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Role of international law of the internal criminal law of the CIS countries establishing guilty responsibility in formation

The task of this article includes the analysis of basic provisions of the international criminal law and consideration of single questions of its application in the Commonwealth countries. Also in article the attention is paid to the questions connected with definition of a role of norms of the international criminal law in system of the national legislation of countries of the Commonwealth of Independent States and the assessment of extent of influence of these norms on formation of internal criminal law of data of the states is given.

Key words: international law, international treaties, national law, sources of law, implementation, implement.

*Let's lay through joint efforts
new complex ways social, ecological and
economic development which are based on the principle
of social justice and the promise of the better future for all.*

Ban Ki-moon

(The message on the occasion of the World day of social justice on February 20, 2016)

In the report on the general debate of the 70th session of the United Nations General Assembly the President of the Republic of Kazakhstan spoke «Kazakhstan supports all initiatives directed on restoration of trust in the international relations, peace and security consolidation on the basis of international law» [1]. Further in the performance the President of Kazakhstan N. Nazarbayev has emphasized that «the dangerous call is represented by an erosion of international law and weakening of global institutes» and by century of the UN has suggested to develop the Plan of the Global Strategic Initiative — 2045 which sense would be a bringing to the world of a new trend of development on the basis of fair conditions of access of all of the nation to world infrastructure, resources of the market, and also general responsibility for development of humanity. We think, important place in this strategic plan will be taken by questions of general fight against crime. On a row with social and economic progress in modern society also growth of number of the most serious crimes is observed. It is not only all-criminal (cross-border) offenses, but also international crimes.

In spite of the purposes of the UN in the field of the prevention of crime and criminal justice, especially reductions of crime, more effective and effective law enforcement and administration of justice, respect of human rights and fundamental freedoms and assistance to achievement of the highest standards of justice, humanity and professional behavior which appear in «The Vienna declaration on crime and justice: answers to calls of the 21st century» the UN accepted on the X Congress according to the prevention of crime and the treatment of offenders [2], Vienna, on April 10–17, 2000, two thousand-year world ontogenesis demonstrates, that, unfortunately the mankind couldn't get rid of evil influence of crime.

Total number of the registered crimes in 2015 in comparison with 2014 has decreased on all State Parties of the Commonwealth of Independent States by 7% and has made more than 3,6 million. In Belarus and Russia it has decreased respectively by 7% and 12%. Rise in crime is noted in Azerbaijan and Tajikistan for 1%, Armenia and Kazakhstan — for 8%, Kyrgyzstan — for 20%, Moldova — for 30% and Ukraine — for 15% [3]. Considerable scales gets terrorist crimes, religious extremism, illicit trafficking in the forbidden objects (drugs, psychotropic substances, the weapon, etc.), a traffic of children, women, all this has taken a transnational form in the last decade.

The accruing threat of such offenses demands global corrective actions, by association of efforts of all participants of the world community. Improvement of interaction in the field of the prevention of the crimes connected with human trafficking in territories of the State Parties of the CIS is one of the most important directions of further accumulation of efforts of the international community on counteraction to these dangerous transnational crimes [4].

The chairman of Executive committee — the Executive secretary of the CIS, S. N. Lebedev speaking in Vienna at opening of conference of Alliance on fight against human trafficking (on July 6, 2015) I have spoken that «human trafficking in its various manifestations and forms continues to remain one of the most dangerous types of a transnational organized crime» [5]. Afterwards, he has emphasized that in the State Parties of the CIS the solution of safety, counteractions to human trafficking and illegal migration also remains priority area of the cooperation based on the conventional principles and rules of international law and which is equitable to national and regional interests.

Also all State Parties of the CIS consider fight against terrorism and extremism as one of the most important problems of ensuring the national security and support further strengthening of interaction on this course because the terrorism is one of the main threats to security for all world community which went beyond a national framework long ago and has gained the international character, became a source of unprecedented danger to people pernicious to development. Today in more and more globalized world any country, even the most advanced, isn't capable to conduct successful fight against terrorism alone. It obliges the world community including member states of the Shanghai Cooperation Organisation (SCO) to consolidate the efforts in fight against the international terrorism and the most radical manifestations of extremism [6].

If to follow valuable recommendations of the International scientific and practical conference «Improvement of Cooperation of Competent Authorities and Special Services of the State Parties of the CIS in the Sphere of Counteraction to Modern Calls and Threats to Security» taken place on November 27–28, 2013. in Minsk, further development of regulatory legal base of the joint activity regulating cooperation of the State Parties of the CIS in counteraction to various forms of terrorism including with use of nuclear, chemical, biological and bacteriological materials is necessary, for crimes with use of information technologies, and also activization and improvement of organizational and practical interaction between competent authorities and special services of the State Parties of the CIS in counteraction of economic crime, corruption, legalization of income gained in the criminal way, identification and suppression of activity of the international terrorist and extremist organizations, channels of their financing, and also channels of delivery of the weapon, ammunition, explosives and explosive devices prevention of use of capacity of non-governmental non-profit organizations by the terrorist and extremist organizations for implementation of the activity [7].

