratic state, international law and scientific analysis of national legislation.

**KEYWORDS:** Competent, independent and impartial judiciary, universally recognized principles and norms of international law, international legal framework of the law of justice, jurisdiction, international standards in national legislation.

### INTRODUCTION

Today, almost all developed countries in the world have chosen the path of building a democratic state governed by the rule of law,

and in a sense, they have achieved and are achieving their goals. We can say with confidence that one of the necessary conditions for a democratic state governed by the rule of law is the existence of the principle

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of separation of powers in the system of state bodies and the independence of the judiciary and the rule of law. This rule means that the restoration of the violated rights of a person, the restriction of his freedoms and rights, the determination of guilt for the crime committed and the imposition of appropriate punishment or other legal action is carried out only by the court.

In addition, everyone who has committed a crime has the right to a fair trial, ie his case must be heard in an independent, impartial and fair court, provided that it is enshrined in international law and not less than the rules established by international standards recognized by states. Similarly, persons who have been harmed or harmed as a result of a crime (victim, civil plaintiff, etc.) have the right to judicial protection for the violation of their rights established by law.

The right to judicial protection guarantees the protection of the rights and freedoms of citizens in court. This is one of the basic rights of every person living in a democratic state governed by the rule of law, and in parallel, it is also the duty of a democratic state governed by the rule of law to ensure this right. Judicial protection is one of the ways to protect the rights, freedoms and legitimate interests of the subjects of justice through fair trial.

According to the Universal Declaration of Human Rights, everyone has the right to effective remedies by the competent courts in case of violation of the fundamental rights granted to him by the Constitution or the law (Article 8). has the right to consider his case in an independent and impartial court on the basis of equality in accordance with all the requirements of openness and fairness (Article 10).

However, the European Convention on Human Rights also provides that in the event of a dispute over the rights and obligations of each person or criminal charges against him or her, he or she shall be treated fairly and openly by an independent and impartial court established by the relevant law. have the right to withdraw (Article 6, paragraph 1).

The above norms set out the basic international standards imposed on the courts as the right of citizens to a fair trial, which is to have the case heard by an independent and impartial court within a reasonable time, in a fair and transparent manner.

An independent court is a court that is separate from other bodies of the state, is not hierarchically subordinate to them, is financially independent, has the power to decide a case only in accordance with its internal trust and in accordance with the law.

In the case of impartial courts, the defendant and the victim must be treated in the same light by the law, creating the same conditions for them in the trial, but only the principle of adversarial proceedings. If the court creates more conditions for the defendant than the victim during the trial, or if the defendant decides the outcome of the case, the court's impartiality will be called into question. As a result, this standard is violated. This, in turn, violates the right to a fair trial.

Moreover, to the methods of ensuring the protection of the rights, freedoms and interests of the individual through the judiciary, modern legal systems allow for other methods of protection of rights, such as self-defense of individual rights. The above norm stipulates that a person may self-protect his rights, and in our opinion, a citizen may apply to the relevant law enforcement agency, not to the court, to protect his rights. In this

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process, the rights of the citizen can be restored without going to court. However, if the violated right violates the rights of the individual as a result of the crime, we think that it will definitely have to be protected by the court.

This is because the existence of an institution of judicial protection of rights in the legal system based on the principle "any violated right must be protected by the court" is a necessary condition for the recognition of such a legal system as truly democratic.

In addition, modern legal systems should guarantee the independence of the judiciary. This independence, provided by legal, organizational, political, ideological measures, is an integral attribute of a non-false institution of judicial protection of violated rights, which guarantees the judicial protection of violated rights of the subject, including: part is also guaranteed.

There are now many classifications of national criminal law and criminal procedural law systems in states around the world. In our scientific work we also consider the developed types of legal families classified on the basis of historical-legal and cultural features of the states.

There are several legal families and relevant "national" types of criminal justice system:

1. The Romano-Germanic legal family (continental system) is characterized by the predominance of legal norms: it is usually reinforced by codified rules. This family includes most countries of continental Europe: including Europe, as well as Latin and Central American countries, French-speaking African countries, the Middle East, Indonesia, Turkey

and, in terms of official legislation - Japan, Singapore, Thailand and many other Asian countries, including Central Asian countries.

