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THE SIGNIFICANCE OF PREJUDICIAL CIRCUMSTANCES IN INTERNATIONAL COOPERATION IN THE FIELD OF CRIMINAL LEGAL PROCEEDINGS

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Abstract:

The article analyzes the essence and features of the application of the institution of prejudice in criminal proceedings in some countries, examines the opinions of scientists on the procedure for the implementation of prejudice, makes some judgments on the use of prejudice in the provision of legal assistance in international cooperation.

Keywords: Legal proceedings, prejudice, implementation of prejudice, proof, international conventions.

The legal nature of the institution of prejudice and its essence currently cause different understanding among legal scholars. The prevailing opinion is that prejudice is "a legal rule, which consists in the fact that the circumstances established by one judicial act are recognized as true in subsequent cases without additional verification" [1, p. 59].

Chashina I.V. reasonably asserts, "Prejudice is the obligation to take into account or apply the very precedent, that is, an event that has already happened and is significant" [2, 44]. Of particular interest in the analysis of this institution is intersectoral prejudice, which is understood as a system of legal relations that arise in the process of proving circumstances within the framework of the relationship of acts of criminal, civil, arbitration, administrative proceedings with the same participants in the trial [3, p.598].

In our opinion, prejudice, as well as intersectoral prejudice, is a complex legal phenomenon, its application is important when making a court decision, when the prejudicial circumstances of an earlier court decision are taken into account. Therefore, the institution of prejudice closely related to the principle of the inadmissibility of double prosecution, acts as a guarantor of the protection of the rights and interests of citizens and ensures the inviolability of justice.

The discussion of the features of the institute of prejudice is of interest in terms of issues related to its legislative consolidation and law enforcement in the CIS countries. Thus, in the Model Code of Criminal Procedure of the CIS member states, the mention of prejudice is enshrined in Article 147 among the circumstances established without evidence, namely, by a decision that is binding on the court as a prejudice [3, c.26]. Some Commonwealth countries, whose criminal procedure legislation is based on the Model Code, have defined their own rules for the application of prejudice. However, not all the CIS member states accepted this institution in the same way.

Thus, in the Criminal Procedure Codes of the Kyrgyz Republic, the Republic of Uzbekistan, the Republic of Moldova, the rules on prejudice are not regulated. At the same time, the Civil Procedure and Economic Procedure Codes of the Republic of Uzbekistan contain rules for intersectoral prejudice.

When considering a case, the circumstances established by a decision of an economic or administrative court that has entered into legal force must not be proved and cannot be disputed by persons if they participated in a case that was resolved by an economic or administrative court. A court verdict in a criminal case that has entered into legal force is obligatory for a court considering a case on the civil law consequences of the actions of the person against whom the court verdict was made, only on the questions whether these actions took place and whether they were committed by this person (Article 75 of the Civil Procedural code of the Republic of Uzbekistan).

A decision of a court in civil cases or an administrative court that has entered into legal force is binding on the economic court considering another case on questions about the circumstances established by the decision of the court in civil cases or an administrative court and related to the persons participating in the case. The verdict of the criminal court that has entered into legal force is binding on the economic court on issues of whether certain actions took place and by whom they were committed (Article 73 of the Economic Procedure Code of the Republic of Uzbekistan).

In Azerbaijan, Belarus, Kazakhstan, Tajikistan and Turkmenistan, prejudice in criminal proceedings is irrefutable intersectoral. Prejudice is given only to decisions in civil cases and only in terms of whether the

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event or action itself took place, but prejudice does not apply to decisions in arbitration or administrative cases (except for Turkmenistan).

Thus, article 141 of the Code of Criminal Procedure of the Republic of Azerbaijan establishes that without using the materials of the criminal prosecution proceedings, the circumstances established by the decision, which is binding for the court in a prejudicial procedure, are recognized as proven.

A judgment of a criminal prosecution court that has entered into legal force is binding on the inquirer, investigator, prosecutor or court both in terms of the circumstances established in the criminal prosecution proceedings and in terms of their legal assessment; a court ruling in a civil case that has entered into legal force is mandatory in criminal proceedings only in terms of whether an incident or action took place, and does not preliminarily decide the question of the guilt or innocence of the accused (Article 142 of the Code of Criminal Procedure of Azerbaijan) [4, c.22].

