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Implementation of the Statute of the International Criminal Court into the National Legislation of the Republic of Azerbaijan

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Abstract

The article is devoted to the implementation of the Statute of the International Criminal Court in the national legislation of the Republic of Azerbaijan. The article is based on the Statute of the International Criminal Court, scientific and theoretical provisions on its implementation, the national legislation of the Republic of Azerbaijan, as well as a comparative analysis of the national legislation of foreign countries. Meanwhile, the activities of the International Criminal Court and the advantages and disadvantages of its Statute in the implementation of national legislation were analyzed in detail. Recommendations and conclusions from the policies of both jurisdictions are presented.

Keywords: International Criminal Court, national legislation, the Republic of Azerbaijan, implementation, complementary, jurisdiction, the execution of an order, criminal offences, international crimes, obligation.

1. INTRODUCTION

The International Criminal Court is an international organization, the creation of which is conditioned by the objective conditions for the development of international law and international relations, the need to search for coordinated actions of states in solving major international problems. The establishment and activities of the ICC indicate that the system of international organizations has been replenished with a new organization for the maintenance of international law and order.

High hopes were pinned on the International Criminal Court; positive assessments were made of the Court even before the start of its activities. Such assessments and expectations are reflected in many scientific studies, both domestic and foreign. This was due, among other things, to the fact that the ad hoc tribunals for the former Yugoslavia and Rwanda, created in the 1990s, were often criticized – both on the legality of their creation by the UN Security Council (the UN Charter, we recall, the power to create judicial bodies The UN Security Council doesn`t provide), and on the issue of their activities.

The activities of the tribunal for the former Yugoslavia evoked more critical assessments; doubts were voiced about the impartiality of this judicial body, the focus of its legal attention specifically on the Serbs. Thus, it was noted: "the unequivocal statements of the representatives of Western Europe and the United States, prior to the creation of the Tribunal, gave grounds to consider this action as a sanction directed against one of the parties to the conflict, the responsibility for the consequences of which is shared by all participants. At international conferences on the former Yugoslavia .....Serbs were accused in advance of "violations of international law" and "deliberate and systematic acts of terror against other nations" [1].

It was pointed out that from the very beginning of its work, the tribunal "couldn`t avoid being politicized and a double standard, being anti-Serb. This, in particular, is evidenced by the fact that most of the accused are Serbs; at the same time, the tribunal turns a blind eye to crimes committed by other parties to the conflict". The death in 2006 in The Hague of the former leader of Yugoslavia, S. Milošević, didn`t contribute to the formation of a positive image of the tribunal, while his case was being considered by the tribunal [2].

Against this background, criticism of the ad hoc tribunals, the International Criminal Court had convincing legal advantages, which led to a fairly quick receipt of the number of ratifications required for the entry into force of the Statute - 60; by 2016, 123 states

are parties to the Statute, which suggests broad international support for the Court. There are several such advantageous aspects.

Firstly, the legal basis for the creation of the Court was a universal international treaty, but not a UN Security Council resolution [3].This method of creating a judicial body is the most optimal: each state voluntarily decides on participation in the constituent act, on the subsequent extension of the jurisdiction of the Court to it. The creation of the tribunals for the former Yugoslavia and Rwanda wasn`t conditional on the consent of these countries; the jurisdiction of the tribunals extended to the citizens and territory of these states, regardless of their will.

Secondly, the UN International Law Commission, which worked on the development of the text of the Statute for about 50 years, was able to take into account and reflect in its text both the legally fundamental provisions laid down by the Charter and the Judgment of the Nuremberg Tribunal, and the subsequent development of international law in the field of individual responsibility for committing international crimes. These include, in particular, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Geneva Conventions and the 1977 Additional Protocols to them, the UN General Assembly 1974 Resolution on the Definition of Aggression, the 1968 Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, and a number of others.

Thirdly, the Rome Statute enshrines the principle that the Court "complements the national criminal justice authorities" (Article 17 of the Statute), which implies the beginning of the Court's activity only in cases where the relevant judicial authorities of the state can`t function properly, or their activity turns out to be ineffective [4].