2. The common law family (island or Anglo-Saxon legal system) first of all promotes the legal practice expressed in the set of court decisions - precedents, ie when the court makes a decision on a particular issue, it takes into account the previous court decision on the same issue. Typical representatives of the Anglo-Saxon legal system are England, the United States, most countries of the British Commonwealth: Australia, New Zealand and others<sup>1</sup>.

According to the legislation of the Republic of Uzbekistan, criminal justice in the Republic of Uzbekistan is carried out by the Supreme Court of the Republic of Uzbekistan, the Supreme Criminal Court of the Republic of Karakalpakstan, regional, Tashkent, district (city) courts and military courts. The court of first instance has the right to issue a verdict or ruling in a criminal case. The court of appellate instance shall consider cases on appeals and protests against invalid judgments and rulings of the court of first instance<sup>2</sup>.

Article 389 of the Criminal Procedure Code (CPC) of Uzbekistan stipulates that criminal cases are subject to judicial review. According to him, all criminal cases are subject to the jurisdiction of the district (city) court on criminal cases, except for cases referred to the jurisdiction of higher courts and military courts.

The court of the Republic of Karakalpakstan, regional, Tashkent city court is charged with the second part of Article 97, the fourth part of Article 118, Articles 150, 153, 155, 157, 158,

<sup>1</sup> International standards for fair trial and criminal proceedings in the Republic of Uzbekistan. Guide. International Commission of Lawyers.

<sup>2</sup> Article 397, CPC of The Republic of Uzbekistan,

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the third and fourth parts of Article 159, Articles 160, 161 of the Criminal Code. The third part of Article 210 applies to cases of crimes provided for in Articles 230, 231, 242, 244.

If during the trial of a criminal case in one court it is established that the defendant has committed a crime related to another trial, the case shall be continued by the court that initiated the trial.

Cases related to the jurisdiction of military courts shall be determined by law.

The Supreme Court of the Republic of Uzbekistan has very complex and important cases.

The Chairman of the Supreme Court of the Republic of Uzbekistan, the Chairman of the Court of the Republic of Karakalpakstan, the chairmen of the regional, Tashkent city courts, the Chairman of the Military Court of the Republic of Uzbekistan has the right to submit it to the regional military court for consideration.

According to the third part of the above article, if during the trial of a criminal case in one court it is established that the defendant has committed a crime related to another trial, the trial shall be continued by the court that initiated the trial. However, international law, in particular Article 5 of the UN Basic Principles on the Independence of the Judiciary, adopted in 1985, provides for the right of a person accused or convicted of a crime to be tried by a competent court. Our national legislation also defines cases within the competence of district (city) courts and higher courts. However, if the case is found to belong to another court after the trial has begun, it will be heard in the court where the trial began, rather than being sent to another court under the jurisdiction rule. Also, in the fifth part of

Article 393 of the Criminal Procedure Code, if it becomes clear at the hearing that the case belongs to another court of the same level, the court will continue to hear the case, otherwise the court will send the case to another court. intended to produce. However, what should be taken into account in this case is that international standards such as the right of the defendant to be tried by a competent court or the right of the victim to be tried in a competent court must be taken into account.

Of course, all courts, like citizens, are interested in a fair trial, so the norms of the above article should strictly refer the case to another court if the issue of jurisdiction is determined during the trial. The wishes of the defendant and the victim must be taken into account. Because when the issue of jurisdiction is resolved with the consent of the participants in the crime, one of the international standards of the right to a fair trial, the rule of "trial by a competent court" is not violated.

Therefore, taking into account the rights and interests of the defendant or the victim, it is necessary to consider the extent to which the norms of the above article correspond to the norms of international law and the existing norms of our national legislation.