According to Article 127 of the Code of Criminal Procedure of the Republic of Kazakhstan, a sentence that has entered into legal force, as well as another court decision on a criminal case that resolves it on the merits, is binding on all state bodies, individuals and legal entities in relation to both the established circumstances and their legal assessments in relation to the person about whom they are made.

This provision does not prevent verification, annulment and change of the sentence and other decisions of the court in cassation on newly discovered circumstances. A court decision in a civil case that has entered into legal force is binding on the body conducting the criminal process in the course of a pre-trial investigation or in a criminal case only on the question of whether the event or action itself took place, and should not prejudge the conclusions about the guilt or innocence of the defendant [5, p. 46].

Article 127 of the Criminal Procedure Code of Turkmenistan determines that the circumstances established by a court decision that has entered into legal force are classified as circumstances established without evidence. Any court decision that has entered into legal force when considering a criminal case without restrictions has prejudice.

According to Article 89 of the Code of Criminal Procedure of Tajikistan, a verdict in a criminal case that has entered into legal force is mandatory for the court, judge, prosecutor, investigator and interrogating officer in the proceedings on a criminal case in relation to the established circumstances and their legal assessment. A court decision in a civil case that has entered into legal force is obligatory in criminal proceedings only on the question of whether the event or action itself took place, and should not prejudice conclusions about the guilt or innocence of the defendant. It can be concluded that in Tajikistan only a sentence and a court decision in a civil case have prejudice.

The prejudice in the Code of Criminal Procedure of the Russian Federation defines the circumstances established by a verdict that has entered into legal force or another court decision that has entered into legal force, adopted in the framework of civil, arbitration or administrative proceedings, which are recognized by the court, prosecutor, investigator, interrogating officer without additional verification. At the same time, such a sentence or decision cannot prejudge the guilt of persons who have not previously participated in the criminal case under consideration (Article 90) [6].

In Georgia and Ukraine, which are not part of the CIS, the norms of the Model Code on the implementation of prejudice in national criminal proceedings have nevertheless been reflected.

In Georgia, the following provisions on prejudice are normatively regulated: factual circumstances established by a court verdict that has entered into legal force in another criminal case and their legal assessment are binding on the court, the prosecutor's office, the investigator and the interrogator, if none of the participants in the process questions the legality of this verdict; a court decision in a civil case that has entered into legal force is binding on the court, the prosecutor, the investigator and the interrogating officer to resolve the issue in the criminal case, whether an event or action took place, if none of the participants in the criminal process questions this decision [7].

The norms of the criminal procedural legislation of Ukraine are of interest relating to the institution of prejudice.

Thus, according to Article 90 of the Code of Criminal Procedure of Ukraine, a decision of a national court or an international judicial institution that has entered into force and established a violation of human rights and fundamental freedoms guaranteed by the Constitution of Ukraine and international treaties, the consent to be bound by which has been granted by the Verkhovna Rada of Ukraine, has prejudicial value for the court, which decides on the admissibility of evidence.

Apparently, only the Code of Criminal Procedure of Ukraine recognizes as prejudicial decisions not only national courts, but also international judicial institutions [8]. An analysis of the legislation of the CIS countries showed that, despite the different interpretation of the circumstances recognized as prejudicial, the CIS countries unanimously perceive

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information about intersectoral prejudice as evidence in the case. In societies is undergoing continuous integration, social changes, new legal acts appear, which, due to their legal nature, can also have prejudicial force.

There is a need to discuss the issue of recognizing circumstances as prejudicial, established by court decisions of foreign states in cases where an intersectoral prejudicial relationship is manifested between sentences and court decisions in civil, arbitration (economic), administrative cases of courts of foreign states.

As is known, the Minsk (1993) and Kishinev (2002) Conventions on legal assistance and legal relations in civil, family and criminal cases operate between the CIS countries.

According to the norms of the Conventions, its member states provide legal assistance in various areas of legal proceedings, while procedural and other actions are carried out, a person is extradited for criminal prosecution, search for property and funds of civil defendants for the execution of decisions in civil cases and other economic disputes, decisions in civil and family cases, and sentences in criminal cases are recognized and enforced [9].