Thus, the provisions of the Statute provide an opportunity to prosecute perpetrators primarily within the framework of national legal systems, and only in the event of their inaction or ineffectiveness can the mechanism of the Court be activated. Such legalization of the Court as an additional, or auxiliary means in relation to the national judicial system, probably made it possible to remove the possible suspicious attitude of states and to obtain a large number of parties to the Statute (recall that ad hoc tribunals provided for a different scheme: along with the fact that the tribunals and national courts had parallel jurisdiction to prosecute individuals, the jurisdiction of the tribunals took precedence over the jurisdiction of the national courts - at any stage of the proceedings, the tribunals could demand that the proceedings be transferred to them).

So that existence of such legal advantages predetermined the decision of many states to become parties to the Rome Statute. Such participation has become a kind of criterion for the law-abidingness of states, their adherence to the principles of fair trial and the inevitability of punishment for the guilty persons, the desire to demonstrate their readiness, if necessary, to transfer their citizens to the Court for prosecution. As stated in the Preamble to the Rome Statute: "the most serious crimes of concern to the international community as a whole mustn`t go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation" and states adopt the Statute "to put an end to impunity for the perpetrators of ... crimes" [5].

Meanwhile, such large states as China, India and Turkey didn`t make the decision to become parties to the Rome Statute. In 2000, the United States signed the Statute, but later withdrew its signature. In May 2002, the US Administration sent a note to the UN Secretariat stating: "Regarding the Rome Statute of the ICC, we hereby inform you that the United States doesn`t intends to become a party to this treaty. Accordingly, the United States isn`t legally bound by its signature on December 31, 2000. The United States requests that its intention not to be a party, as indicated in this note, be reflected in the depositary's list of status relating to this treaty. "... Note that this was done even before it was possible to assess the first results of the Court's activities. Moreover, subsequently, the United States began to conclude bilateral "immunity agreements" with a number of states, through which the possibility of bringing American citizens to justice by the Court is excluded. Such treaties, in particular, provide that if an American citizen is in the territory of a member state of the ICC and a request is made to transfer him to the disposal of the Court, then such a state undertakes to extradite this person not to the Court, but to the US authorities.

2. MATERIALS AND METHODS

During the preparation of the article, comparative research, historiography, deduction, induction, etc. methods were used. Also, not only the Statute of the International Criminal Court, but also international legal documents providing for the fight against international crimes and crimes of an international nature were analyzed in detail. In addition, the national legislation and experience of the states implementing the Rome Statute were considered.

In practice, we can see that international courts are very different from each other in the degree of influence on national legal systems, in their "transformational" potential. While some have been very successful in this (for example, the ECHR and ECJ), others face serious difficulties (such as the Inter-American Court of Human Rights, the African Court of Human and Peoples` Rights) and can`t yet boast impressive successes.

A convenient methodological approach to the analysis of this problem was proposed by professors Laurence R. Helfer and Anne-Marie Slaughter, who divided these factors into three large groups:

1) Objective factors beyond the control of the international court and member states;
2) Factors under the control of the participating States,
3) Factors that can be influenced by the international court [6].

The first group of factors allows us to look at the general historical, cultural, political, social and legal context and assess the objective ability and willingness of states to cooperate. The International Court of Justice will most likely prove to be powerless or ineffective in a situation where the gap between the participating States in terms of their political structure, level of development, cultural values is so great that it will not allow it to form common legal standards.

In this case, a certain maturity is required, as well as the commonality of interests of the member states of the integration association, which will allow them to agree to the limitation of their national sovereignty and submission to the jurisdiction of the international court. Perhaps this explains the phenomenon of the success of regional international courts and integration associations, in which more or less homogeneous states participate, which have much in common and are at comparable stages of their development.

The second group of factors can be attributed to those that are in the power of the states that create an international court, which determine its competence and powers. Changing the national legal system of a sovereign state can only become possible if there is political will associated with the need to participate in a particular regional association, as well as with all the ensuing consequences, including the need to obey the general rules of the game. The more clearly and distinctly the political will and support for the international court is expressed, the more effective the work of the international court and the process of implementation of common standards at the national level will be. And vice versa, the weakening or loss of political will and support, partial or complete loss of meaning in participation in a regional association will lead to an increase in centrifugal tendencies, isolationist sentiments and active resistance of national actors responsible for the implementation of the legal positions of international courts.