In the CIS countries, if a defendant is found guilty of a crime under another court, the case will be transferred to another court. In particular, according to Article 75 of the Criminal Procedure Code of the Republic of Azerbaijan, in making a decision on the admission of a criminal case to court:

1) materials on simplified pre-trial proceedings, complaints in the order consider the availability of private charges, as well as other materials, and the issue of jurisdiction. If it is established that the case has been

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referred to a court, the criminal case or other materials shall not be within the jurisdiction of that court, and the court shall send it to the court which is obliged to do so.

2) in the second part, if the court finds this out in the course of the proceedings, the criminal case must be heard in another court (under its jurisdiction).

According to the Criminal Procedure Code of the Russian Federation:

1. The judge shall decide to refer the criminal case to court, determining that the criminal case received in the decision on the appointment of the court session does not fall under the jurisdiction of this court.

2. The court finds that the criminal case under its jurisdiction belongs to the jurisdiction of another court of the same level, but if it has begun consideration at the hearing, it has the right to leave the criminal case in its proceedings with the consent of the defendant.

3. If a criminal case falls under the jurisdiction of a higher court or a military court, then in all cases it must be conducted in accordance with the jurisdiction<sup>3</sup>.

According to Article 15 of the Criminal Procedure Code of the Republic of Latvia, the right to a trial is established, according to which everyone has the right to a fair, impartial and independent trial.

According to Article 316 of the Code of Criminal Procedure of the Republic of Kazakhstan, the normative decision of the Supreme Court of the Republic of Kazakhstan dated December 8, 2017 No. 10 "On some issues of application of criminal procedure

legislation by courts": if it is determined that the case is not included, the court will decide the case in accordance with its jurisdiction.

Also, if the main court finds that the rules of territorial jurisdiction of the case provided for in this Code have been violated, then with the consent of all participants in the proceedings, the court shall continue to hear the case or refer it to the appropriate court.

If it is established that the case falls under the jurisdiction of the specialized inter-district court for criminal cases, the specialized inter-district military court for criminal cases or the military court of the garrison, it is considered to be relevant to the court<sup>4</sup>.

Article 317 of the Code of Criminal Procedure of the Republic of Kazakhstan states that in some cases a case may be heard as soon as possible, comprehensively and impartially, including with the consent of the defendant or at the request of the parties. transferred from one level of court to another for consideration.

However, this is allowed before the case is filed before the trial begins.

The case may also be transferred from one court of the same level to another at the request of the party, at the request of the judge or the presiding judge, if the court is unable to consider the case within the prescribed period. The issue of transferring the case from one court to another is decided by a higher court and a court decision is issued.

Hence, according to the criminal procedure legislation of the above states, international standards for the right to a fair trial are defined differently in national legislation. In particular, there are different approaches in the legislation of the CIS countries in ensuring the

<sup>3</sup> Article 34, Criminal Procedure Code of the Russian Federation.

<sup>4</sup> Article 316, CPC The Republic of Kazakhstan.

right of the perpetrator to be tried by a competent, independent and impartial court. In some cases, if the court finds that the case belongs to another court, the case will continue to be heard if the consent of the parties to the criminal case is taken into account, and in some state legislation it does not preclude the full disclosure of the case. For example, according to Article 34 of the Criminal Procedure Code, the case is decided by jurisdiction as a general rule until the trial, if the case is determined by another court, the court will continue to hear the case with the consent of the parties, especially the defendant and the victim. If he does not agree, the criminal case will be sent to another court of jurisdiction. In the Criminal Procedure Code of the Republic of Azerbaijan, if the case is determined during the trial, the case is sent to the appropriate court of jurisdiction.

From the above, it can be concluded that the main element to be considered in deciding the issue of jurisdiction is the jurisdiction of this person. This right, defined in the norms of international law, is recognized as an international standard. In ensuring this right, we must first and foremost ensure the protection of human rights, in particular the right to a fair trial. The rights and wishes of the defendant or victim must be taken into account.

In the CPC of Uzbekistan, if during the criminal proceedings it is determined that the case falls under the jurisdiction of another court, the consent of the defendant and other participants must be taken into account in the first place. If they do not agree to continue the case, it is suggested that the court determine that they are obliged to refer the case to another court as appropriate.

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