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POSSIBILITIES OF COMPARATIVE CRIMINAL PROCEDURE IN REFORMING AND MODERNIZING THE JUDICIAL AND LEGAL SYSTEM OF UZBEKISTAN

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Annotation: *In this article, the author attempted to reveal the possibilities of a new direction of legal science, emerging not only in Uzbekistan, but also in the entire post-Soviet space – comparative criminal procedural law, which can be used at the present stage of reforms and changed in Uzbekistan in the field of justice.*

In particular, the comparative criminal procedure law can successfully, on the basis of the proven experience of the most developed democratic countries, solve many tasks identified in the field of justice recently adopted. Development strategy on five priority directions of the Republic of Uzbekistan for 2017–2021. These tasks include further modernization and optimization of the domestic criminal process, bringing the domestic criminal process closer to the standards and principles of justice that are universally recognized in the democratic community, as well as ensuring the impartiality and objectivity of the criminal process at the pre-trial stage.

Keywords: *comparative, criminal procedure, law, criminal process, foreign, legal system, branch, science, court, crime.*

Аннотация: *в данной статье автором предпринята попытка раскрыть возможности зарождающегося не только в Узбекистане, но и на всем постсоветском пространстве нового направления правовой науки – сравнительного уголовно-процессуального права, которые могут быть использованы на современном этапе реформ и преобразований, проводимых в Узбекистане в судебно-правовой сфере.*

В частности, сравнительное уголовно-процессуальное право может успешно на основе апробированного опыта наиболее развитых демократических стран, решить многие задачи, обозначенные в принятой в Республике Узбекистан Стратегии действий по пяти приоритетным направлениям развития Республики Узбекистан в 2017–2021 годах в судебно-правовой сфере. К таким задачам можно отнести дальнейшую модернизацию и оптимизацию отечественного уголовного процесса, приближение отечественного уголовного процесса к общепризнанным в демократическом сообществе стандартам и принципам отправления правосудия, а также обеспечение беспристрастности и объективности уголовного процесса на досудебной стадии.

Ключевые слова*: сравнительное, уголовно-процессуальное право, уголовный процесс, зарубежная правовая система, отрасль, наука, суд, преступление.*

The end of the twentieth and beginning of the 21st century is marked by the rapid development of comparative jurisprudence and its penetration in the branch of science. As a result, new scientific disciplines began to appear and, most importantly, recognized: comparative linguistics, comparative anthropology, comparative political science, etc. And in the last decade of the new millennium, this trend has also affected jurisprudence, in which such new branches of legal science as comparative constitutional law, comparative criminal law, comparative administrative law, comparative civil law received their independent place. At the same time, the norms and institutions of not only material but also procedural law become the object of comparative jurisprudence, as a result of which some scientists,

mainly in the post-Soviet space, put forward the idea of the need for recognition as an independent branch of the legal science of comparative criminal procedural law.

In the modern world, the tendency to identify the sphere of legal cooperation is growing, within which there is an interpenetration of legal theories, doctrines and views, the intensive exchange of legal information, as a result the adoption of agreed and similar acts and norms.

This also applies in the field of criminal justice, which, along with administrative justice, is seen in the democratic community as the only effective and efficient means of achieving such a basic goal of democracy as limiting arbitrariness and abuse of power, as well as successfully solving the relatively new problems facing it, such as Separatism, terrorism.

It is possible to speak infinitely about what comparative jurisprudence in criminal trial aspires to achieve both various legal families, as a whole, and legal systems, in particular. But if we summarize all these judgments, then among the main objectives of comparative criminal procedure law, one can distinguish between epistemological and practical goals.

Thus, the epistemological goal of comparative criminal procedure law is to reveal the general laws governing the development of legal phenomena and institutions of the criminal process, since only a comparison of the various systems of the criminal process makes it possible to distinguish between them general and special, accidental and natural. In other words, knowledge of a foreign criminal process allows you better understand your own criminal process, see its advantages and disadvantages. In this regard, the study of the basics of comparative criminal procedure is an important component in the formation of the criminal policy of the country, especially when developing legislative initiatives to develop and further improvement of the domestic system of criminal justice.