The third group of factors relates directly to the work of the international court, its strategy and tactics of interaction with national legal systems. This group of factors also includes the *erga omnes* [7] effect in decisions of an international court. This effect is responsible for the systemic consequences of the decisions (precedents) of the international court, which are manifested in the behavior of states under the jurisdiction of the international court. As a general rule, a decision of an international court is binding only for the disputing parties.

At the end of the twentieth century, quite unexpectedly for observers, the process of rapid development of international courts began. Beginning in the 1970s, the growth in the number and diversity of international judicial institutions continued into the 1980s and even accelerated in the 1990s. This phenomenon had two consequences:

- The number of international courts of universal jurisdiction (the International Court of Justice, as well as the courts of regional general political organizations) has grown significantly; specialized (WTO Dispute Settlement Body. Investment Dispute Resolution Center, Human Rights Courts, International Tribunal for the Law of the Sea, Courts of Integration Associations, International Criminal Court);
- Organizations have emerged that have many features of an international court, but differ either in the way of creation (International Criminal Tribunals for Rwanda and for the former Yugoslavia), or a hybrid nature (mixed tribunals created within the state to investigate the acts of a war criminal head of state, as in the Sierra- Leone) [8].

Thus, there are many purely judicial or quasi-judicial institutions operating in the worlds, which in organizing their activities widely use the experience and process of “classical” international courts, primarily the International Court of Justice. Therefore, the study of various aspects of international litigation, in particular the regulation of the collection, assessment and use of evidence, has a direct theoretical and practical significance.

The Statute of the International Criminal Court was adopted in Rome on July 17, 1998 and entered into force on July 1, 2002. Article 5 (1) (d) states that the International Criminal Court has jurisdiction over all serious international crimes, including the crime of aggression. The Rome Statute is aimed at strengthening the rule of law in international relations, requiring persons who have violated their obligations towards the international community to appear before an independent international judicial institution and be held accountable for their deeds. For the rest of the crimes falling under the jurisdiction of the Court, namely the crime of genocide, crimes against humanity, war crimes, existing international treaties apply, including the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions for the Protection of War Victims of 12 August 1949, the Convention against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984 and other international instruments. Many states can`t decide on the recognition of the jurisdiction of the ICC, which has been created as one of the effective means of prosecuting and punishing those who have committed the most serious international crimes. Moreover, it only applies in cases where the states concerned are unable to prosecute the perpetrators of such crimes on the basis of the national criminal justice system, or fail to do so properly.

Unlike the International Court of Justice and the ECHR, the ICC isn`t empowered to decide on the international responsibility of states. Its task is to prosecute those "responsible for the most serious crimes of concern to the international community" [9].

3. RESULTS

3.1. The Activities of the International Criminal Court and its Role in International Criminal Justice

The creation of the International Criminal Court has become one of the achievements of the world community. The establishment of a permanent body of international criminal justice has a twofold meaning. Firstly, ensuring in practice the inevitability of punishment will help prevent crime and promote international peace and security. The activities of the International Criminal Court are capable of raising the general level of law in the world community, striving through the achievement of the statutory goals of the United Nations to ensure the observance of international law and justice. Secondly, the practice of the International Criminal Court is capable of creating a complex of unwritten norms of international criminal law, which, together with the norms of bilateral and multilateral international treaties (created on the basis of UN model treaties on international cooperation in criminal law), will contribute to the harmonization of the criminal systems of states on a global scale in the community. The requirements of good faith compliance with the norms of international criminal law are within the competence of the current body of international justice – the International Criminal Court.

As noted in a number of UN documents, the ICC is a core element of the emerging international criminal justice system, which includes national courts, international courts and hybrid courts with both national and international components. These bodies of international justice are closely linked to efforts to establish and the maintenance of international peace and security [10].

It should be noted that the peculiarity of international crimes is that they are characterized by the scale and duration. The theory and practice of international relations indicate that the principle of individual responsibility for crimes against peace, war crimes and crimes against humanity has been formed in international law.

Therefore, the activities of the ICC are one of the brightest examples of cooperation between states in the fight against crime. One of the main tasks of the Court is that all persons subject to international treaties to combat crime mustn`t shirk responsibility. The principle of the inevitability of punishment is one of the basic principles of international criminal law.

