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TOWARDS EUROPEAN JUDICIAL CULTURE: ICC STANDARTS IMPLEMENTATION

The most difficult thing to understand in formatting new judicial culture in Europe is breakage impunity archaic norms and standards. Multinational and white-collar crime, political crime and rebellious activities, immunities of refugees and men from high circles show that in some situation perpetrators of serious crimes always escape unpunished.

The same thing is stressed up in abuses of powers models that achieved in many countries in transition, countries in civi l war state etc. when criminals among state leaders and executives escape any form of punishment. Covering such criminals leeds to public entrustment in governing structures and policy.

On the contarary social legitimization of political structures prosecution and punishment process is connected with sovereignity loose especially when supranational criminal law is formatting. Thus cross cultural influence under mutual understanding of culture of impunity significance is of great interest to study.

International security setting or implementing standards of international justice belongs to rise or fall on the judgments of individual decision-makers [1]. That is why old and new challenges which national judges are facing when trying to ensure a consistent and effective application of European law throughout the whole of the European Union are the same like situation when members of Ukrainian judiciary are using European Court on Human Rights decisions in their practice.

There was some criticism concerning questions of the role of culture and identity and international judiciary functions, the significance of cultural norms to the volume of discretion due to cultural conflicts (i.e. when judges, representatives of administrative bodies and parties in process belong to different cultures). We know that culture is a basis for reinterpreting global law and local practices. Culture is a political tool in the interplay between international and domestic politics. And culture is the culprit for failure to meet international legal standards. At standard situations judicial culture and culture of the society at large are deeply entangled in the exercise of discretion. Law, justice and culture have been historically interconnected, but law and culture are beginning to come apart. It is not hard to see why. The rise of legal positivism in the nineteenth century shifted the source of law away from local, moral/social norms to legislation [2].

Reformers sometimes also fall into the trap of believing that new laws can solve problems simply by virtue of the fact that the laws exist. Yet laws and regulations that are overly complex or that fail to take into account weaknesses in the agencies that will enforce them or the greater social context can create more problems than they solve. Participants of European public law organization conference that was

held in Athens,Greece at the beginning of September 2009 stressed significance of unified cultural norms and standards onto formulating the new rational of European public law [3].

Much more problems exist on European level. As EU officials said: Given the European Union's objective of establishing an area of freedom, security and justice, it is crucial for justice professionals in each Member State to acquire a European legal culture. To this end, Member States will have to become familiar with one another's systems, learn one another's languages and become accustomed to working in the context of mutual recognition and cross-border partnership, so as to foster cooperation between judicial authorities. The EU has been working for more than fifteen years on the creation of a European Judicial Training Network (EJTN) as essential to the development of a European judicial culture. In addition to these management tools, the mechanisms set up to help cooperation – such as the Judicial Network in Civil Matters , Eurojust and the Judicial Network in Criminal Matters – play an important role in the dissemination of information. There are also many European institutions that regularly organise training for practitioners of justice and public administration, e.g. the European Institute of Public Administration (EIPA) in Maastricht, the European Centre for Judges and Lawyers and the European Law Academy (ERA) in Trier.

The object of the EJTN, which was set up in 2000, is to promote a judicial training programme with a genuinely European dimension. This valuable tool for developing judicial training and coordinating the activities of the various national structures in the field of European Union law received operating grants from the Union in 2003 and 2005. As from 2007, the Commission proposes that it be allocated an annual operating grant under the framework programme on fundamental rights and justice specific programme on criminal justice [4]. So European Judicial Training Network was created to improve the knowledge of European law among members of the national judiciaries, to build mutual understanding and confidence and hence to contribute to the development of a European judicial and public administration culture. The main ethical aims of it were:

– the proper application of Community law, which depends largely on how it is applied by the legal practitioners, and especially by judges;

– the development of the mutual recognition principle, which rests primarily on mutual confidence and cooperation between judicial and public administration authorities.

Due to this efforts governments struggling to create a minimal political consensus may find that their laws, often filled with last minute additions and deletions, conflict with one another or fail to serve the international purposes intended. A tendency to over-regulate can lead to regulations that are ignored, harming the reputation of the legal system as a whole.

From this point of view the dominant role of International Criminal Court, International Court of Justice and European Court on Human rights, Administrative court of European Public Law Organization belongs to the fundamentals of their activity. The values, benefits of the Honorary Judges don't correspond with

concrete society's culture. It is non-negotiable value. But what should we do with the situation when governments, communities or interpersonal obligations are in conflict with individual norms and values, when standards of international due process are westernized being in contradiction with social group or other society's response.

That pretends on beginning a creation of common international Judicial culture. For example an ICC model is based on Strategic plan of ICC that stresses that The Court is now a working reality, investigating and prosecuting the most serious crimes of international concern on prevention of transnational crime the fight against impunity. That is why the efforts are done in case to conduct fair, effective and expeditious public proceedings in accordance with the Rome Statute and with high legal standards, ensuring full exercise of the rights of all participants. Court's officials are working to develop policies for implementing the quality standards specified in the Statute and the Rules of Procedure and Evidence with respect to all participants in proceedings and persons otherwise affected by the Court's activities, in a manner that is respectful of diversity.

In order to meet these standards, the Court has been and will continue developing and implementing policies which are mindful of the different cultural contexts in which the Court operates. In many areas, such as in relation to the treatment of victims and witnesses, the Court already has a number of policies in place. Moreover the Court works on implementation of a common ICC culture that means clear ethical standards of staff's behavior and dynamic, results-driven, respectful of diversity, honest, transparent (while respecting confidentiality) and service-oriented culture of judges and prosecutors. It is essential to the Court's ability to carry out its mission and to ensure the well-being of individuals, including victims, witnesses and others the Court is charged to protect [5].