Conferees were unanimous that all these threats and calls dictate need of further building of joint efforts on strengthening of regional stability and safety in the context of counteraction to terrorism and a transnational organized crime, ensuring the international information security, settlement of migratory processes, strengthening of boundary cooperation and ensuring collective security in the sphere of defense on space of the Commonwealth of Independent States.

Increase of efficiency of interaction of competent authorities according to the prevention, identification, suppression and investigation of crimes of terrorist and extremist character, identification and suppression of activity of the organizations and persons involved in implementation of terrorist and extremist activity, and also on counteraction to financing of terrorism, criminal prosecution is also main objectives of cooperation in this direction.

Among all system of international law it would be desirable, to note the special place of the international criminal law which is allocated with features of sources, specificity of object of regulation, an originality of methods and mechanisms of regulation of legal relations.

Ensuring national security, assistance to development of the international cooperation in criminal prosecution and fight against crime, friendly the relation between the nations on the basis of respect of a principle of equality and self-determination of the people, acceptance of the appropriate measure for strengthening of a universal peace, are considered as one of the main tasks of the CIS countries pursuing the prime target of the state — political stability, economic development for the benefit of all people. The foreign policy of these countries which relying on the principles to maintain an international peace and safety, to take effective collective measures for prevention and elimination of a threat to peace and suppression of acts of aggression or other violations of peaceful co-existence, in consent with the principles of justice and international law is directed to the solution of objectives, promote creating favorable conditions for further development of social and economic life of the country.

The chosen course of the States is the Commonwealth in fight against the international and transnational crime, and criminal prosecutions for these acts provides active use of norms of modern international law which effectively work in this sphere. Opportunities to use norms of the international criminal law increases every day in that measure in what in the international relations positions in questions of fight against crime

and criminal prosecution are more and stronger approved asserting by the CIS. Any state as the participant of the international relations and the subject of international law, adopts laws of a world order, at the solution of questions of realization of criminal liability, it is also important to it to be guided by the internal law.

The possibility of use regulatory functions of the international criminal law, for implementation of activity of the state in the sphere of departure of criminal justice, assumes recognition of the fact of a ratio of the international and internal criminal law. In this case it is important to emphasize that the international criminal law and interstate criminal integrally compatible systems. It allows approaching the international criminal law from positions of the fact that it has the tool value as it is used as means for achievement of the purpose of justice in the state. In this regard, there is a need to find out whether the international criminal law takes the priority place in system of the national right. A. Movchan noted, «The modern international relations make uniform comprehensive system and therefore all actions of the states have to be put in a strict legal framework of the general for all countries of international law» [8; 20]

Only such approach represents international law as the mechanism which to be in continuous interaction with associates — with the national right. From here follows, standard, organizational and material security of interests of the state's international law, helps realization of the main objective of international law, contribution to respect for common interests of mankind.

The State Parties of the international relations, having the internal living conditions characterized by their interests, requirements, various material and economic parameters and socio-political systems make the contribution to formation of uniform international legal system. At coincidence of own interests of each of participants of the international communication, push them on development of the international legal norms satisfying common interests of the majority in realization of criminal liability. Interests on establishment of guilty responsibility belong to number of national and common interests of any of the CIS countries as they show requirement, identical to all states, — the integrated process of administration of justice.

For the benefit of these states to have the most universal standard mechanisms of attraction to guilty responsibility. Processes of internationalization of interests of justice, developing in modern international community, are based on the main and strategic questions of establishment of guilty responsibility in the state.

The role internationally — the precepts of law directed to regulation of departure of criminal justice remains powerful and has direct value in formation of national legal systems. As it is told in the Concept of legal policy of the Republic of Kazakhstan for the period from 2010 to 2020 No. 858 signed with the Decree of the President of the Republic of Kazakhstan of August 24, 2009 «For ensuring compliance of the national right to new calls of time, increases of his competitiveness further improvement of rule-making and law-enforcement activity of the state is necessary, having finally exempted from the legal doctrines which aren't answering to prospects of the 21st century» [9].

And at the beginning of the new millennium the international standards about criminal liability as well as all other norms are created for achievement of specific goals — ensuring due level of criminal justice, opposition of the world community of large-scale crime, including transnational character. Following these purposes, the Commonwealth countries gradually bring into accord with the universally recognized international standards the internal laws and in general national legal systems.

