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THE ROLE OF INTERNATIONAL INSTITUTIONS IN TRANSITIONAL JUSTICE PROCESSES

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The article analyses the place and role of international institutions in the process of transitional justice. It is determined that the concept of transitional justice is a system of mechanisms and tools implemented in a country that is in a state of transition from armed conflict to post-conflict period or from totalitarian to democratic regime.

Examining international practice, it was found that the concept and directions of transitional justice are constantly evolving and improving both through the efforts of the countries themselves, and due to the active participation of various international institutions.

It is proved that, on the one hand, international institutions contribute to the strengthening of local civil society, which in the future will have a positive impact on transitional justice. On the other hand, individual transitional justice measures, such as trials, truth commissions or reparations, can often catalyse the development of civil society institutions. International practice has shown that the concept and directions of transitional justice are constantly evolving and improving both the efforts of the countries themselves and due to the active participation of various international institutions.

Key words: international institutions; transitional justice; conflict; Human Rights; European Union; European Court of Human Rights; Security Council; United Nations; International Criminal Court.

Formulation of the problem. The concept of transitional justice ("transitional justice") is a system of mechanisms and tools implemented in each country that is in a state of transition from armed conflict to post-conflict or from totalitarian to democratic regimes. International practice shows that the concept and directions of transitional justice are constantly evolving and improving both through the efforts of the countries themselves and due to the active participation of various international institutions. The introduction of the institution of "transitive justice" in the domestic political and legal model is designed not only to establish the facts and assess the ranges of human rights violations due to the conflict in eastern Ukraine, but also to promote an effective course of change of human rights institutions. The experience of other countries that have managed to restore rights that were not provided by their states in the process of reforming these institutions should be used.

Analysis of research and publications. The topic of transitional justice is comprehensively presented in the scientific works of J. Balabanyuk, A. Blaga, M. Gnatovsky, A. Zorina, O. Yevseyev, K. Karmazina, E. Kachanov, A. Korynevych, J. Melnyk, V. Mykhaylenko, O. Ovcharenko, Yu. Orlova, N. Satokhina, O. Semenyuk, O. Uvarova, K. Khlabystova, S. Shemeta, O. Shcherbanyuk. However, the study of this phenomenon remains relevant due to the existence of armed confrontation in Ukraine and the search for optimal ways out of it, which leads to the need to study the place and role of international institutions in transitional justice and the complexity of their mechanisms that can be used in Ukrainian society.

The purpose of the article is to conduct a comprehensive analysis of the place and role of international institutions in the justice process in transition.

Main material presentation. International institutions are types of social institutions that are characterized by activities at the level of the international regime, due to which they regulate international relations and within their competences form their own international political regime [1, p. 24]. Transitional justice has gained widespread institutionalization in recent decades, as evidenced by the emergence of local institutions, notably in Northern Ireland, Southern Africa, Colombia, Peru, Morocco, Tunisia, and other countries [2, p. 210].

In addition to the local nature, transitional justice has a global dimension, as international judicial institutions are widely involved in the practical implementation of its activities. These include special international tribunals concerning the former Yugoslavia and Rwanda, Lebanon, the hybrid tribunal of Sierra Leone, the European Court of Human Rights (ECtHR), and the International Criminal Court (ICC). Also, a significant place in the transitional justice process is occupied by supranational institutions, non-governmental international and regional organizations: the United Nations (hereinafter – the UN), the Organization of American States, the African Union, the European Union (hereinafter – the EU), the Council of Europe (hereinafter – CoE), World Bank and other donors, international NGOs, international research institutions and other institutions [3].

The main role of international institutions in transitional justice is that if a state fails to meet its international obligations within its jurisdiction to bring perpetrators to justice, the international community can take steps to ensure that such justice is administered. Revealing the potential of international institutions in transitional justice, we are going to analyse their role in the criminal process.