Analysis of the doctrine of international law and international practice allows us to assert that the problem of responsibility in international law is complex and extensive; it is considered as one of the properties of international relations and is an important factor in maintaining order in these relations. International legal sanctions provided for by international law are coercive measures applied to subjects of international law in response to international crimes, and are designed to guarantee and ensure international law and order [11].

An analysis of the practical activities of the International Criminal Court indicates that it isn`t yet ideal, because the time for considering cases in court stretches for many years, and a clear mechanism for serving a sentence hasn`t been developed. It`s necessary to further improve legal standards in the field of criminal justice, to develop and adopt new international legal acts on the prevention of crime and the treatment of offenders. In general, it can be stated that the establishment and activity of the ICC means a certain progress in the legal regulation and coordination of cooperation in the fight against crime. And although the scale of the activities of the International Criminal Court at this time is still small, the emergence and development of such organizations represents a significant step forward towards expanding and improving the key dimensions and forms of international cooperation [12].

One of the most important principles of the ICC is that it`s competent only for crimes that were committed either on the territory of a State party or by a citizen of a State party. If neither the personal nor the territorial principle is respected, the Court can`t act. This provision guarantees the right of states to decide whether or not to subject their citizens or their territory to the jurisdiction of the ICC. However, there is one exception: the UN Security Council may, through a resolution adopted in accordance with Chapter VII of the UN Charter, refer to the Court a certain situation affecting crimes that are committed neither on the territory of a participating state, nor by citizens of a participating state. For example, the Security Council exercised this right when it referred the situation in Darfur to the Court, since Sudan isn`t a State party to the ICC.

Another important principle of the International Criminal Court is the principle of complementary, enshrined in article 17 of the Rome Statute. The ICC only acts if the state on whose territory the crime was committed or of which the perpetrator is a citizen is unwilling or unable to investigate and make accusation.

Finally, the third most important principle of the ICC is that the Court can`t automatically administer justice for any alleged crime. This requires one of the following mechanisms: either the prosecutor of the State party transfers a certain situation to the Court; or the UN Security Council refers a situation to the Court; or the ICC prosecutor initiates an investigation against a State party on his/her own initiative *(propriomotu)*, and his/her actions must be confirmed by a Chamber consisting of three independent and impartial judges. In itself, this initiative combines a number of elements and factors (procedure; reasonable basis standard; crimes falling within the jurisdiction of the ICC; complementary requirement; gravity requirement; interests of justice) as result on analysis of the Articles 13(c), 15 and 53(1) of the Rome Statute.

At the same time, the analysis of the obligations of states arising from the Statute of the ICC is also important. In essence, these obligations can be divided into three groups:

1) Specific legal obligations arising from the provisions of the Statute that are to be complied with. For example, the most important obligations stem from parts 9 and 10 of the Statute, which deal with the cooperation of states with the ICC. Article 86 of the Statute establishes a general obligation to cooperate fully with the ICC in its investigation and prosecution of crimes, while Article 87 regulates issues related to requests for cooperation and the consequences of failure to comply with such a request.
2) Indirect obligations arising from the principle of complementary. Under the Rome Statute, States-parties aren`t required to introduce into their national legislation norms on the crime of genocide, crimes against humanity and war crimes, however, in practice, states have to take into account two factors:
   - The ICC will not be able to prosecute and judge all these crimes, so that the work of national courts in this area remains of paramount importance;
   - The definition of crimes contained in Articles 6-8 of the Rome Statute is based on various sources of treaty law to which many states are parties. For example, States parties to the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must ensure that genocide and torture are crimes under national criminal law [13].
3) Provisions according to which the participating States can make certain statements or choose certain methods of cooperation with the ICC. For example, article 14 of the Statute refers to the transfer of a situation by a State party. However, each state can independently determine which national body is authorized to do this.

