

BASES OF JUDICIAL REVIEW OF PERSONAL RIGHTS IN INTERNATIONAL DOCUMENTS BY AN INDEPENDENT AND IMPARTIAL COURT

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ANNOTATION

The article examines international and regional documents related to the right to an independent and impartial court. It analyzes the right to a fair trial in universal and regional treaties. International standards for judicial independence include the right to a fair trial by independent and impartial tribunals. According to these standards, the right to a hearing by an independent and impartial tribunal must be considered absolute and must be guaranteed without exceptions. The article argues that access to justice should be open and accessible to all, and a fair trial must be ensured.

Key words and phrases: international and regional documents, judicial independence, independent and impartial court, individual and institutional independence of the court.

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Recibido: 27 October 2023 / aceptado: 23 November 2023 / publicado: 08 December 2023

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Key words and expressions: international and regional documents, the independence of the judiciary, the independence and impartiality of the judiciary, the individual and institutional independence of the judiciary.

Ensuring the right to an independent and impartial trial remains an important and pressing issue in an increasingly globalized world. One of the main reasons for this is that the right to be heard by an independent and impartial court is aimed at protecting people from the abuse of human rights by the authorities, as defined in the constitution and laws.

In international and regional documents norms regarding the right to a fair trial by an independent and impartial court are established. For example, in Article 10 of the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, "Every person should be free and independent in order to determine his rights and duties and to determine to what extent the criminal charge against him is justified, on the basis of complete equality, in compliance with the requirements of transparency and justice. has the right to be considered by an impartial court ⁱ.

International Covenant on Civil and Political Rights Clause 1 of Article 14 provides the following: "All individuals are equal before courts and tribunals. Everyone has the right to a fair and open trial by an authoritative, independent and impartial court established in accordance with the law when any criminal charge against them is being considered or their rights and duties are being determined in any civil process ⁱⁱ. The UN Human Rights Committee, which is responsible for monitoring compliance by states with this covenant, states that the right to a trial by an independent and impartial tribunal is an "absolute right that does not allow for any exceptions ⁱⁱⁱ. "

The Committee also clarified that even in times of war or emergency, only a court can prosecute a person for a criminal offence. Therefore, this right applies in all cases and to all ordinary, special courts.

At the same time, according to Article 18, Clause 1 of the International Convention "On the Protection of the Rights of All Migrant Workers and Their Family Members", "the case of migrant workers and their family members shall be fairly and transparently heard by a qualified, independent and impartial court established in accordance with the law"^{iv}.

Regional international documents, including the European Convention on Human Rights Clause 1 of Article 6 stipulates that "everybody has the right to a fair and public hearing of their case by an independent and impartial court established on the basis of law in a reasonable period of time in a lawsuit about their civil rights and obligations or in the event of any criminal accusation against them. ^v"

Guiding Principles of the European Union Committee of Ministers "On Human Rights and Combating Terrorism". Principle IX states that: "A person accused of terrorist acts has the right to have his case examined by an independent and impartial court established on the basis of law ^{vi}. "

The Charter of Fundamental Rights of the European Union Article 7 states: "Everyone has the right to have their case heard by an independent and impartial court established on the basis of the law ^{vii}. " Articles 41-44 of Chapter V ("Citizen's Rights") of the Charter guarantee the right of citizens, residents, natural and legal individuals registered in the territory of the European Union to apply to European institutions, including the judicial bodies of the European Union ^{viii}.

In the Asia-Pacific region, the Beijing Declaration on Principles for the Independence of the Judiciary (the "Beijing Principles") provides that: "The independence of the judiciary is based on its impartial assessment of issues and on the basis of its unbiased understanding of the law, directly or indirectly, regardless of where it comes from, requires to be solved" ^{ix}.

American Declaration of Human Rights and Duties Article 26 states: "Every person accused of a crime has the right to have their case considered by a court established on the basis of existing laws ^x. "

Of the Inter-American Convention on Human Rights Clause 1 of Article 8 stipulates that "Every person shall have the right to a qualified, independent, legally established body to establish his civil, labor, financial or other rights and obligations, with appropriate guarantees and for a certain period of time" and has the right to be considered by an impartial court ^{xi}.

A similar expression is used in the African Charter on Human and Peoples' Rights states: "Everyone has the right to a trial", this right includes "the right to be presumed innocent until proven guilty by a competent court or tribunal", "has the right to a trial by a competent court or tribunal within a reasonable time" ^{xii}. This article should be read together with Article 26 of the Charter, according to which member states are "obliged to guarantee the independence of the judiciary". The African Commission on Human and Peoples' Rights states that Article 7 should be "considered non-derogable" because it provides "a minimum level of protection for citizens" ^{xiii}.