So we can't diminish the role of international standards and norms that have been constructed due to one type of cultural standards. Such norms and rules have to be cleared from cultural dependency. But from the average point of view they depend on language, on interpretation, on understanding of the international rule of law. Yet membership of the International Court is drawn from the ranks of distinguished statesmen and academics than it is from experienced judges so the wisdom of concrete judicial system decision making can't be in use through the process but the elements of the UN policy can. Maybe formulation of cultural traditions here would rely on local professional judicial cultures and their integration into the world where the Judges or public administrators understand global problems, have the skills to resolve conflicts and struggle for justice non-violently, live by international standards of human rights and equity, appreciate cultural diversity.

From the other side specialists say that change in the law of war, human rights law and in other legal domains have placed individuals, governments and non-governmental organizations under new systems of legal regulation – regulation which, in principle, recasts the legal significance of state boundaries. The regime of liberal international sovereignty entrenches powers and constraints, and rights

and duties in international law which – albeit ultimately formulated by states – go beyond the traditional conception of the proper scope and boundaries of states, and can come into conflict, and sometimes contradiction, with national laws. Within this framework, states may forfeit claims to sovereignty, and individuals their right to sovereign protection, if they violate the standards and values embedded in the liberal international order; and such violations no longer become a matter of morality alone.

Rather, they become a breach of a legal code, a breach that may call forth the means to challenge, prosecute and rectify it. So the process of international legal thinking development overturned the exclusive position of the state in international law to individuals' rights and duties. Within the wider international community, rules governing war, weapon systems, terrorism, human rights and the environment, among other areas, have transformed and delimited the order of states, embedding national polities in new forms and layers of accountability and governance. J. Beitz has noted that the boundaries between states, nations and societies can no longer claim the deep legal and moral significance they once had; they can be judged, along with the communities they embody, by general, if not universal, standards. That is to say, they can be scrutinized and appraised in relation to standards which, in principle, apply to each person, each individual, who is held to be equally worthy of concern and respect. Despite the development and consolidation of the regime of liberal international sovereignty, massive inequalities of power and economic resource continue to grow. There is an accelerating gap between rich and poor states as well as between peoples in the global economy [6]. But through multinational courts proceedings as a rule it is impossible to individual to claim to a 'higher moral court' in connection with such a breakage of his privileges.

That is why we can point out that the reconnection of international law and morality requires coordinated multilateral European action in the fields of:

– basic human rights upholding especially in connection with the impunity principle;

– equality and non-discrimination in judicial policies and administrative practices;

– respect the rights and dignity of all involved in conflict resolution.

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Анотація

Лоренцо Буддел Вазел, Тулякова К. **На шляху до європейської суддівської культури: втілення стандартів МКС.** – Стаття.

У статті розглянуто питання формування європейської судової культури та можливостей та протиріч які існують на шляху втілення цієї ідей шляхом втілення стандартів Міжнародного кримінального суду. Спільний розгляд справ, визнання судових рішень потребують іншого рівня підготовки професійного судді. З другого боку тривалий конфлікт між індивідами та системою європейського права не надає можливості узгодженого вирішення питання щодо формування єдиного підходу та оцінки європейських норм, цінностей та стандартів.

Ключові слова: Європейська культура правосуддя, Міжнародний кримінальний суд.

Summary

Lorenzo Bujosa Vadell, Katherine Tulyakova. **Towards european judicial culture: ICC standarts implementation.** – Article.

In the article it is stressed that improving the knowledge of European law among members of the national judiciaries, building mutual understanding and confidence and hence contributing to the development of a European judicial culture is connected wit supranational legal structures like International Criminal Court. The main ethical aims of it were: the proper application of Community law, which depends largely on how it is applied by the legal practitioners, and especially by judges; the development of the mutual recognition principle, which rests primarily on mutual confidence and cooperation between judicial authorities. Unfortunately proper implementation of it depends on human rights understanding and realization in different European countries.

Key words: European judicial culture, International Criminal Court.

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Yener Ünve

DIE GRUNDLAGEN VOM ALLGEMEINEN UND BESONDEREN TEIL DES NEUEN TÜRKISCHEN STRAFGESETZBUCH

Das türkische neue StGB ist am 01. 06. 2005 in Kraft getreten sind. Dieses Gesetz wurden in mehreren Punkten vor und nach dem Inkrafttreten geändert, da das in einer eiligen Weise, in kurzer Zeit und außer einigen Juristen, ohne Einholung der Meinungen der anderen Strafrechtler vielmehr von ausländischen Gesetzen in Eile, fehlerhaft und mangelhaft übersetzt worden sind.

Weil während der Erstellung des neuen türk-StGB vom deutschen StGB auch von vielen Gesetzen, die ins Deutsche bereits übersetzt wurden, Übersetzungen vorgenommen worden sind, besteht ein wichtiges Systemproblem.

Das alte türk-StGB von 1926, das von der italienischen Zanardelli StGB übernommen wurde, hat sich in vieler Hinsicht geändert.

Sowohl mit den allgemeinen Begründungen des türk-StGB als auch mit den Begründungen der Artikel besteht meistens kein Zusammenhang mit den Artikeln im Text und sie beinhalten vollkommen entgegenstehende Bestimmungen.