The Resolution of the PACE 1644 (2009) on Co-operation with the International Criminal Court (ICC) and its universality states that “The Assembly welcomes the fact that, since its adoption in 1998, the Rome Statute of the ICC has been ratified by 108 states across the world. Regrettably, eight Council of Europe member states (Armenia, Azerbaijan, the Czech Republic, Moldova, Monaco, Russia, Turkey and Ukraine), one Council of Europe observer state (the United States) and one state with observer status with the Parliamentary Assembly (Israel) have not yet ratified it” (para. 3). In this regard, under para. 5 of the above-mentioned the Assembly therefore urges and recommends those Council of Europe member and observer states and Parliamentary Assembly observer states which have not yet done so to following para. 5:

- Sign and ratify without further delay the Rome Statute and the Agreement on the Privileges and Immunities of the ICC;
- Adopt effective national legislation to implement the Rome Statute at the earliest opportunity and encourage third states to do so;
- Protect the integrity of the Rome Statute as recommended in Resolutions1300 (2002) and 1336 (2003);
- Fully co-operate with the ICC in the fight against impunity for the most serious crimes of international concern;
- Empower their judicial and law-enforcement authorities in order to exercise the states’ primary jurisdiction over crimes within the purview of the ICC;
- Make meaningful financial contributions to the ICC’s Trust Fund for Victims;
- Incorporate in their legal orders relevant standards on victims’ rights, without prejudice to existing higher standards in some Council of Europe member and observer states and Parliamentary Assembly observer states [14].

On other hand, in accordance with Article 1 of the Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the International Criminal Police Organization – INTERPOL, done at December 22, 2004, “is to establish a framework for cooperation between the Parties in the field of crime prevention and criminal justice, including the exchange of police information and the conduct of criminal analysis, the search for

fugitives and suspects, the publication and circulation of Interpol notices, the transmission of diffusions, and access to the INTERPOL telecommunications network and databases". The special agreement approved by the same international legal document, specifies the terms and conditions under which the ICC-OTP and its designated point of contact shall have access to and use of the INTERPOL communications network and databases [15].

3.2. Implementation of the Statute of the International Criminal Court into the National Legislation of the Republic of Azerbaijan

In the theory of law, attention is drawn to the possibility of implementation in several directions.

Firstly, the simplest seems to be the decision on the full textual reproduction of the norms of international law in national legislation. This is due to the continuous growth of the importance of international law and the law of the European Union for strengthening international relations in the field of criminal law. For example, Germany not only ratified the Rome Statute of the International Criminal Court, but also adopted in 2002 the Code of International Criminal Law, which completely implemented into German criminal law the criminal offenses provided for in the Statute, as well as the provisions on the orders of the chief and the provisions of the law.

The second direction is the expansion of the content of the international legal norm in the formulation of the domestic criminal law prohibition, that is, the limitation of actions to execute the order or order of the chief, as excluding the criminality of the act. So the Rome Statute of the International Criminal Court links the apparent illegality of the order and, accordingly, the onset of criminal responsibility for its implementation with the commission of crimes against humanity or genocide [16]. And it does not provide for this for an order to commit war crimes, but only indicates the possibility of criminal liability if the person knew about the illegality of the order. At the same time, the 1998 Criminal Code of the Republic of Latvia provides for unconditional responsibility for the execution of an order or instruction when committing not only the crimes of genocide against humanity and the world, but also war crimes.

The third direction is expressed in narrowing the content of an international legal norm when formulating a criminal law prohibition by national legislation that is, expanding the application of the execution of a law or an order of the authorities, as a circumstance excluding the criminality of an act. In relation to Article 33 of the Rome Statute of the International Criminal Court, the execution of the provisions of the law is considered only as a mandatory order of the government to commit certain acts. At the same time, Article 122-4 of the French Criminal Code of 1992 establishes that a person who has committed acts not only prescribed but also permitted by the provisions of a law or regulation is not subject to criminal liability. That is, we are talking about whether a person hasn`t only a legal obligation, but also the right to comply with the requirements of the law [17].

Moreover, they allow taking into account the peculiarities, specifics, traditions of the implementing state. It`s only important that the changes do not change the essence of the implemented norm. When implementing it, it is important to ensure that the national criminal law is in line with international acts that define the criminality of an act. Consequently, for circumstances precluding the criminality of an act, it is necessary to clearly record in which cases they do not work, that is, when the execution of a law or an order of the authorities becomes criminal.

