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International legal standards for the conduct of criminal prosecution and its implementation in the legislation of the Russian Federation and the Federal Republic of Germany

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Abstract

Through the method of reviewing scientific documentation, the objective of the study is to determine international legal standards for the implementation of criminal prosecution and its implementation in legislation in Russia and Germany. International standards in the field of criminal procedure are analyzed, from which the category «international standards of criminal prosecution» has been developed. To form a unified concept for the implementation of criminal prosecution and create an effective mechanism to protect the rights of the accused, the need for further investigation of international standards is argued. Within the framework of this investigation, an attempt was made to draw attention to the issues of the regulation of the implementation of criminal prosecution in international documents, as well as the national legislation of the Russian Federation and the Federal Republic of Germany. It is concluded that international standards for the application of criminal prosecution play an important role in consolidating the rule of law and improving criminal procedure legislation, as they contribute to the formation of a unified concept of criminal prosecution and set the permissible limits for restricting the rights of the accused.

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Normas jurídicas internacionales para la realización de procesos penales y su aplicación en la legislación de la Federación de Rusia y la República Federal de Alemania

Resumen

Mediante el método de revisión de documentación científica, el objetivo del estudio es determinar los estándares legales internacionales para la implementación del enjuiciamiento penal y su implementación en la legislación en Rusia y Alemania. Se analizan las normas internacionales en el campo del proceso penal, a partir de las cuales se ha desarrollado la categoría "normas internacionales de enjuiciamiento penal". Con el fin de formar un concepto unificado para la implementación del enjuiciamiento penal y crear un mecanismo efectivo para proteger los derechos del acusado, se argumenta la necesidad de una mayor investigación de las normas internacionales. En el marco de esta investigación, se intentó llamar la atención sobre las cuestiones de la regulación de la implementación del enjuiciamiento penal en documentos internacionales, así como la legislación nacional de la Federación de Rusia y la República Federal de Alemania. Se concluye que las normas internacionales para la aplicación de la persecución penal desempeñan un papel importante en la consolidación del estado de derecho y la mejora de la legislación de procedimiento penal, ya que contribuyen a la formación de un concepto unificado de enjuiciamiento penal y también establecen los límites permisibles para restringir los derechos del acusado.

Palabras clave: persecución penal; estándares internacionales; garantía de los derechos del sospechoso; imputado; concepto de persecución penal.

Introduction

The norms of international law regulate the procedure for criminal prosecution in conjunction with the issues of ensuring the rights of the suspect, the accused, determining their legal status, protecting the interests of these entities, regulating the powers of the prosecutor, terminating criminal prosecution, etc.

The initial principles of building a criminal justice system formed by the world community contain only the fundamental principles of the activities of law enforcement agencies, paying attention to ensuring the rights and freedoms of a person involved in criminal procedural relations in connection with the implementation of criminal prosecution against him.

At the same time, not only the category of "criminal prosecution" is absent in international law, but it also does not disclose what should be understood by "international standard".

This situation is due to the activities of the bodies carrying out criminal prosecution, depending on the individual provisions of each legal system, which makes it possible to take into account the sovereignty of states, recognizing the right to self-determination. Such loyalty is explained by the diversity of national legal systems, their dependence on the policy pursued in the state, the economic situation, social situation, national and cultural characteristics. The importance of international standards, which, in turn, are specially formulated in this way in order to provide states with an independent choice of tools for the implementation of the starting principles of criminal prosecution, does not diminish.

Thus, Russian and German legislators retain the right to clarify and detail the criminal procedural legislation, taking into account the international standards of criminal prosecution when building the national system of law.

1. Methods

The study is based on the analysis of international regulations, German, and Russian criminal procedure legislation.

The research methodology consisted of: systemic, formal-logical methods, dialectical method of cognition, method of legal and technical analysis. On the basis of the data obtained, provisions were formulated that made it possible to highlight the definition of "international standards for the implementation of criminal prosecution", to develop the foundations of a single concept for the implementation of criminal prosecution, to reveal the essence of criminal prosecution.

2. Results

Now let us look at the research results:

(1) When defining international standards of criminal prosecution, one should take into account the provisions of the UN General Assembly Resolution "Establishing International Standards in the Field of Human

Rights" No. 41/120 of December 4, 1986, which, in fact, states the existence of a system of international standards in the field of human rights established by it (meaning, the UN), other UN bodies and specialized agencies, and calls for widespread ratification of existing treaties. When developing such documents, it is necessary to take into account: their compliance with existing international legal norms; clear formulation for further possible use; realistic mechanism for the implementation and implementation of the principles.

