
QUESTIONING THE INTERDEPENDENCE IN THE FUNCTIONING OF THE JUDICIARY: AN EVALUATION OF UZBEKISTAN AND UKRAINIAN JUDICIAL SYSTEMS

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ABSTRACT

This paper is put to assess and evaluate the significance and role of the function of the judicial systems of both Uzbekistan and Ukraine in the acquisition of criminal justice process, as well as analyzes the institution of judicial control and their correlation with the function of the courts in the administration of justice. Additionally, serves to ensure the rights and legitimate interests of the individual in criminal proceedings at the initial stage of the investigation. From the above observation, there rule remain that the interdependence as evaluated in both countries continue to be questionable as constant violations are experienced. This infelicities of the two systems has been a tempting ground for continous examination and evaluation.

KEYWORDS: *Criminal Proceedings, Law, Judiciary, Court, Prosecutor, Defendant, Functions.*

1. INTRODUCTION

The task of building a democratic state based on the rule of law, in turn, is a priority of all states to create an effective mechanism for ensuring human rights and freedoms in all spheres of life. Based on the strategic objectives of democratization and renewal of society in post-Soviet countries (which also included Uzbekistan and Ukraine), modernization and reform of the country, current issues of building a democratic state governed by the rule of law, ways to address them, development of basic civil society institutions, deepening judicial reform, legal framework for economic reform special progress has been made in improvement.

In particular, in the process of gradual judicial reforms in Uzbekistan, the task set forth in Articles 19, 25 and 44 of the Constitution of the Republic of Uzbekistan - the full harmonization of the legislation of our country with universally recognized standards of international law. In particular, the power to issue arrest warrants has been transferred to the courts, the institute of judicial control over the activities of preliminary investigative bodies has been formed, the bar has been radically reformed, the limits of individual rights have been clearly defined, and the rights of detainees and suspects have been regulated.

The reform of Ukrainian legislation is moving in the same direction of reform, and in some aspects

even a step forward. For example, progressive provisions are reflected in the Code of Criminal Procedure of Ukraine in 2012, in particular, in part 2, Article 8 provides that: “The principle of the rule of law in criminal proceedings shall be applied with due account of the practices of the European Court of Human Rights”.

Along with this, in part 5 of article 9 of the Code of Criminal Procedure of Ukraine it is stipulated that: “The criminal procedural legislation of Ukraine shall be applied with due regard to the case law of the European Court for Human Rights”. In a law-based state, the investigation of criminal offenses must be carried out in compliance with human rights and freedoms, the rule of law and legality. Given the importance and significance of this aspect, in Part 2 of Article 8, Part 5 of Article 9 of the Criminal Procedure Code of Ukraine (hereinafter CPC) it is defined that the principles of the rule of law and legality in criminal proceedings are applied taking into account the case law of the European Court of Human Rights, the legal positions of which are based on the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (hereinafter ECHR or Convention). Therefore, taking into account the restrictive nature and specifics of the criminal procedural activity of the pre-trial investigation bodies, the prosecutor's office, the legislator provided for judicial control over its legality, which is carried out by investigating judges.

Objective and Purpose of this Paper

The judiciary has been considered as the cornerstone of every fundamental justice system where the rule of law continues to be perceived as a bedrock of a stable society. In this regard, the main objective of this paper is to question the efficiency and effectiveness of the criminal justice systems of Uzbekistan and Ukraine. Truly in acquiring a stable society with the respect of fundamental human right and freedom, there must be that independence of the judicial system for the effective administration of justice. There is no way one can acquire a concrete judicial system and justice without the judiciary administering its function independently. The rule remains that whether in Uzbekistan or Ukraine, the Judiciary will and always occupied a prominent place in the administration of justice in all spheres especially in the criminal justice process and procedures. The criminal law has a procedure which need to respect the rule of law in every process of the criminal procedure. It therefore becomes the responsibility of the judiciary in ensuring that every rule of law by the parties has been respected from the initial stage to the completion stage.

2. METHODOLOGY USED

In answering the above objective and observations made above, it will be of huge essence of establishing a concrete methodology in order to answer a common hypothesis established. One can emphasize without reservation here that the methodology involved here is that of comparative in nature. We have two systems and countries in question so as to ascertain their position and place occupied by their judiciary when issues of the respect of the rule of law are concerned especially during the criminal process and procedure. It is true that these countries have enacted a series of proliferated laws and provisions ranging from their constitutions, criminal procedure and penal codes where the judiciary occupies a prominent place in the respect of fundamental human right and even the criminal procedure process. The Criminal Procedure Code of both countries has really been useful and pertinent as it handles cases of human right violations, and has extended in providing relevant sanctions and punishments for those who violate the common criminal law principles. Really, one the Criminal Procedure Code of both countries need to be applaudable for their wonderful initiative and job carried out in ensuring a concrete, stable and democratic judicial system in seeing that various rules of law are respected. The issue here is not just in illustrating the various legal instruments showing the need to respect the rule of law in the judicial systems of both countries, but rather question its efficiency and effectiveness when it comes to the administration of justice. One thing remains clear here that, the judicial systems of both countries will continue to be questionable when issues of the rule of law are concerned consider as a cankerworm for the administration of justice.