As the experience of foreign states with regard to the implementation of the provisions of the ICC Statute shows, there are three main approaches:

1) The adoption of one legislative act covering all implementation problems *(the approach chosen by Great Britain, Germany)*. However, it`s necessary to clarify that such a law shall have an advantage over the current legislation in the event of a conflict between the legislation relating to the ICC and other legislation;
2) Amending all relevant legislative documents separately: the Constitution, sectoral codes or laws (the approach taken by France). Since the introduction of amendments and additions to the Constitution is a complex and multi-stage process, such an approach seems to be the most difficult, but it most fully reflects the recognition of the jurisdiction of the ICC;
3) Amendments and additions to the relevant legislative acts, accompanied by the adoption of special legislation on cooperation with the ICC (the approach chosen by Finland, Canada, Georgia). It`s important with this approach of implementation that the national legislation not only provides for cooperation procedures, but also designates the Competent Authorities carrying out cooperation.

The Statute itself doesn`t clearly stipulate what is primary (ratification or implementation) and what is secondary. In Article 88 only in a general form speaks of the need to ensure the existence of national procedures for cooperation with the Court, and the moment of implementation of such procedures isn`t indicated. From this we can conclude that the solution to this issue depends on the discretion of the state itself [18].

Within the framework of the first problem, the states managed to develop the following options for its solution: priority of implementation before ratification; the method of "governmental consideration" of the

issue of the priority of ratification and implementation of the Statute, when both processes are carried out practically simultaneously; implementation of the Statute after its ratification.

The optimality of the method of "governmental consideration" of the issue of the priority of ratification and implementation of the ICC Statute is that it will allow to immediately taking a comprehensive decision on ratification and implementation, without breaking these procedures in time.

International experience in the implementation of the ICC Statute shows that states, one way or another, chose one of the three above-mentioned options for performing the ratification and implementation procedures. Norway, Canada, France, the Netherlands, Portugal, Spain, Sweden, South Africa and many other countries adopted implementing legislation after ratifying the ICC Statute, that is, in this case, the formula was applied - "ratification precedes implementation". This isn`t surprising, given that the above states ratified the ICC Statute even before its entry into force *(before July 1, 2002)*. In this regard, the moment of implementation was not particularly relevant for them, since the possibility of the ICC exercising its jurisdiction didn`t yet exist [19].

Until July 1, 2002, the ICC Statute didn`t come into force, so the time lag between ratification and implementation, in principle, couldn`t create any trouble for the member states. For example, Spain ratified the ICC Statute on October 24, 2000, and the Law on Cooperation with the ICC was adopted on December 10, 2003. In South Africa, the ICC Statute was ratified on November 27, 2000, and the Law on the Implementation of the Rome Statute of the International Criminal Court was adopted. On July 18, 2002, Portugal ratified the ICC Statute on February 5, 2002, while the implementing act was adopted on July 22, 2004.

In some States, a different approach has been taken, with implementation taking place before or at the same time as ratification. These include Luxembourg, Finland, Australia, Great Britain, Denmark. In Denmark, for example, on May 16, 2001, an implementing act was adopted (the Law on the International Criminal Court), and on June 21 of the same year, the ICC Statute was ratified. In Luxembourg, the constitution was revised in August 2000 and a law was passed approving the ICC Statute. The Statute itself was ratified by Luxembourg on September 8 of the same year. Australia has an interesting implementation experience, where the ICC Statute was ratified on July 1, 2002, that is, on the day of its entry into force. Implementing acts, amending some legislative acts, were adopted in Australia a few days earlier - on June 27, 2002. In Finland, these two procedures took place almost simultaneously: on December 28, 2000, the Law on Cooperation with the International Criminal Court and the Law on crimes within the jurisdiction of the International Criminal Court, and on December 29, 2000, the Republic of Finland ratified the ICC Statute. This can be seen as applying the "batch method" of ratification and implementation mentioned above [20].

The adoption of implementing legislation in Germany is a historic milestone, which came much faster than the states that signed the ICC Statute on July 17, 1998 could have dreamed of. In German legislative initiatives, there was a great hope that these laws could become a kind of role models, "export" laws for other states that also want to bring their national legislation in line with the requirements of the ICC Statute.

The process of implementation took place through the implementation of a "general package" consisting of six laws. The beginning was laid directly by the adoption of the "ratification law" (Law on the Statute of the ICC) of December 4, 2000, according to which the ICC Statute formally became part of German law.

In addition, even before the deposit of the instrument of ratification, the Act amending Article 16 of the German Basic Law (November 29, 2000) was adopted. The provision provided for in part 2 of Article 16 ("No German can be extradited outside Germany") was supplemented by the provision that "the law establishes the rules for the extradition of persons to any member of the European Union or any international court".