International experience shows that a post-conflict society is usually unable to cope alone with the mass trials of those responsible for crimes committed during armed conflict. In view of this, special international tribunals and the ICC are the first agents to influence the prosecution of perpetrators of large-scale crimes and human rights violations in transitional justice. The creation of these supranational international institutions was conditioned by the fact that national justice systems in post-conflict societies were mostly in a state of crisis, and therefore could not overcome new challenges.

In the context of the analysis of the role of international tribunals, it should be noted that the first international criminal tribunal in history was Nuremberg, which proved the guilt and prosecuted those who committed serious crimes during World War II. In fact, this tribunal became the basis for the development of the modern world order, ensuring the protection of human rights and the foundations of international humanitarian law. Also, its decisions marked the beginning of the formation of international criminal law and justice on the principles of ending impunity for all criminals without exception, the priority of international law over national, creating a relationship between peace and justice [4, p. 25].

The first events after the Nuremberg Trials and a significant demonstration of the importance of international institutions in transitional justice were the establishment of UN Special Criminal Tribunals to prosecute crimes committed in significant violation of international humanitarian law in the former Yugoslavia and Rwanda, the International Criminal Tribunal for the Former Yugoslavia (1993) and the International Criminal Tribunal for Rwanda (1995). It was these tribunals that set a precedent for the Security Council to establish international criminal tribunals as subsidiary bodies of the United Nations, which allowed the Council to exercise judicial functions. International criminal tribunals are an integral part of the UN, designed to restore and maintain international peace and security [5].

The model of special international tribunals is not ideal, but it has become the basis for the establishment of a permanent ICC. Its formation was carried out in accordance with the Rome Statute (1998) and came into force in 2002, after its ratification by 60 states. The Rome Statute was the result of a rather difficult compromise between strong political restrictions and the need to respect the sovereignty of states. Thus, according to Article 1 of the Rome Statute, the ICC is a permanent body empowered to exercise jurisdiction over those responsible for crimes of concern to the international community and to strengthen national criminal justice systems.

Hence, the ICC is based on the principle of complementarity (complementarity) i.e., the court may act in a special case when national courts are unable or unwilling to take the initiative. The establishment of such a principle determined the relationship between the role of the ICC and the national justice system, as according to it the ICC does not interfere in national criminal proceedings and does not act against its institutions, but only acts as an additional element in combating particularly serious crimes. Yes, the ICC deals with conflicts in the Democratic Republic of the Congo, northern Uganda, the Sudan, and so on [3, p. 34].

The ICC's jurisdiction provides for the administration of justice for crimes against humanity, war crimes, aggression, and genocide, which ensures that perpetrators will be brought to justice at the international level. [6]. Note that the ICC may have jurisdiction over crimes of aggression only after agreement has been reached on the definition of this type of crime. Legally and functionally, the ICC is an independent body from the UN and does not belong to its system. However, relations between the ICC and the UN are quite close and are governed by a special agreement on relations between them. In particular, the Security Council may initiate a case before the ICC or refer a case to it. Due to the complex nature of the ICC's activities, the number of cases and sentences handed down to it is relatively small.

The defining goal of the ICC is to end impunity and prevent further serious crimes against humanity. In countries that have ratified the Rome Statute, the ICC acts as a court of last resort that does not compete with states, but is a catalyst for national justice, which promotes a fair trial of every crime. Currently, 122 states are the members of the Rome Statute of the ISS, including 33 in Africa, 28 in Latin America, 25 in Western Europe, 18 in Eastern Europe, 18 in Asia and other countries.

The problem of determining the capacity of international institutions in transitional justice leads to the analysis of the so-called “hybrid courts” created by the UN with the involvement of foreign judges. These courts belonged to the bodies of international criminal justice, as their activities were guided by both national and international law.