In the legal literature, there is no unified approach to understanding the category of "international standards", which negatively affects their implementation in national legislation.

Some authors refer to international standards all international norms in the field of individual rights and freedoms (Borodin, Lyakhov, 1983; Kondrat, 2013, p. 10).

According to S.V. Chernichenko, international standards include the obligations of the state or requirements that members of the international community make to each other (Chernichenko, 1989, pp. 117-120).

A.I. Zybailo and V.L. Fedorova state that international human rights standards include a set of rules recognized by states that reflect the normative minimum in the field of human rights, are formed as a result of the interpretation of international human rights law by competent international bodies and appear as models that states must follow in legislative, executive and judicial domestic activities with permissible deviations in the form of their exceeding or concretization (Zybailo, Fedorova, 2018, pp. 26-30).

We believe it possible to agree with the position of I.N. Kondrat in terms of the application of the category "normative rule" to international standards and its extension to the national systems of the member states, for example, the Council of Europe, the European Union, the CIS, etc., that is, in a certain region. The concept of "standards" in relation to human rights should be considered not as a model, standard or model, but as a general normative rule, the purpose of which is to achieve adequate sensitivity to human rights and their equal applicability not only at the international, but also at each of the regional levels (Khaliulin, 1997).

According to A.G. Khaliulin, it is advisable to single out "groups of states, whose legislation has some similarities to each other: 1) the USA; 2) Great Britain and the countries of the British Commonwealth; 3) the countries of Western Europe; 4) the countries of Eastern Europe - former socialist states; 5) the countries of the CIS and the Baltic states – the former republics of the USSR" (Ivanov *et al.,* 2020).

International standards in the field of criminal prosecution, in our opinion, also include the positions of the ECHR, formulated by it in

decisions and judgments, which by their legal nature, although not norms or normative rules, contain and explain the basic fundamental principles of the European Convention on the Protection human rights and fundamental freedoms, adopted in 1950, its interpretation and application.

(2) Despite the fact that international courts do not create norms of law, they, interpreting the provisions of international treaties, play an important role in the formation of international standards for the implementation of criminal prosecution.

The jurisdiction of the ECHR extends to both the Federal Republic of Germany and the Russian Federation, which are members of the Council of Europe, which have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms. So, in accordance with Art. 32 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the jurisdiction of the court is all questions concerning the interpretation and application of the provisions of this document and the protocols thereto (Mullerson, 1991).

This international act indicates the obligations of the member states of the Council of Europe: "The High Contracting Parties undertake to comply with the final judgments of the Court in cases to which they are parties" (Art. 46).

According to Art. 27 of the Vienna Convention on the Law of Treaties, which enshrines one of the fundamental principles of international law pacta sunt servanda (treaties must be enforced), "a party cannot invoke the provisions of its domestic law as an excuse for not fulfilling a treaty".

The stated provisions and the obligation to comply with them are not unambiguous.

In the German legal literature, the place of the ECHR decisions in the system of court decisions made by national courts is controversial (Hartwig, 2005).

Some scholars prioritize the ECHR decisions and argue that, at a minimum, they should be viewed as "super-governmental", "constitutional" or even "super-constitutional". Justifying their position, German researchers proceed from the provisions of the Convention on Human Rights (Art. 46), according to which the state against which the decision is made, implementing international agreements, and acting within the framework of international legal relations, are obliged to execute the decisions of the Court in any case, in which they act as parties.

The Federal Constitutional Court of the Federal Republic of Germany pointed to the obligation to review the decisions of the ECHR and developed the duties of state bodies arising from individual judgments (decision of the ECHR "Görgülü v. Germany", No. 74969/01, 26 February 2004):

1. The Constitutional Court of the Federal Republic of Germany first of all pointed out that the European Convention on Human Rights (as well as the protocols thereto), in national legislation, have only the status of a federal law.
2. The Basic Law seeks to integrate Germany into the legal community of peace-loving and free states but does not renounce the sovereignty ultimately embodied in the German constitution. The law of treaties is applied at the domestic level only when it is implemented in the domestic legal system in an appropriate form and in accordance with substantive constitutional law.
3. Administrative bodies and courts cannot abandon legal regulation in the existing and current system of law and compliance with the law, referring to the decision of the European Court of Human Rights.
4. The absence of challenging of the court's decision, as well as its execution, which violates the priority national law, may affect fundamental rights, while if the ECHR found a violation of the Convention with the participation of the Federal Republic of Germany, then in each case, the peculiarities of the "internal sphere" should be taken into account, that is the competent authorities or courts should clearly deal with it and, if necessary, justify why they still do not follow the international legal establishment.