3. RESULTS AND DISCUSSION

Thus, by enshrining the above normative provisions at the legislative level, the Government of Ukraine emphasized the importance of both observance and protection of human rights and freedoms. The updated provisions of the CPC of Ukraine have become a prerequisite for the improvement of the concept of protection of human rights and fundamental freedoms during the pre-trial investigation and trial.

The judiciary has a special place in both the theory and practice of the separation of powers. While there is debate in our foreign and domestic literature about the interdependence of the executive and the legislature, and even the usefulness or inexpediency of sometimes merging with each other, there seems to be an open consensus when it comes to the judiciary. Its function is very clearly defined. Judicial institutions are independent structures of the state. Where the doctrine of the separation of powers is adopted and exercised in a constitutional manner, this power will be fully and consistently manifested.

The judiciary has a great influence on the socio-economic, political and cultural life, the status of the individual, the protection of his rights and freedoms. Everyone must have a firm conviction that his or her appeal to the court will result in an independent, objective and fair decision. In fact, going to court is a common occurrence in people's behavior in a state governed by the rule of law.

The Constitution of the Republic of Uzbekistan defines the following issues within the competence of the judiciary:

- Independence and the priority of the judiciary in the implementation of laws and the protection of the rule of law;
- Principles of organization of courts and bases of the status of judges;
- The main ideas of democratic justice - the principles of the courts;
- The rights and freedoms of citizens are guaranteed in the field of justice.

In turn, the Constitution of Ukraine defines that:

- Justice in Ukraine shall be administered exclusively by the courts. Delegation of the functions of courts or appropriation of such functions by other bodies or officials shall be prohibited (Article 124);
- The independence and immunity of judges shall be guaranteed by the Constitution and the laws of Ukraine (Article 126);
- Justice shall be administered by judges. In cases determined by law, justice shall be administered involving jurors (Article 127).

The Constitution of the Republic of Uzbekistan enshrines the following principles of judicial proceedings:

- Independence of courts and immunity of judges (Articles 106, 108);
- Independence of courts and their subordination only to the law (Article 112);
- The position of a judge is not accompanied by a deputy mandate (Articles 108, 112);
- Open and transparent consideration of cases in all courts (hearing of cases in closed session is allowed only in cases provided by law, Article 113);
- Judicial proceedings are conducted in Uzbek, Karakalpak or in the languages spoken by the majority of the population in certain areas (Article 115);

- The participation of lawyers at any stage of the investigation and court proceedings (Article 116);
- Mandatory execution of judicial acts by all state bodies, enterprises, institutions, organizations, public associations, officials and citizens (Articles 109, 110, 114).

Similar principles for the activities of judges are also enshrined in the Constitution of Ukraine. This means that the court is not an ordinary law enforcement body, but a full-fledged public authority. He is an expression of justice and a full-fledged advocate of the law. Judgment is one of the highest achievements a person has made during his or her development. The main task of judicial reform is to ensure the independence of the judiciary and expand the rights and freedoms of citizens. The Constitution provides a basis for this, and these principles are reflected in the Regulations on the Activities of Military Courts, on the Qualifications of Judges, on the Qualifications of Judges, and on the Ranks of Judges.

The Code of Criminal Procedure of the Republic of Uzbekistan regulates criminal proceedings, the activities of all courts of the first instance, including pre-trial investigation, inquiry and preliminary investigation bodies, and prosecutorial supervision. These legal documents are a guarantee of further strengthening of the judiciary. In particular, the Law on Courts defines the principles of justice and the judicial system of the republic.

After the Constitution, the Law on Courts strengthened the presumption of innocence for the first time. This principle means that a person under investigation or trial does not have to prove his innocence. "The accused shall be acquitted until his guilt is proved in accordance with the law and there is a court verdict that has entered into force," the statement said (Article 9). The Constitution and Code of Criminal Procedure of Ukraine also enshrined the principle presumption of innocence and conclusive proof of guilt. In particular, a person shall be presumed innocent of committing a crime and shall not be subjected to criminal punishment until his/her guilt is proved through a legal procedure and established by a court verdict of guilty. No one shall be obliged to prove his/her innocence of committing a crime. An accusation shall not be based on illegally obtained evidence or on assumptions. All doubts in regard to the proof of guilt of a person shall be interpreted in his/her favour. In the event of revocation of a court verdict as unjust, the State shall compensate the pecuniary and non-pecuniary damages caused by the groundless conviction.

The administration of justice is protected by applicable law. For example, the Criminal Code of the Republic of Uzbekistan provides for liability for crimes against justice (Chapter 16), and the Code of Administrative Liability provides for liability for aggression against justice (Chapter 14). Section XVIII of the Criminal Code of Ukraine is referred to as "Criminal offences against justice" (Article 371 "Knowingly illegal apprehension, taking into custody, house arrest or detention"; Article 372 "Prosecution of a knowingly innocent person"; Article 373 "Coercion to testify"; Article 374 "Violation of the right to defence"; Article 375 "Delivery of a knowingly unfair sentence, judgment, ruling or order by a judge (or judges)" et al.).