An analysis of these international legal documents for the presence of pre-judicial norms showed the following:

1. In some cases (Article 52 of the Minsk Convention, Article 55 of the Chisinau Convention) decisions of the Contracting Parties that have entered into force and do not require enforcement by their nature are recognized in the territories of other Contracting Parties without special proceedings (such as decisions on guardianship, on divorce);

2. Each of the Contracting Parties shall annually inform the other Contracting Parties of information about convictions passed by its courts against citizens of the relevant Contracting Party that have entered into legal force, information about the convictions of persons previously convicted by its courts, if these persons are brought to criminal responsibility in the territory of the requesting Contracting Party (Article 79 of the Minsk Convention, Article 107 of the Chisinau Convention);

3. When resolving issues on recognizing a person as a particularly dangerous recidivist or the presence of various types of recidivism in his actions, the institutions of justice of the Contracting Parties recognize and take into account the sentences passed by the courts of each of the Contracting Parties (Article 99 of the Chisinau Convention);

4. In addition, the Chisinau Convention determines the recognition and enforcement by each of the Contracting Parties of sentences pronounced by the courts of other Contracting Parties.

However, the above norms of the Convention, which regulate the relevant circumstances in the provision of legal assistance between states, do not contain the prejudicial nature of court decisions that have entered into legal force.

For example, the establishment of a procedure for the recognition and enforcement of decisions made in the territory of other states does not yet mean that the circumstances in these decisions are prejudicial.

Also, the norms of criminal procedure legislation regarding the legal force of evidence obtained in the territory of a foreign state (Article 594 of the Code of Criminal Procedure of the Republic of Uzbekistan, Article 455 of the Code of Criminal Procedure of the Russian Federation) regulate the significance of evidence obtained in the territory of another state in the execution of an order for the provision of legal assistance, but these evidence do not are decisions that have entered into legal force in a civil, administrative or arbitration case, which could have prejudicial value.

We believe there is a need to enshrine in interstate legal documents the norms regulating intersectoral prejudice, which would mean that the circumstances established by a court verdict that has entered into legal force or another court decision that has entered into legal force, adopted in the framework of civil, arbitration (economic) or administrative proceedings of one states are recognized by a court, prosecutor, investigator, interrogating officer of another state without additional verification.

These changes, it seems, will largely contribute to ensuring the guarantees of the rights of participants in the process, protecting their legitimate interests, as well as the public interests of the state in terms of compensation for damage.

Of particular importance is the definition of the institution of intersectoral prejudice in the provision of legal assistance to the states of the Commonwealth countries for solving the problems of combating economic crimes, when, for example, within the framework of a civil process, the facts established by the court of one state will not require additional verification, having the force of conclusive evidence when sentencing by a court in another state.

Decisions made taking into account intersectoral interstate prejudice will certainly strengthen the interaction of states in providing legal assistance in all areas of legal proceedings, increase the authority of the court and the social significance of its acts, and ensure the optimization of the process of proof

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in cases under consideration within the framework of legal relations in civil, family and criminal cases.

I think everyone is aware of the fact of a blackout in Central Asia this week due to an increase in power at the section of the main power line connecting Uzbekistan, Kyrgyzstan, Kazakhstan and Turkmenistan. Simultaneous power cuts in these countries naturally led to a disruption in the functioning of all water supply systems, public utilities in many cities.

In connection with the situation that has arisen, an intergovernmental commission has been created to investigate the causes of the accident, which will unconditionally establish the circumstances of the accident and those responsible.

Since a large-scale power outage occurred in four states at the same time, citizens, legal entities, and entrepreneurs naturally suffered considerable damage, which will require high costs to restore.

The applicants' appeal to the judicial authorities with claims for compensation for the damage caused is quite real, and during their judicial consideration, the final court verdict in a criminal case against the persons responsible for the accident as an element of an intersectoral interstate prejudice may act as evidence.

These circumstances once again confirm the need to develop the issue of regulation in interstate legal acts of the norms on the application of intersectoral prejudice, which will be mandatory for a court of a foreign state considering a case in criminal, civil or arbitration (economic) proceedings.

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