Russian scholars point out that the Federal Constitutional Court of the Federal Republic of Germany does not establish the imperativeness of the decisions of the European Court, thereby emphasizing the need to carefully study the judgment of the ECHR when introducing it into national legislation (Kulikov, 2020). At the same time, it should be borne in mind that the opinions expressed regarding the ECHR judgments do not prevent the use of the positions formulated in the relevant court decisions as a guideline for law enforcement and legislative activities on the observance and implementation of human rights.

In accordance with Federal Law No. 101-FZ (July 15, 1995) "On International Treaties of the Russian Federation", there is a provision according to which "international treaties of the Russian Federation are subject to fair implementation in accordance with the terms of the international treaties themselves, the norms of international law, the Constitution of the Russian Federation, this Federal Law, other acts of the legislation of the Russian Federation" (Art. 31).

According to Part 4 of Art. 15: "If an international treaty of the Russian Federation establishes rules other than those provided by law, then the rules of the international treaty are applied".

At the same time, attention should be paid to the changes introduced by the Federal Law (December 8, 2020) No. 419-FZ "On Amendments to Article 1 of the Code of Criminal Procedure of the Russian Federation", according to which the application of the rules of international treaties is not allowed in their interpretation that contradicts Constitution of the Russian Federation.

In connection with the foregoing, the position of E.A. Torkunova (2002) is of interest, according to which, even though the ECHR does not replace national legislation, the participating States will have to eliminate gaps in domestic legislation, the inconsistency of its individual provisions with European human rights norms, as well as violations of these norms in law enforcement practice. The presented author's statement, in general, despite the recent legislative changes in this area, characterizes the importance of the positions formulated in the decisions of the ECHR and indicates the expediency of their use as international standards, including in the implementation of criminal prosecution.

Thus, on the basis of the foregoing, we come to the conclusion that the *international standards for the implementation of criminal prosecution* include the normative rules enshrined in international declarations, conventions, protocols, pacts, treaties both at the international and regional levels, as well as the position of the ECHR, formulated by him in decisions and judgments, which are not norms by their legal nature, but in fact contain and explain the starting fundamental principles of the European Convention on Human Rights.

(3) Let us turn to the international documents that enshrine the principles of criminal prosecution, the mechanism for its implementation, and apply to the jurisdiction of the Federal Republic of Germany and the Russian Federation.

International criminal prosecution standards can be divided into *two groups*.

The first group includes the following *international standards established by the Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948*, which are to consolidate: (a) the rights to life, liberty and security of person "(Art. 3), to equal protection of the law (Art. 7), equality of all people before the law (Art. 7); free movement and choice of residence (Part 1 of Art. 13); to own property (Part 1 of Art. 17); (b) the prohibition of torture or cruel, inhuman or degrading treatment (Art. 5), conviction for a crime that, at the time of its commission, did not constitute a crime under national or international law (Part 2 of Art. 11); arbitrary deprivation of a person of his property (Part 2 of Art. 17).

International standards of criminal prosecution are also enshrined in the *International Covenant on Civil and Political Rights* adopted on December

16, 1966, by Resolution 2200 (XXI) at the 1496th plenary meeting of the UN General Assembly, which specified some international legal standards related to the implementation of criminal prosecution and set forth in The Universal Declaration of Human Rights and established new ones.

Thus, this document contains such international legal standards that are subject to mandatory observance, such as: (a) prohibition of torture, cruel, inhuman or degrading treatment (Art. 7); (b) the right to life, liberty and security of person (Art. 9); (c) inviolability of the home, privacy of correspondence, protection of honor and reputation (Part 1 of Art. 17); (d) the right to equal protection of the law from arbitrary or unlawful interference with private and family life (Part 2 of Art. 17); (e) the right to free movement and choice of residence (Parts 1 and 2 of Art. 12).