In addition to purely epistemological, the comparative criminal procedure law pursues the following practical goals:

Firstly, the comparative criminal procedure law promotes the approximation and unification of the criminal procedural legislation of various states in those areas where this is clearly necessary (first of all, in the fight against international and transnational crime, religious fundamentalism and extremism, extradition of criminals, etc.);

Secondly, the use of of comparative criminal procedure law will make it possible to work out the most effective proposals for improving its own criminal trial system on the basis of studying the legal experience of foreign states. This is most urgent and important in the current conditions, with the initiatives of the President of the Republic of Uzbekistan Sh.M. Mirziyoyev on further reformation of the judicial and legal sphere, especially in matters of ensuring the true independence of the court and judges, raising the status of judges, the equation of powers of lawyers and prosecutors for The stage of judicial proceedings, the exclusion of certain supervisory powers at various stages of criminal proceedings, etc. The last such initiative was the introduction by the head of state for a nationwide discussion of the Draft Decree of the President of the Republic of Uzbekistan, which is expected to approve the Uzbekistan's Five Area development Strategy for 2017–2021. In this strategy, the second priority area is to ensure the rule of law and further reform of the judicial and legal system.

Thirdly, the comparative criminal procedure law, its possibilities can be irreplaceable in the matter of international integration of the criminal process. At the same time, this is not so much about the processes of globalization and regionalization as a whole, which call for the unification and harmonization of law in different countries, but also about their individual aspects. In particular, it means the supposed process of forming a "global jurisprudence" and creating a "global judicial community" (Global Community of Courts); the process of universalization of human rights, the process of formation of legal systems of newly formed states, etc.

All of the above circumstances point to the need to recognize the comparative criminal procedure as an independent branch of law, and not as an independent object (criminal process) of comparative jurisprudence. However, in my opinion, it is still far from such recognition, which other relatively new branches of substantive law have.

This negative image is promoted by disputes concerning the role and importance of comparative jurisprudence in solving certain problems, as well as the degree of its influence on the processes taking place in the legal systems of different countries, which are still being conducted in the scientific legal literature of some post-Soviet countries, including in Uzbekistan. At the same time, all researchers of comparative law, of course, recognize the enormous importance of this discipline in the life of society and the state.

As a justification for the independence of comparative criminal procedural law, one can state such an argument, that this branch of science is not only limited by the method of comparative legal analysis of domestic or foreign criminal procedural legislation and law enforcement practice, certain criminal trial institutions and ideas on criminal proceedings, but it's also aimed at obtaining a whole picture of the criminal process, criminal procedure law throughout the world.

In addition, as a science, it is aimed specifically at optimizing interstate interaction in the legal sphere and developing practical recommendations for changing the current criminal procedural legislation. According to the classic of foreign comparative studies R. David: "... today's world is not the same as it was before. Lawyers who have received a modern education use other concepts, their outlook and understanding of law differ from those adopted earlier. Here we need comparativists to teach lawyers to understand their interlocutors and be understood by them, to warn lawyers about the difficulties they can face. This explains, first of all, the modern development of courses and institutions, where a comparative law is taught»

We can also refer to the direct relationship between comparative criminal procedure law and other legal sciences, thereby confirming its importance as an independent science. It should be taken into account that such fundamental directions as criminal law, criminology, not only use the results of comparative criminal procedure law, but also provide an opportunity to actively use their own achievements. In addition, the cooperation of comparative criminal procedure with comparative sociology and the philosophy of law, based on the study of concrete facts, are also significant.

Speaking about the goals of comparative criminal procedure, it is possible to single out several main ones:

The first goal is analytical, which consists in discovering the origins of legal phenomena and institutions of the criminal process in foreign legal systems and identifying trends in their development.

The second goal is integrative, contributing to a clear orientation in developing ways to harmonize and bring together the criminal process of different legal systems, within the framework of one legal family, at the level of interstate entities.

The third goal is critical, in the course of which a constructive analysis of individual institutions and norms of the criminal process of foreign countries and its comparison with similar institutions and norms of the domestic criminal process is carried out.

The fourth goal is information, aimed at obtaining accurate information about qualitative moments in the criminal process of developed democratic countries and their use in domestic legal practice.

The fifth goal is cognitive, which consists in a comprehensive, in-depth and large-scale study of the criminal process in various states.

The sixth goal is propaganda, which is expressed, first of all, in informing the international community and the expert community about the importance of the criminal process of the country.

What are the opportunities for comparative criminal procedure at the present stage of reforming the judicial and legal sphere of Uzbekistan? What goals can be defined for this new branch of law in the criminal policy of our country?

In my opinion, the objectives of the comparative criminal procedure law of Uzbekistan for the near future could be identified the following problems, some of which are outlined in the Uzbekistan Five-Area development Strategy for 2017–2021.