Thus, the most serious constitutional and legal barrier was overcome, which in the former German law prevented full-scale cooperation with international criminal tribunals and thanks to which the German law on cooperation with the International Tribunal for the Former Yugoslavia was *lex imperfect* [21]. However, a significant part of the representatives of German legal science considered it superfluous to amend the constitution, since, in their opinion, the transfer of a citizen to international judicial bodies is not, from a legal point of view, "extradition to a foreign state".

Other changes to the Basic Law weren`t required, since, in accordance with the common point of view in judicial practice and literature, and guaranteed by national law and international legal agreements, "no person shall be tried with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted" *(ne bis in idem)*, and the principle of legality *(nulla poena sine lege)* belong to national and not international justice [22]. The rules on immunity and indemnity are enshrined in Germany not in the Constitution, but at the level of ordinary laws.

Thus, international practice highlights that states have used all three possible options for performing the ratification and implementation procedures: implementation prior to ratification; implementation upon ratification; simultaneous ratification and implementation.

As for the implementation of the provisions of the Statute of the ICC in the national legislation of the Republic of Azerbaijan, it should be noted that in the current situation, it would be expedient to regulate relations on the basis of a bilateral international agreement *(it may be in the form of an Agreement on the Enforcement of Sentences concluded by Georgia with the Court)*. Even, Law "On cooperation of Georgia with the International Criminal Court", dated August 14, 2003, "regulates issues related to the cooperation of Georgia with the International Criminal Court established under the International Criminal Court Statute of 17 July 1998 - Rome Statute, determines the body authorized for the cooperation of Georgia with the International Court and the forms of judicial assistance in the course of cooperation with the International Court". As for the obligations of state bodies to ensure the execution of requests from the International Court, the competent authority and the relevant state bodies that have receive a request from the International Court shall ensure its execution in accordance with the procedure and time limits established under the Statute and the legislation of Georgia under Article 4 [23].

So that under Article 1 of Law "On the rules of concluding, implementing and terminating international treaties of the Republic of Azerbaijan, dated June 13, 1995, an international treaty of the Republic of Azerbaijan, regardless of its name, is an treaty of the Republic of Azerbaijan with foreign states and international organizations concluded in writing in accordance with the procedure established by national legislation. In addition, international treaties of the Republic of Azerbaijan with foreign states and international organizations are concluded on behalf of the Republic of Azerbaijan (interstate treaties) and on behalf of the Government of the Republic of Azerbaijan (intergovernmental treaties) as provided for in Article 2 of the same Law. Undoubtedly, important thorough details of the conclusion of abovementioned international treaty shall be regulated by the "Rules for submission of proposals on conclusion or termination of international treaties of the Republic of Azerbaijan by central executive bodies and state-owned enterprises" approved by the Decree of the President of the Republic of Azerbaijan (No. 373 dated January 19, 2011).

One of the circumstances necessitating the cooperation of the Republic of Azerbaijan with the International Criminal Court on the basis of an international agreement is the non-regulation of extradition to international judicial bodies in accordance with national legislation. Criminal-Procedural Code (Article 483.3), laws "On surrender (extradition) of criminals" (Article 1.3) and "On legal assistance in criminal matters" (Article 2.5) which don`t provide for cooperation with international courts, are irrefutable and undeniable samples of the analyzed. However, it would be appropriate to note the exceptions. For instance, in accordance with para.2 of the "Agreement between the Government of the Republic of Azerbaijan and the Government of the United States of America regarding the surrender of persons to the International Criminal Court" done at Washington, February 26, 2003, persons of one Party present in the territory of the other shall not, absent the express consent of the first Party,

a. Be surrendered or transferred by any means to the International Criminal Court for any purpose, or
b. Be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court [24].

Just after that, it`s expedient to adopt a separate legislative act regulating legal relations on cooperation between the Republic of Azerbaijan and the International Criminal Court. The stipulation of relevant provisions (for instance, legal grounds for cooperation with the International Court; State body authorized for the cooperation of the Republic of Azerbaijan with the International Court; obligations of state bodies to ensure the execution of requests from the International Court; determination of jurisdiction of the International Criminal Court and challenges to the admissibility of the case; requests from the International Criminal Court; surrender of a person to the International Criminal Court and etc.) in this legislative act would be considered favorable and acceptable in terms of regulating relations.