Regarding the independence of the judiciary, the African Commission on Human and Peoples' Rights "Resolution on Respecting and Strengthening the Independence of the Judiciary" ^{xiv} should be highlighted.

International humanitarian law also recognizes the right to a fair trial. First Protocol of the Geneva Convention as stated in paragraph 4 of Article 75: "A person accused of committing a criminal offense related to an armed conflict may not be sentenced and punished without a neutral and properly constituted court decision that adheres to the generally recognized principles of ordinary legal proceedings. ^{xv}"

The norms in the above international and regional instruments include the following rights: a) the process must provide for the accused to be promptly informed of the details of the offense he is accused of and to be given all necessary rights and remedies before and during the trial; b) no person may be convicted of an offense other than on the basis of personal criminal responsibility; c) every person accused of a crime is considered innocent until proven guilty by law; g) every accused person has the right to have his case heard in court in his presence.

Declaratory instruments are not legally binding, but set widely recognized standards on a range of human rights issues. In general, these documents, in particular, the documents adopted within the framework of the UN, form the basis of international law.

According to the international legal scientist O.R. Sulaymanov, the word "standard" was taken from English as a starting point for comparison with standard - sample, criterion, model. The interpretation of international legal standards in the field of human rights is more consistent with the correct interpretation as a normative minimum, because according to it, the necessary and sufficient level of regulation of the rights and freedoms of people and citizens by the state, as well as the excess of these rights and freedoms in this situation or determining the minimum level state that it will be carried out with legally impermissible restrictions"^{xvi}

Most of them reflect rules repeated in international documents and in some cases expressed in international law. For example, the "Basic Principles of the Role of Lawyers" of the UN Principle 1: "Every person has the right to turn to any lawyer for assistance regarding his rights and self-defense at all stages of criminal proceedings"^{xvii} International Covenant on Civil and Political Rights Article 14, paragraph 3 d) "To be tried in person and to be defended by one's own or selected defense counsel; if there is no vindicator, to be informed that he has the right to have it; states the right to have an attorney appointed to him in any cases required by the interests of justice, and to provide an attorney for him free of charge in all cases where he does not have sufficient funds to pay this attorney ."^{xviii}

According to Belarusian author L. Zaitseva , " The right to a fair trial is a generally recognized international legal norm that is directly related to human rights. The right to effective restoration of violated rights, and the court is the most appropriate body capable of ensuring such restoration. Therefore, all the authoritative international legal instruments , first of all, the right to judicial protection or access to justice are ^{xix}strong. This author's opinion reaffirms that the right to be considered by an independent and impartial court is one of the basic human rights.

The right to a trial by an independent and impartial court is recognized not only in international treaties, but is also a part of international law. In this regard, countries that have not acceded to or ratified these treaties must, nevertheless, respect this right and adapt their judicial systems accordingly.

For a fair resolution of the case, the independence of the judge or the court considering this or that case should be ensured. All international human rights treaties provide for the right to a fair trial by independent and impartial courts. A person's right to a fair hearing in court can be respected in the presence of an independent judge, the state cannot fulfill its international obligations without the judicial system as an independent branch of government. In this context, independence applies to the judge personally and to the judiciary as a whole.

The essential aspect of independence is described in the UN's "Basic Principles of Independence of Judiciary Bodies" as follows: "The independence of judicial bodies is guaranteed by the state and established in the country's constitution or laws. All state bodies and other institutions must respect and observe the independence of judicial bodies ^{xx}. "

In the recommendations of the Council of Europe on the independence of judges, it is determined that the independence of judges should be guaranteed by the inclusion of specific provisions in the constitution and other legal documents, and "the branches of the executive power and the

legislative power should ensure the independence of judges and prevent the adoption of measures that compromise the independence of judges.^{xxi}"

"Universal Charter of Judges" approved by the International Association of Judges states that "The independence of judges is necessary for the implementation of an impartial fair trial in accordance with the law. All national or international bodies and authorities must respect, preserve and protect this independence^{xxii}. "

The principle of independence of the judiciary is derived from the main principles of the rule of law, in particular, the principle of the separation of powers. According to the Human Rights Committee, the principle of legality and the rule of law is intrinsic to the International Covenant on Civil and Political Rights. The Inter-American Court of Human Rights states that "there is an inextricable connection between the principle of legality, democratic institutions and the rule of law^{xxiii}. "

According to this principle, the executive, legislative and judicial branches constitute three separate and independent branches of the government. Different bodies of the state have extraordinary and different obligations. Due to this separation, none of the branches of the government is allowed to interfere with the powers of the second branch. The principle of separation of powers is the cornerstone of an independent and impartial judicial system.