The first is further modernization and optimization of the domestic criminal process. This problem can be considered within the framework of the Strategy outlined in the draft under 2.1. and 2.3

directions, such as democratization and improvement of the judicial system, as well as the improvement of administrative, criminal, civil and economic legislation. In this regard, it must be recognized that over the past years, the domestic criminal process has not undergone any significant changes. Unlike western systems, it was not affected by the rapid development of information and communication technologies (ICT), the widespread introduction of the capabilities of the worldwide Internet information system, as well as modern interactive forms of justice. In the domestic criminal process, the format-based method of conducting criminal proceedings is still of paramount importance, the pre-trial stage occupies a large place: an inquiry (in the narrow and broad sense of it (the so-called pre-investigation check) and a preliminary investigation.

The study of this issue, namely the introduction of modern ICT in the activities of courts (as defined in the sixth paragraph of paragraph 2.2 of the Strategy) and the introduction of modern forms and methods of electronic legal proceedings and enforcement proceedings (as defined in paragraph 4 of paragraph 2.3 of the Strategy), taking into account the developments in the comparative criminal procedural law, will allow legislators to choose the optimal, most effective forms and methods of electronic legal proceedings.

The second is the approach of the domestic criminal process to the standards and principles of justice that are universally recognized in democratic community. Here, the most relevant questions as:

Defining and legislating the criteria for determining the effectiveness of the activities of the bodies of inquiry and preliminary investigation, prosecutorial supervision of these stages of the criminal process, as well as the work of the court and the activities of judges;

the implementation of norms of international law and the most effective norms and institutions of the criminal process, in practice ensuring the true independence of the court and judges, the equality of prosecutors and lawyers, not only in the court session, but also in the pre-trial stages of criminal prosecution. This problem is correlated with the measures outlined in point 3 of paragraph 2.1 of the Strategy draft, namely the full implementation of principles of independence and impartiality of the court, adversarial and equal rights of the parties to the trial;

bringing to the classic, used in the practice of developed democratic countries, the type introduced in the domestic criminal process of institutions such as the "Habeas corpus act", the Miranda Rules, etc. Realization of this measure with the help of the possibilities of comparative criminal procedure law will solve the problem indicated in poing 4 of paragraph 2.1 of the Strategy draft;

Approval, at the legislative level, of the code of conduct of such participants in the criminal process as investigators, prosecutors, lawyers, judges.

The third is to ensure the impartiality and objectivity of the criminal process at the pre-trial stage. Here, it is very important and useful to work out the comparative criminal procedure law, the results of the research conducted on its basis criminal justice systems of developed democracies, in which they strictly adhere to the principle of separation and institutional independence, isolation of prevention and prevention functions, as one; disclosure of committed crimes, as two; implementation of inquiry and preliminary investigation in criminal cases, as three.

The study of all the above problems, as well as other issues listed in the draft Strategy, based on the achievements of the comparative criminal procedure law, will undoubtedly allow modernization and liberalization of the domestic system of criminal procedure, implement the most democratic norms and institutions in the criminal procedure, generally recognized norms of international law in the field of human rights, true justice and humanization of all parties to the criminal process.

References:

1. *Головко Л.В. Материалы к построению сравнительного уголовно-процессуального права: источники, доказательства, предварительное производство // Труды юридического факультета. – М.: Правоведение, 2009, Кн. 11. – С. 227–360.*

2. Гуценко К.Ф., Головко Л.В., Филимонов Б.А. Уголовный процесс западных государств. – М.: Зерцало-М, 2002. – С.528.

3. Давид Р., Жоффре-Спинози К. Основные правовые системы современности. – М., 2003.

4 Кох Х., Магнус У., Винклер П. фон Моренфельс. Международное частное право и сравнительное правоведение. – М., 2001.

5. Малиновский А.А. Уголовное право зарубежных государств. – М.: Новый юрист, 1998. – 128 с.

6 Марченко М. Н. Сравнительное правоведение. Общая часть. – М., 2001.

7. Молдован В.В. Молдован А.В. Сравнительное уголовно-процессуальное право. – М., 1999.

8. Уголовное право зарубежных стран. – М., 2013, 152 с.

9. Уголовный процесс современных зарубежных государств: Учебное пособие / К.Б.Калиновский. – Петрозаводск: Изд-во ПетрГУ, 2000. – 48 с.

10. Уголовный процесс. Григорьев В.Н., Победкин А.В., Яшин В.Н. 2-е изд., перераб. и доп. – М., 2008. – 816 с.