The second group of international legal standards for the implementation of criminal prosecution includes the normative rules that secure the rights of a person when a criminal charge is brought against him, as well as those related to the conditions of a possible restriction of inalienable rights and freedoms in the event of a criminal charge of a person and his arrest. Such standards are also enshrined in the *Universal Declaration of Human Rights* and contain the following postulates in the form of:

(a) the rights of every person on the basis of full equality in order to determine his rights and obligations, as well as to establish the validity of the criminal charge brought against him, to a criminal case in compliance with requirements of justice by an independent and impartial court (Art. 10); (b) prohibition of arbitrary arrest and detention: "no one may be subjected to arbitrary arrest, detention or exile" (Art. 9); (c) the duty of the state to ensure judicial control and, if there are grounds, rehabilitation of a person who has been illegally detained or imprisoned: "everyone has the right to effective restoration of his rights by the competent national courts in case of violation of his fundamental rights conferred on him by the constitution or law" (Art. 8); "Every person accused of committing a crime has the right to be presumed innocent until his guilt is established legally through a public trial, in which he is provided with all the opportunities for defense" (Parts 1 of Art. 11).

The International Covenant on Civil and Political Rights has significantly expanded the international legal standards enshrined in the Universal Declaration of Human Rights, complementing the second group of standards we have identified in this study with normative provisions concerning: (a) the mandatory establishment of the grounds, conditions of arrest and detention (Part 1 of Art. 9); (b) the obligation to notify the detainee of the grounds for detention and inform him of the charges brought against him (Part 2 of Art. 9); (c) providing a person with additional guarantees when a criminal charge is brought against him (Part 3 of Art. 14): to be notified of the nature and basis of the criminal charge against

him in his native language (if necessary, use the free help of an interpreter); to receive sufficient time and opportunity to prepare a defense, including free of charge with the help of a designated defense lawyer; to freely testify or confess guilt without coercion; (d) judicial control during the arrest or detention of a person in order to determine the legality of the restriction of the rights of the person arrested or detained, respectively (Parts 3 and 4 of Art. 9); (e) the grounds for the release from custody of persons in the event of the presentation (at any stage of the criminal proceedings) of guarantees to appear in court (Part 3 of Art. 9); (f) the peculiarities of criminal prosecution against juvenile accused, aimed more at the re-education of minors (Para. b of Part 2 of Art. 10, Part 4 of Art. 14).

In its essence and content, the category "international standard" is synonymous with the United Nations Minimum Rule Standards, which, like other international documents (declarations, covenants, conventions, treaties), contain the guiding principles of international law.

Such documents include, for example: (1) Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 in Geneva. It should be noted that this document was the first to use the term "standard rules"; (2) Standard Minimum Rules for Non-custodial Measures (Tokyo Rules, December 14, 1990); (3) Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules) (December 17, 2015); and the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by UN General Assembly resolution 40/33 of November 29, 1985.

For example, the Beijing Rules grant states the right to independently determine the age of criminal responsibility for minors who may be prosecuted, while the lower limit of such age "should not be set too low" (Para. 4.1).

For a juvenile who is being prosecuted, additional procedures are established in the form of immediate notification of the parent or guardian of the juvenile about the detention, the use of detention as a last resort, as well as replacement of detention with other milder special measures.

International legal standards in the field of criminal prosecution are formed as a result of the work of regional international organizations (Council of Europe, CIS, etc.). A significant role in this area is played by the activities of the Council of Europe, in the documents of which the requirement addressed to the member states is established to comply with the basic standards and principles in the field of human rights and freedoms developed by the organization and formulated in the conventions, protocols to it, agreements, and in case of violation - to use means for their restoration and compensation for harm caused by such violation (Khaliulin, 1997, p. 47).

Such standards in the field of criminal prosecution include the normative rules formulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its Protocols; The Convention on Compensation for Victims of Violent Crimes (1983); Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) and its Protocols, etc.

The provisions of the above-mentioned international documents are naturally reflected in the national legislation of the Federal Republic of Germany and in the Russian Federation – states cannot ignore the provisions contained in the documents, since they are either parties to an international treaty, or directly participated in their development and adoption.

(4) Let us consider some examples of the implementation of international standards in the criminal procedure legislation of the Federal Republic of Germany and the Russian Federation.

A significant step towards building a democratic state governed by the rule of law was the entry of the Russian Federation into the Council of Europe in 1996, the subsequent adoption of the Federal Law No. 54-FZ (March 30, 1998) "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols to it" and the state's undertaking to bring Russian legislation and the practice of its application in line with European standards.

The most important direction of the judicial reform in accordance with international documents was the protection and unswerving observance of fundamental human rights and freedoms in criminal proceedings, as well as the strengthening or establishment of judicial control over the legality of restricting such rights in the implementation of criminal prosecution against a person.