Russian authors E.V.Burdina, D.A.Burdinlar "Legislative and executive authorities to ensure the rights and freedoms of citizens directly in theory, in practice and at the level of regulatory and legal documents (including those at the level of international documents) Recognizing the judicial power as an important element of the detention system, the independence of the courts importance^{xxiv} special emphasis is given. These authors recognize that the judiciary must be independent in order for the system of checks and balances to work as in the treatise. A truly independent judiciary cannot restrain the legislative and executive powers. As a result, the rights and freedoms of citizens may be violated.

The conclusions of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Bakre Vali Ndaye, and the Special Rapporteur on the independence of judges and lawyers, Param Kumaraswamy, "separation of powers and compliance with it is a sine qua non for the effective functioning of an independent judiciary (which you cannot be) is considered"^{xxv}

Indeed, compliance with the principle of separation of powers is an important foundation for ensuring the independence of the judiciary.

Continuing the above opinion, Param Kumaraswamy, Special Rapporteur on the Independence of Judges and Lawyers, points out that "the principle of separation of powers is the foundation of the independence and impartiality of the judiciary. Understanding and respecting the principle of separation of powers is a sine qua non condition for the existence of a democratic government.^{xxvi}

Agreeing with the author's opinion, it should be noted that one of the most important signs of a democratic legal state is the independence of the judiciary.

The demand for an independent and impartial judiciary is universal and has its roots in both natural and positive law. In his work, Canadian scientist Peter W. Hogue states that "at the time of the entry into force of the Great Charter of Freedoms, the words "fundamental justice" were

understood as synonymous with the common law idea of "natural justice", and it was considered a procedural concept.^{xxvii}

According to Scottish scientist AV Bradley and English scientist K. D. Ewing "Common law Within the framework of the concept of "natural justice ", a fair procedure has been developed, according to which the court only informs the interested parties and gives them the opportunity to express their opinions, and then makes a decision. For this, the courts themselves should be free from^{xxviii} any external interference.

At the international level, sources of this law should be sought from contractual instruments and obligations based on customary law and general principles of law. Concepts underlying the independence and impartiality of the Court are the Statute of the International Court of Justice "the general principles of law recognized by the developed nations" understood in paragraph 1 c) of Article 38^{xxix}.

The Inter-American Court of Human Rights, in its decision on the Constitutional Court of Peru case, emphasizes the following point: "one of the most important purposes of the separation of powers is to guarantee the independence of judges." In this regard, the court concludes that "the independence of all judges should be guaranteed due to the rule of law^{xxx}."

The UN Human Rights Committee also draws attention to the principle of separation of powers and states that "the lack of clarity in the division of the respective powers of the executive, legislative and judicial authorities may hinder the implementation of the principle of the rule of law and a consistent policy for the protection of human rights." The committee has repeatedly recommended to the states to adopt appropriate legislation and measures to ensure a clear separation of powers between the executive and the judiciary^{xxxi}.

In turn, the European Court of Human Rights emphasizes that the observance of the principle of the separation of powers is the fundamental principle of a functioning democracy that cannot be questioned^{xxxii}. According to international law, the state should organize its apparatus in such a way that it should guarantee the rights and freedoms protected by international law and ensure their practical use.

In this regard, the Inter-American Court of Human Rights announced that "the protection of human rights must necessarily include the concept of limitations on the exercise of state power." The state apparatus should be organized in such a way that it should correspond to the clearly expressed and intended international obligations of the state. In fact, the state is the most important "subject" in all areas of society. This status of the state is clearly distinguished in all relations (economic, social, spiritual, legal). After all, the state's participation in the creation, formation and development of these relations is directly aimed at realizing the interests of the people. In this case, the state, as the defender of these interests, ensures their correct and acceptable implementation^{xxxiii}.

Regarding this issue, the Inter-American Court of Human Rights notes in Article 1, paragraph 1 of the "American Convention on Human Rights" that "the obligation to respect and guarantee the rights of the member states is binding on the government apparatus and, in general, on all structures of public governance implemented through it. In its turn, this requires that they should be organized

in such a way that they have the legal capacity to ensure the free and full use of human rights ^{xxxiv}.
"

An integral part of compliance with the obligation to respect and guarantee human rights is understood as the obligation to organize the state mechanism in such a way that, among other aspects, the structure and operation of state power structures based on the true separation of the executive, legislative and judicial branches, and the existence of an independent and impartial judicial system to ensure that it is possible to guarantee the primacy of rights and legality by the authorities in their actions. The principle of separation of powers is one of the most important requirements for the implementation of a fair trial. In practice, the existence of a judicial system independent of other branches of power is considered a necessary condition for the implementation of a fair trial, as well as the rule of law.