In this aspect, the involvement of the international component in the national judicial system was a positive factor for such a mechanism of transitional justice as criminal prosecution, as it contributed to the harmonization of judicial practice, raising professional awareness of local judges, and increasing public confidence in the justice system. Such hybrid tribunals include the Special Panel of Serious Crimes in Timor-Leste (East Timor), the Special Tribunal for Lebanon, the Special Court for Sierra Leone, and The War Crimes Chamber of the Court of Bosnia and Herzegovina (BWCC or War Crimes Chamber) [7, p. 47].

In this regard, the UN in its document “Title, Rule of Law Tools for Post-Conflict States: Prosecution Initiatives” [8] notes that in the case of Timor-Leste and Kosovo, there was no possibility of prosecution at the national level at all, and the UN therefore set up an international group of experts who actually prosecuted within the national legal system (speaking about the Special Panel of Serious Crimes in Timor-Leste (East Timor), as well as the Program of International Judges and Prosecutors in Kosovo).

In some cases, such as Sierra Leone and Cambodia, the UN has entered into special agreements with their governments, which has helped increase national prosecution capacity. As a result, a Special Court has been established in Sierra Leone, which operates on the basis of its own statute and rules of procedure and is independent of the legal regime of the state. Cambodia has decided to set up “emergency panels” that also have their own procedures and rules [9].

As a supranational international organization of independent nations for common peace and social progress, the United Nations has also had a significant impact on the development of mechanisms for prosecuting perpetrators, not only through the establishment of international tribunals and the ICC, but also in support of national justice system of post-conflict states.

Given the shortcomings of previous work, the UN is now focusing its resources on supporting local forces implementing transitional justice reforms, which will strengthen their own national judiciary and, in the long run, fill the "legal vacuum" of post-conflict states. Thus, in his report, the UN Secretary-General notes that the UN's activities in the transition period will be aimed at long-term maximum assistance to states in developing and strengthening their own national justice systems in accordance with international standards [10]. Apparently, this shift in the UN's focus from the international to the national component of criminal justice is due in part to the significant costs of international tribunals and courts, the length of court proceedings, and the remoteness of the state whose cases are pending.

Another important instrument of transitional justice, in the development of which the UN is also actively involved, is the truth commissions. Thus, the Truth Commissions in Guatemala, Timor-Leste, Sierra Leone, El Salvador, the Democratic Republic of the Congo, and Liberia have enjoyed active UN assistance and support [9].

Significant potential of the UN is directed to the reform of judicial and law enforcement agencies in the countries in transition, it creates appropriate institutions and departments, forms special programs and funds, which involve highly qualified specialists who have positive experience in building transitional justice. At the same time, the Peacebuilding Commission has been functioning at the UN since 2005, which develops appropriate strategies and formulates an action plan for states affected by armed conflicts. The Office of the United Nations High Commissioner for Human Rights develops standards and instruments of the rule of law, as well as prepares and implements transitional justice mechanisms. In addition, the Office of the UN High Commissioner responds to inquiries from the Human Rights Council on transitional justice.

The EU's position on transitional justice mechanisms in post-conflict countries was outlined only in 2015. Yes, it became the first regional organization to define the goals, principles, and mechanisms for implementing EU measures to support transitional justice. Therefore, a separate issue on transitional justice was added to the Plan of Human Rights and Democracy Action. As a result, the Council Conclusions on EU Support for Transitional Justice were adopted together with the EU Policy Framework on Support to Transitional Justice [11].

In general, the EU's position is in line with the provisions on transitional justice set out in UN documents, and the EU fully supports the Rome Statute and advocates for the extension of the ICC's jurisdiction. The EU provides financial assistance to states in the development of national justice, supports truth commissions, develops a mechanism for compensating victims and institutional reform systems, including security and defence, and facilitates operations in specific countries. One of the defining principles of EU policy is the implementation of judicial reforms with broad public involvement. The seriousness of the EU's intentions in the development of transitional justice is first confirmed by the declaration in the Copenhagen criteria of the obligation to adhere to the principles of transitional justice to the candidate countries [12].