The consequence of the ongoing judicial reform and the actions of the legislator was the development and adoption on December 18, 2001 of the Code of Criminal Procedure of the Russian Federation, which reflected the main provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which everyone has the right to liberty and security of person, no one can be deprived of liberty except lawful being taken into custody by a competent court, whereby each person in custody is promptly brought before a judge or other official with judicial power, is entitled to trial within a reasonable time or to release pending trial (Art. 5).

The protracted alignment of the Russian criminal procedural legislation with international standards and the Constitution of the Russian Federation served as the basis for the receipt of relevant complaints first to the Constitutional Court of the Russian Federation, and then to the ECHR.

According to the Decree of the Constitutional Court of the Russian Federation of March 14, 2002, No. 6-P, the provisions of Articles 90, 96, 122 and 216 of the RSFSR Code of Criminal Procedure were recognized as inconsistent with the Constitution of the Russian Federation, allowing the detention of a person suspected of committing a crime for a period of more than 48 hours and as a preventive measure of taking into custody without a court decision. Federal Law No. 59-FZ of May 29, 2002 "On Amendments and Additions to the Federal Law "On the Enactment of the Code of Criminal Procedure of the Russian Federation", the judicial procedure for choosing a preventive measure in the form of detention was put into effect.

Aware of the existing negative law enforcement practice, the legislator continued to improve the procedure for choosing a preventive measure in the form of detention and already in 2003 made amendments to Part 1 of Art. 108 of the Code of Criminal Procedure of the Russian Federation, according to which a judge's decision on the choice of a preventive measure in the form of detention must indicate specific, factual circumstances on the basis of which the judge made such a decision, in addition, the choice of a preventive measure is permissible only if there is a reasonable suspicion (Popenkov *et al.*, 2021).

The criminal procedural legislation of the Federal Republic of Germany in the field of choosing a preventive measure in the form of detention contains, in fact, provisions similar to the Code of Criminal Procedure of the Russian Federation with some exceptions/additions. So, according to §112 (Para. 1, sentence 1) of the CPC of the Federal Republic of Germany, one of the prerequisites for detention is the presence of substantial suspicion of a criminal act, which means the belief that the accused has committed a criminal act or participated in its commission, i.e., all signs of punishment and conditions of criminal prosecution are present.

It is of interest to present to each citizen (both the person against whom a crime has been committed and any other person, for example, an eyewitness) in exceptional cases (Para. 1 of §127 of the Code of Criminal Procedure of the Federal Republic of Germany) the right to take a criminal procedural measure in the form of detention in relation to a person caught on the crime scene of the suspect in the commission of a criminal act, provided that such detention cannot be carried out by the authorized bodies. The purpose of such detention is to ensure criminal prosecution.

After the arrest, the law enforcement agencies have an additional obligation to inform about the reasons for the arrest, including the criminal act.

In the official translation of the European Convention on Human Rights into Russian, the category "immediately" is used. In the English version it is understood as "promptly", which translates as "quickly", and in the

German we find the following translation: "in kürzester Zeit", i.e., as soon as possible.

Information about the criminal act, that is, on the charges brought forward, in practice during the arrest is the initial one and can subsequently be supplemented if necessary. A short-term delay in the provision of information is possible until the point in time when the information can be processed properly (Löwe, Rosenberg, 2016). The criminal procedure legislation of the Federal Republic of Germany does not indicate how long the detained person is notified of the suspicion.

In the judgments of the ECHR, the judges additionally explain how to understand the corresponding time of notification formulated in the European Convention. Thus, information may not be provided at the time of arrest, but it must be announced within a few hours after it, as indicated in several judgments of the ECHR.

Thus, in the case "Zuyev v Russia" (Application no. 16262/05, §84) The ECHR concluded that the period between Z.'s arrest and the notification of the charges against him, equal to 14 hours, was excessive. As the court indicated, during this period Z. remained in a state of confusion and uncertainty as to the reasons for the deprivation of liberty (a similar reasoning was used in the judgment of the European Court of April 21, 2011, in the case Nechiporuk and Yonkalo v Ukraine), application no. 42310/04, §210).

Thus, using the example of the analysis carried out, we see that the international the standards of criminal prosecution concerning the prohibition of arbitrary arrest, as well as the need to establish its grounds and conditions, the duty of law enforcement agencies to inform the detainee of these grounds and the criminal charge are reflected in the national criminal procedure legislation. In the Russian Federation, there is a specific time limit for such notification, which is three hours. In the Code of Criminal Procedure of the Federal Republic of Germany, such a term is not specified in such detail that, in our opinion, it is subject to change to more detailed regulation of the powers of authority of persons conducting criminal prosecution and authorized to detain on suspicion of committing a crime, preventing violations of human rights, as well as providing additional guarantees to the detainee.