Independence and impartiality are closely related, and courts often consider these concepts mutually exclusive. However, each of them has its own importance. In a general sense, "independence" refers to the autonomy of a particular judge or court in applying the law to the evidence. This type of independence refers to the judiciary as an institution (independence from other branches of the government, called "institutional independence") and to a particular judge (independence from other members of the judiciary, or "individual independence"). "Independence" requires that any judicial system, including its judges, should not be dependent on any other branch of state power. "Impartiality", on the other hand, describes the attitude of a judge or court to the case and its parties.

According to the Human Rights Committee, in terms of Article 14, Paragraph 1 of the International Covenant on Civil and Political Rights, "judicial impartiality implies that judges should not be biased on the issues under consideration and should not act in the interests of one of the parties."^{xxxv}

The concept of institutional independence is mentioned in the 1st principle of the UN "Main principles of independence of judicial bodies", which stipulates that all state bodies and other institutions must respect and observe the independence of judicial bodies ^{xxxvi}. This concept means that the judiciary must be independent from other branches of government, particularly the executive and parliament, which must respect and abide by court decisions and judgments like any other institution. This principle requires the protection of diversity of opinion on the decisions of other institutions and the refusal to follow these decisions as much as possible. Such independence is necessary to uphold the principle of the primacy of law and human rights, such as independence of decision-making.

The judiciary should be independent from both the executive and the parties to the proceedings. The concept of institutional independence is related to several issues. The requirement of independence implies the autonomy of the courts from other branches of government, freedom from influence, threat or interference by anyone and on any grounds, as well as the proper and independent performance of judicial functions, the need for tenure and appropriate professional training emits.

The Human Rights Committee also focused on issues related to institutional independence. He noted, for example, that salary interruptions and insufficient guarantees regarding the tenure of judges negatively affect the independence of the judiciary. According to the committee, the absence of any independent mechanism for selecting judges and bringing them to disciplinary responsibility limits the independence of the judiciary^{xxxvii}.

International law provides a number of provisions concerning some important aspects of the judicial system's institutional independence. One possible means of controlling the results of individual cases is to include them for consideration by judges who can decide to protect certain interests. In order to prevent such illegal interventions, in paragraph 14 of the "Basic Principles of the Independence of Judicial Bodies" of the UN It is stated that "in the courts to which the judges belong, the division of work among the judges is at the discretion of the court administration."^{xxxviii} In addition, the independence of the judiciary requires that it has jurisdiction over all matters of a judicial nature, as well as the jurisdiction to decide whether the matter before it is considered a judicial matter. Therefore, court decisions cannot be changed by non-judicial authorities, except in cases of commutation or commutation of sentence and pardon.

According to the 3rd principle of the UN document "Main principles of the independence of judicial bodies": "Judicial bodies have the authority over all matters of a judicial nature and the absolute right to decide whether the case assigned to them falls within the powers established by law." According to principle 4, "There should be no illegal or unauthorized interference with the judicial process, and the decisions of the courts shall not be reviewed." This principle does not prevent judicial review or mitigation of sentences issued by judicial bodies carried out in accordance with the law^{xxxix}.

Although institutional independence is a necessary guarantee, it cannot be a sufficient condition for ensuring the right to a fair trial in each individual case. If judges are not guaranteed protection from interference in deciding individual cases, their right to a fair trial is violated. There are a number of factors, some of which are discussed below, that determine whether a court is independent.

Such independence does not mean that judges can decide cases at their own discretion. On the contrary, judges should decide the cases before them based on the law, without fear of any repressive measures. As stated in the 2nd principle of the "Basic Principles of the Independence of the Judiciary" of the UN: "Judicial bodies shall conduct the cases entrusted to them objectively, based on the facts and in accordance with the law, without any direct or indirect restrictions, illegal influence, inducements, by any party and without any reason. Actually, it is resolved without coercion, threats or interference^{xl}."

The UN Commission on Human Rights called on all authorities to "respect and support the independence of judges and lawyers and to adopt effective legislative, law enforcement and other necessary measures to enable them to fulfill their professional duties without any form of harassment or intimidation"^{xli}.