Important international institutions involved in transitional justice are the Council of Europe and the ECtHR. Thanks to the latter, it is possible to trace the ability of national justice to address human rights violations in the state, including during conflict and post-conflict settlement. The ECtHR has a wide case law, especially regarding the right of victims of crimes committed by previous regimes to know the truth about the circumstances of the crime committed against them, as well as related to restitution [13, p. 143].

In addition, the ECtHR has considerable experience in the legality of the application of such elements of transitional justice as amnesty and lustration. Thus, the existence of positive case law of the ECtHR on such controversial issues as restitution, amnesty, lustration shows its potential in the legal resolution of most issues that arise in post-conflict and post-repressive contexts. It is important that the

ECtHR not only correctly assesses the political spaces and features of the past, in which the rule of law was quite changeable, but also tries to form a vision of European human rights for the future. [14].

Transitional justice, based on the interdependence of its various mechanisms, must also consider the different levels and actors. First, it concerns the participation of civil society institutions in this process and the nature of their relations with state institutions. In addition, the adequacy of interaction between international and local institutions must be considered, as if international actors do not take into account endemic conditions, any action may slow down even unpredictable or even unpredictable negative consequences [15].

International public and research institutions play an important role in the transitional justice process, especially when the state is unwilling or unable to implement them. Among them, for example, the International Centre for Transitional Justice (ICTJ), which works to ensure justice in countries that have suffered massive human rights violations during conflict and repression.

Conclusions. In the post-conflict period, transitional justice and civil society are often closely interlinked. International institutions contribute to the strengthening of local civil society, which will have a positive impact on transitional justice in the future. Conversely, often some transitional justice measures, such as trials, truth commissions or reparations, can catalyse the development of civil society institutions.

International intervention in the transitional justice mechanisms of a state is not always an advantage, as it is not always perceived by local society, understood as foreign expansion. In addition, the support of international organizations can also contribute to the maintenance of the current government, which uses this as an argument for certain of its actions, inconsistent with endemic civil society. The international interest in transitional justice can also intensify the processes of combating the past in advance when society is not prepared for it. This can discredit transitional justice and make it unfeasible in the future, in a more relevant time.

Thus, on the one hand, the involvement of international institutions in transitional justice activities as unbiased experts and professionals with positive experience in this field contributes to the development of its mechanisms. On the other hand, given the external nature of these institutions, there is a danger of implementing measures without considering local conditions and proper interaction with local actors, which can lead to negative consequences for reconciliation.

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РОЛЬ МІЖНАРОДНИХ ІНСТИТУЦІЙ У ПРОЦЕСАХ ПЕРЕХІДНОГО ПРАВОСУДДЯ

У статті здійснено аналіз місця та ролі міжнародних інституцій у процесі правосуддя перехідного періоду. Визначено, що концепція правосуддя перехідного періоду є системою механізмів та інструментів, що запроваджуються у певній країні, яка перебуває в стані переходу від збройного конфлікту до пост-конфліктного періоду або від тоталітарного до демократичного режиму. Розглянувши міжнародну практику, з'ясовано, що концепція й напрямки перехідного правосуддя постійно розвиваються та удосконалюються як зусиллями самих країн, так, зокрема, й за активної участі різних міжнародних інституцій.

Доведено, що з одного боку міжнародні інституції сприяють підкріпленню локального громадянського суспільства, що в майбутньому позитивно впливає на перехідне правосуддя. З іншого боку, часто окремі заходи правосуддя перехідного періоду, приміром, судові процеси, комісії з правди або репарації, можуть виступати каталізатором розвитку інститутів громадянського суспільства. Міжнародна практика показала, що концепція й напрямки перехідного правосуддя постійно розвиваються та удосконалюються як зусиллями самих країн, так, зокрема, й за активної участі різних міжнародних інституцій.

Ключові слова: міжнародні інституції; перехідне правосуддя; конфлікт; права людини; Європейський союз; Європейський суд з прав людини; Рада безпеки; Організація Об'єднаних Націй; Міжнародний кримінальний суд.