Thus, strengthening the rule of law and the rule of law in practice, as well as large-scale changes in our lives in a sense, also have many effects. Among the scientific researches on the judiciary, its functions and responsibilities, "Judicial control in criminal proceedings and problems of its implementation" by F.Inogomjanova, F.Mukhitdinova's "Establishment and development of judicial power in the Republic of Uzbekistan", Sh.Umarova's "The role of the judiciary in building a democratic state governed by the rule of law in the Republic of Uzbekistan", A.Egamberdiev's "Judicial power: criminal procedural aspects", G.Shodiev's research on "Judicial control over investigative actions that restrict the rights and freedoms of citizens" can be singled out [1-5].

The judiciary is a separate branch of government, which is regulated by Article 11 of the Constitution

of the Republic of Uzbekistan [6]. It consists of the Administrative Court of the Republic of Karakalpakstan, regional and Tashkent city administrative courts, inter-district, district, city courts on civil cases, district and city courts on criminal cases, inter-district, district, city economic courts and inter-district administrative courts. This means the judiciary, which means all the judicial bodies of our country.

According to U.Tadjikhanov [7], the judiciary is an independent and free branch of government (along with the legislature, the executive) in accordance with the theory of separation of powers and Article 11 of the Constitution of the Republic of Uzbekistan. It includes:

- a) The sum of the powers of administration of justice, ie the power to consider criminal, civil, administrative and constitutional cases in the manner prescribed by procedural law, sometimes the power to interpret the rule of law, legislative powers and other secondary powers;
- b) Integrate the system of public authorities exercising the above powers.

The powers of the judiciary are divided into types of administration of justice. In modern democracies, the exercise of the basic powers of the judiciary is vested in the various categories of courts. According to Sh.Umarova, "the judiciary must protect the rights of citizens and the law itself from any offenses and decisions, regardless of who commits them, including officials with authority, the state itself, thereby ensuring the rule of law" [8]. Another researcher A. Kurbanov [9] argued that the judiciary is the power of courts to hear criminal, civil, economic, and administrative cases on the basis of the Constitution and laws of the Republic of Uzbekistan.

Today in Ukraine, considerable attention is paid to the jurisdiction of the IP-court. That category is a set of powers of the IP-court to resolve certain categories of legal disputes and cases in the field of intellectual property. The principle of territoriality of the IP-court in Ukraine extends its jurisdiction to the entire territory of the state, which is established by the Basic Law and the title law on the judiciary and the status of judges. Accordingly, the principle of territoriality must be consistent and organically combined with the principle of specialization. The degree of efficiency of the IP-court in Ukraine depends on the definition of all these components of jurisdiction, which is currently the key one at the initial stage of the formation of its legal base. Each of the principles of the judicial system plays an independent role in its construction and they all together contribute to the effective organization and legal functioning of the judicial system in general, and the activities of the IP-court in particular.

4. CONCLUSION

it can be concluded that "the judiciary is a separate branch of government, a system of bodies that have the ability to influence people and their behavior through the judiciary in a specially established procedural order and in a specific way". Like any state body, the judiciary [10] is focused on performing certain areas of public activity and ensuring the performance of the functions assigned to it.

The functions of the judiciary will have basic and additional functions [11]. The basis for such a division is: the ability to effectively address the challenges facing the judiciary [12]; the degree of application in judicial practice[10]; be able to resolve disputes or conflicts directly and substantively; criteria such as the ability to identify the causes of the crimes and the circumstances that led to their commission and to take measures to eliminate them. The main functions of the judiciary include justice and judicial control, and the auxiliary functions include legislative initiative, normative creativity and generalization of judicial practice. That justice is defined [13] as the primary function performed by the judiciary, the control function cannot be added to the view that it applies only to the courts [14]. Because the control function belongs to all state bodies and agencies, their officials, including the President, the executive branch, the representative bodies. The specificity of judicial control as a type of control activity is reflected in the fact that its social relations controlled by the court have a transparent legal character and, unlike justice, control over the activities of public [15]

authorities and their officials.

The institute of judicial control is closely related to the function of the courts in administering justice, and it serves to ensure the rights and legitimate interests of the individual in criminal proceedings, even at the initial stage of the investigation. In our opinion, the expansion of judicial powers in the pre-trial stages of criminal proceedings is due to the need to ensure effective protection of constitutional human rights and freedoms, in particular, protection from unjustified criminal prosecution and interference in private life, personal rights and the right to a fair trial. [16]

The purposes of judicial control over the pre-trial stages of criminal proceedings can be described as follows:

- 1) Application of detention as a precautionary measure, prolongation of its term;
- 2) Assessment of the legality and reasonable application of the measure of coercive procedural detention, extension of its term.

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