Diego García-Sayan, the special rapporteur of the UN Human Rights Council on ensuring the independence of judges and lawyers, said in his initial comments on the results of his official visit

to Uzbekistan, "The declaration of independence from the Soviet Union in 1991 did not lead to the elimination of the authoritarian and centralized structure inherited from the Soviet Union in Uzbekistan. The judiciary remained under the control of the executive. The prosecution continued to play a decisive role in criminal trials, while the role of judges was limited to mechanically approving prosecutors' appeals in indictments. "The role of the defense lawyer has remained at most an external decoration," ^{xliii}he criticized the fact that the judiciary in Uzbekistan is under the control of the executive power and other bodies.

Summary.

1. International standards on the independence of the judiciary provide for the right to a fair trial by independent and impartial courts. According to them, the right to have the case considered by an independent and impartial court should be considered absolute and should be ensured without any exceptions. Access to justice must be open and easy for all and a fair trial must be guaranteed.

2. Effectively achieve fair trial and justice in accordance with other fundamental rights and freedoms in emergency situations, including the COVID-19 pandemic and other crisis situations, including ensuring the established legal order and continuity of judicial activities, maintaining functionality, accountability, transparency and impartiality to provide the judicial authorities with the necessary resources and opportunities, and at the same time, the right to have the case considered by an independent and impartial court should be ensured without any exceptions, it is defined in international legal standards .

3. According to the analysis of international and regional standards on the independence of the judiciary, the following cases are taken into account in order to consider the judiciary as independent from other branches of the government:

Firstly, the methods of appointment to the position of judge, the period of being a judge, working conditions, the existence of guarantees of protection against external pressure;

Secondly, at least three conditions for ensuring the independence of the judiciary are as follows:

Tenure of a judge: the tenure of a judge (for life, until retirement age, or a fixed term) is a guarantee against arbitrary interference in the judge's activity by the executive power or another body appointing him;

Financial support: the judiciary must be independent in financial matters and have sufficient funds for the effective implementation of its functions. This issue cannot become an object of arbitrary intervention by the executive power, because it is considered a situation that is reflected in the independence of the judge and ensures the guarantee of his right to salary and pension;

Institutional independence: means independence from the executive and legislative authorities in administrative matters related to the direct exercise of the judicial function.

4. From the point of view of the individual independence of judges, it is extremely important that there is no hierarchical subordination to the executive or legislative power, as well as being in the service of these two branches of power. Thus, one of the main requirements of the

independence of the judiciary is that judges at all levels belong to the judiciary and are not subject to or report to other branches of the government.

5. Judicial independence refers to both individual and institutional independence necessary for decision-making. Therefore, the independence of the judiciary is a combination of mentality, institutional and functional mechanisms. The first refers to the independence of the judge in relation to the facts. The second is applied to determining the relationship between judicial bodies and other subjects, in particular, other branches of power, which guarantees both the true independence of the court and its understanding by society. An isolated judge may have such a mentality that a judge cannot be considered independent if the court in which he works is not independent from other branches of the government.

6. Each country should create the necessary mechanisms for judges to be able to decide cases independently. The independence of the judiciary must be supported by non-interference in its work and the execution of its decisions. The judiciary must have institutional independence, and judges must enjoy personal independence within the judiciary and vis-à-vis its other institutions.

ⁱUniversal Declaration of Human Rights. International treaties on human rights: a collection. -Tashkent: Adolat, 2004. - B.32.

ⁱⁱInternational Covenant on Civil and Political Rights. International treaties on human rights: a collection. -Tashkent: Adolat, 2004. - B.41.

ⁱⁱⁱGonzález del Rio v Peru, HRC Communication 263/1987, UN Doc CCPR/C/46/D/263/1987 .

^{iv}The International Convention on Protection of All Workers and Migrants and Members of the Family. Resolution 45/158 was adopted by the General Assembly on December 18, 1990. https://www.flour.org/ru/documents/decl_conv/conventions/migrant3.shtml .

^vConvention for the Protection of Human Rights and Fundamental Freedoms. Rome, 04/11/1950. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005> .

^{vi}Rukovodnyashchie principle v oblasti prav cheloveka i borby s terrorismom. Utverzhennym na 304-om zasedanii Kabineta Ministrov on July 11, 2002. [http://www.concourt.am/hr/rus/h-inf\(2002\)8rus.pdf](http://www.concourt.am/hr/rus/h-inf(2002)8rus.pdf) .

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^{xi}American Convention on Human Rights: "Pact of San Jose, Costa Rica". Signed at San Jose, Costa Rica, on 22 November 1969. Registered by the Organization of American States on 27 August 1979. <https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf> .

^{xii}African Charter on Human and Peoples' Rights. Concluded at Nairobi on 27 June 1981. <https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf> .

^{xiii}African Charter on Human and Peoples' Rights. Concluded at Nairobi on 27 June 1981. <https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf> .

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