(5) When touching upon the powers of the authorities to comply with international standards reflected in national legislation, it is necessary to refer to the international documents defining the activities of the prosecutor in carrying out criminal prosecution, namely to Recommendation No. R (2000) 19 of the Committee of Ministers of the Council of Europe to member states "On the role of the prosecutor's office in the criminal justice system", adopted by the Committee of Ministers of the Council of Europe

on October 6, 2000 at the 724th meeting of the Ministers' representatives.

According to this document, regardless of the forms of criminal prosecution, systems of law enforcement agencies and justice, prosecutors in all criminal justice systems should have the authority to resolve issues on the initiation, continuation of criminal prosecution; maintaining the prosecution in court; appeal against a court decision.

Nowadays, in accordance with international standards in the Federal Republic of Germany, the prosecutor's office has fully retained the function of criminal prosecution, which is enshrined in national legislation as the prosecutor's duty to bring public charges, organize the prosecution of all criminal acts (§152), refuse public prosecution (§153a-153f), limit the prosecution (§154a) or temporarily stop the proceedings (§154f).

In the Russian Federation, the prosecutor has never been the only subject of criminal prosecution, initially its main function was to supervise government officials, and after the adoption of the Federal Law "On Amendments and Additions to the Code of Criminal Procedure of the Russian Federation" dated June 5, 2007 No. 87-FZ, the powers of the Russian prosecutor to carry out criminal prosecution have undergone significant changes and, in fact, at the stage of pre-trial proceedings were reduced to the conclusion of a pre-trial agreement (Clause 5.2, Part 2 of Art. 37 of the Code of Criminal Procedure of the Russian Federation) and the approval of accusatory documents drawn up by the preliminary investigation authorities (Clause 14, Part 2 of Art. 37 of the Code of Criminal Procedure of the Russian Federation).

Based on the afore-mentioned information, it can be stated that international standards in the field of criminal prosecution are presented in international law not only in the form of norms-principles, but also in the form of securing the legal personality of the prosecutor in the implementation of criminal prosecution. At the same time, in terms of granting the prosecutor sufficient powers to carry out criminal prosecution at the pre-trial stages of criminal proceedings, the Russian legal system does not fully meet international standards. This provision is subject to legislative regulation.

Consideration of the issue of criminal prosecution would be incomplete without resolving the question of the adversarial nature of the parties: "If the law stipulates the adversarial principle in its regulations, it demonstrates the level of democracy in the State, humanization and justice of criminal law, protection of rights, freedom, and legal interests of persons, and equal and effective defense by law and courts.

The adversarial system as a general independent principle is specified in Art. 123, Para. 3 of the Constitution of the Russian Federation. Moreover, this principle is enshrined in art. 6 of the European Convention on Human

Rights since the adversarial principle ensures legal justice. Notably, the analysis of the European Court of Human Rights practices revealed that the adversarial approach lies in providing the defense and prosecution with equal opportunities to study the evidence of the other party and state their opinion on it. Consequently, it ensures the equality of the parties in criminal proceedings (Pushkarev *et al.,* 2020).

This ensures the solution of the fundamental tasks of protecting the rights, freedoms, and interests of the individual in the context of the fairness of criminal proceedings but will also eliminate the inconsistency of its individual norms governing criminal prosecution and protection from it (Pushkarev *et al*., 2021).

Conclusion

Based on the analysis of generally recognized principles, norms of international law, the law enforcement practice of the ECHR, the positions of scientists who have studied the legal nature and essence of international standards, the following should be noted.

A common understanding of the essence of criminal prosecution, the definition of its beginning, timing, and procedural order, as well as the system of bodies implementing it, in international norms, decisions of the ECHR has yet to be formulated.

International standards for the implementation of criminal prosecution are specially formulated in such a way as to provide states to independently choose the means and mechanism for implementing the initial principles of criminal prosecution, which is explained by the variety of national legal systems, their dependence on the policy pursued in the state, the economic situation, social situation, national and cultural characteristics.

Thus, the legislator of both the Russian Federation and the Federal Republic of Germany retains the right to clarify and detail the guidelines, international standards for the implementation of criminal prosecution, taking them into account when building the current system of state law.

International standards for the implementation of criminal prosecution play an important role in building the rule of law and improving national criminal procedure legislation, since they contribute to the formation of a unified concept of criminal prosecution and establish the permissible limits for limiting the rights of the suspect, the accused.

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