Evolutionary processes of formation criminal legal means of fight against crime in the Commonwealth countries have a long and difficult way. First of all it is connected with adoption of obligations by these countries to bring the national legislation into accord with norms of the international criminal law. It should be noted, and international criminal it is right to be still at a stage improvement as it has feature to develop in close interaction with the internal law.

Almost for the 25 years period of declaration of independence the legislative base of the CIS countries has endured essential metamorphoses. Criminal laws of a number of the countries were adopted several times, and changes and additions were made to laws of others. Such modernization is connected with the available tendency of globalization and introduction of international experience. Implementation of the obligations for reduction of laws according to the universally recognized norms of international law, first of all have found reflections in standards of the constitution of the CIS country, further in the laws «About International Treaties».

Increase of a role and number of the international treaties regulating questions of criminal liability have given an impetus to the Commonwealth countries to assume obligations to bring into accord with the international standards the internal law.

Due to it all CIS countries for realization of an opportunity in itself to resolve issues with the conclusion, execution and denunciation of international treaties, according to modern conditions and requirements of the international practice, have adopted the laws on international treaties. The law of the country «About international treaties» is united by precepts of law, defining order of the conclusion, a condition of performance, action and termination of international treaties.

As it is told, in the law «About International Treaties of the Republic of Kazakhstan» of May 30, 2005 N 54 «The international contracts of the Republic of Kazakhstan consist, carried out, change and stop according to the Constitution of the Republic of Kazakhstan, the conventional principles and rules of international law, provisions of the most international treaty, the Vienna convention on the right of international treaties, the present Law and other acts of the Republic of Kazakhstan» [10]. The specified rules are proclaimed almost all CIS countries. In particular: item. (2) «about international treaties of the Republic of Moldova» «Initiation, negotiating, signing, entry into force, application, stay, denunciation or cancellation of international treaties of the Republic of Moldova are carried out by Art. 1 of the Law of Moldova according to the principles and rules of international law, the Convention on the right of international treaties (Vienna, 1969), the Constitution of the Republic of Moldova, the present law, and also provisions of contracts» [11]. Also «The international contracts of the Russian Federation are signed, carried out and stop according to the conventional principles and rules of international law, provisions of the contract, the Constitution of the Russian Federation, the law on international treaties of the Russian Federation» [12].

Almost same rules are enshrined in laws of the Republic of Tajikistan [13], the Republic of Uzbekistan [14], Turkmenistan [15], the Kyrgyz Republic [16], the Republic of Armenia [17], Republic of Belarus [18], the Azerbaijan Republic [19]. A bit different formulation is provided in the law «About International Treaties of Ukraine» where it is told, «the present Law establishes an order of the conclusion, performance and cancellation of international treaties of Ukraine for the purpose of appropriate ensuring national interests, implementation of the purposes, tasks and the principles of foreign policy of Ukraine enshrined in the Constitution of Ukraine and the legislation of Ukraine» [20]. Nevertheless in Art. 9 of the Constitution of Ukraine it is told, «The existing international contracts to which obligation it is agreed by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. The conclusion of the international treaties contradicting the Constitution of Ukraine is possible only after entering of corresponding changes into the Constitution of Ukraine» [21]. Thereof we can draw conclusions that all existing international contracts got approval by the Verkhovna Rada of Ukraine are valid in the national right, the conclusion of international treaties of Ukraine are possible if they don't contradict the Constitution of the country. Though mechanisms about the right of the international treaty in this country aren't given in the Constitution.

All know, the modern international law one of sources recognizes the international treaty. Today a huge number of international treaties govern the difficult, diverse and dynamic international relations, in certain cases give life and to interstate precepts of law. The solution of questions of establishment of fault at the international level demands the conclusion of the corresponding international treaties and agreements. Invaluable matters the provision of the international treaty in the solution of the problems of strengthening of unity and unity of the commonwealth facing the CIS in implementation of justice and fight against the international and all-criminal (cross-border) crime.

The distinctive feature of the international criminal law, consists in its sources. First of all, it is the international contracts in wide value of this word. In such value the international treaty is the obviously expressed agreement between the states or other subjects of international law signed on the questions having for them the general interest and urged to regulate their relationship by creation of the mutual rights and duties [22; 11].

In that case we understand, irrespective of the subjects participating in them from a form and the name, from procedure of the conclusion the international treaty has the right to extend the action in general at a planetary scale. The narrow understanding of the international treaty is an agreement between the states, and such definition is given in the item a) Art. 2 of the Vienna convention «About the Right of the International Contracts» where it is told, «Contract» means the international agreement concluded between the states in writing and regulated by international law irrespective of whether such agreement contains in one document, in two or several documents connected among themselves, and also irrespective of its concrete name [23]. In modern understanding the international treaty is the agreement between the states or other subjects of international law.

It is known that obligatory rules of international law are created on the basis of the general multilateral contracts which possess nature of universality. They as a rule, concern regulation of the object and the purpose which is of interest to all international community. Norms of the international criminal law also concern to them. The purpose of many modern contracts of the international criminal law — implementation

of actions of the world scale which demand coordinated actions of all states in fight against the international and cross-border crimes.

According to the principle of universality — one of the most important principles of international law, any state as member of the world community has a right to participate in the general multilateral contracts. Essence of the principle of universality of the general international treaties, the preamble of the Vienna convention «About the Right of the International Contracts» of 1969 reflects. Follows from the maintenance of introductory part of the above-named convention, contracts which concern codification and progressive development of international law, and also contracts which object and the purposes are of interest to all international community have open character for the State Parties of the present Convention. The principle of universality of international treaties, corresponds to character of international law as this right is universal for all subjects of the international relations. The principles of the international criminal law at the heart of which, the conventional universal values as freedom, democracy, respect of the rights and freedoms of the person lie, ideas the defining essence, the contents and an order of construction and application of norms of modern legal system are understood [24; 39].

Giving to the states the right of universality of participation in international treaties, we observe fruits of implementation of the basic principles of international law consolidated by the Charter of the UN. Professor M. A. Sarsembayev has emphasized that in difference from norms the principles of international law have the general for the states universal character, are the legal base, a basis for other rules of international law [25; 37]. The main beginning which grants the right to the states to participate in these open contracts is enshrined in Art. 2 of the Charter of the UN as the principle of sovereign equality of all its Members. This principle is the postulate forbidding to the states or alliance to debar other members of the UN from discussion and the solution of the questions which are of general interest. The general multilateral contracts allow to participation in all of them of associates because the right, all states to participate in the general multilateral contracts follows also from the character of such contracts, from their object and the purpose [26; 131].

The modern international criminal law represents set of huge number of precepts of law (conventional, usual, judgments, the principles) various degree of a community and recognition. Despite variety in essence and a form, these norms form system of the international criminal law as among themselves connects them the basic principles of international law. Continuous and continuous development, formation of system of the international criminal law, as well as all international law is observed. The basic principles of the international criminal law which have arisen as the coordinated form of expression of common interests of the states in general fight from the international and transnational crime are standard rules of implementation of the mechanism of accountability.

Functioning of the standard mechanism of the international criminal law is legally provided, on means of the regulatory complex legal relationship created by the basic principles of international law among which special place is given to legal relationship, connected with criminal prosecution. As a rule, these legal relationships are regulated by an internal standard complex. Incase of a contradiction the state is allocated with an opportunity to use international legal means.

International legal functioning of the mechanism of accountability in the Commonwealth countries is expressed, in establishment between the states, also international community of legal relationship which follow from international legal obligations.

In present conditions when international legal regulation acquires the material characteristic more and more, international legal acts the regulating questions of criminal liability become one of important tools which promote realization of criminal liability within the country. Efficiency of these international treaties (both bilateral and multilateral) depends, in particular, on as far as their application promotes expansion of mutual assistance on criminal cases, development of cooperation in fight against crime. In the conditions of further realization of the general principles of criminal law in the countries with various national legal mechanisms action of these principles is possible in cases when these countries have undertaken obligations of accession to these rules of international law.

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Кінәлі жауаптылықты бекітетін халықаралық құқықтың ТМД елдерінің ішіндегі қылмыстық құқығын қалыптастырудағы рөлі

Мақалада халықаралық қылмыстық құқықтың ережелері талданды және оларды Тәуелсіз Мемлекеттер Достастығы (ТМД) елдерінің заңнамасында қолданудың кейбір сұрақтары қарастырылды. Сонымен қатар ТМД елдерінің ұлттық заңнама жүйесіндегі халықаралық қылмыстық құқық нормаларының рөлін анықтаумен байланысты сұрақтарға көңіл бөлінген, әрі осы нормалардың аталған елдердің ішкі қылмыстық заңнамасының қалыптасуына ықпал ету деңгейіне баға берілген.

Н.Марин, Ж.Уалиева

Роль международного права, устанавливающего виновную ответственность, в формировании внутригосударственного уголовного права стран СНГ

В данной статье проанализированы основные положения международного уголовного права и рассмотрены отдельные вопросы его применения в странах Содружества Независимых Государств (СНГ). Уделено внимание вопросам, связанным с определением роли норм международного уголовного права в системе национального законодательства стран СНГ и дана оценка степени влияния этих норм на формирование внутригосударственного уголовного права данных государств.

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