However, it`s necessary to take into account the provision of the Constitution of the Republic of Azerbaijan on the impossibility of transferring citizens to another state. Thus, in accordance with part II of Article 53 of the Constitution, "A citizen of the Republic of Azerbaijan Under may under no circumstances be expelled from the Republic of Azerbaijan or extradited to foreign state" [25]. Nevertheless, the similar experience of Georgia (Article 20) can be used in relation to Azerbaijan. It`s necessary to include a relevant provision in the legislative act on cooperation between the Republic of Azerbaijan and the International Criminal Court, which will be adopted in the future:

1. "A person shall be surrendered to the International Criminal Court if it is evident from the request or its supporting documents that the committed act is within the jurisdiction of the International Criminal Court".

2. If the International Criminal Court is considering a challenge against the admissibility under Article 17-19 of the Statute, the competent authority may defer execution of the request until the International Criminal Court makes a determination on the given issue.
3. If a citizen of the Republic of Azerbaijan is surrendered to the International Criminal Court, the competent authority may request the International Criminal Court to return the person to the Republic of Azerbaijan after completion of the proceedings".

It can`t be said that only the textual reproduction of a norm of international law in national criminal law fully complies with the requirements of implementation. Both extended and narrowed implementation options are permissible.

The implementation of the Statute of the International Criminal Court into the national legislation of the Republic of Azerbaijan may be possible on the basis of the priority of international law over national law, in particular, of the provision "International treaties to which the Republic of Azerbaijan is a party shall be an integral part of the legislative system of the Republic of Azerbaijan" enshrined in Part II of Article 148 of the Constitution of the Republic of Azerbaijan. In addition, it should be noted that if a conflict arises between normative legal acts of the legislative system of the Republic of Azerbaijan (with the exception of the Constitution of the Republic of Azerbaijan and acts adopted by referendum) and inter-state treaties to which the Republic of Azerbaijan is a party, the international treaties shall apply under Article 158 of the Constitution.

Thus, the two processes - constitutionalism as a mode of society`s life, based, among other things, on the supremacy of the Constitution in the legal system, and the implementation of the norms of international law - are closely interrelated. During the time that has passed since the adoption of the ICC Statute, a certain legal experience has already been accumulated, aimed at its implementation and improvement in this regard, the relevant provisions of national substantive and procedural law.

The problem of the constitutionality of the Rome Statute and potential Azerbaijani obligations in connection with participation in the work of the International Criminal Court has been repeatedly discussed at different levels - both doctrinal and official. It seemed that all sorts of unforeseen circumstances were taken into account and we have a clear idea of the need to amend and clarify our legislation and bring it in line with the norms of the Rome Statute. But the further the ratification process was postponed, the deeper the "chasm" became in the interpretation and approaches of national legislation and the provisions of the founding act of the Court.

4. DISCUSSION

Complementary is the most important principle of the ICC functioning. As noted in the Preamble to the Rome Statute, the International Criminal Court established by this Statute complements the national criminal justice authorities. The ICC doesn`t have exclusive jurisdiction or priority over the jurisdiction of national courts vested in the International Ad hoc Criminal Tribunals for the former Yugoslavia and Rwanda, established by the Security Council under Chapter VII of the UN Charter. The creation in accordance with the Rome Statute of a new judicial body with international jurisdiction wasn`t accompanied by the transfer of the sovereignty of states in the field of criminal proceedings.

The International Criminal Court isn`t empowered to accept a case at any stage of the prosecution carried out by national courts. This provision is very clearly reflected in Article 17 of the Rome Statute, according to which a case can`t be admitted to proceedings when it`s being investigated or a person has been prosecuted by a State with appropriate jurisdiction, or it has been decided not to prosecute a person or in cases where a person has been convicted of acts, in connection with which a case was initiated or it wasn`t serious enough to justify further action on the part of the Court. The exception for the first two grounds concerns situations where the state is unwilling or unable to investigate or prosecute properly [26].

Complementary is the fundamental principle on which the correlation of the legal order of the International Criminal Court and the states parties to the Statute is built. The principle of complementary establishes that the jurisdiction of the ICC is introduced only when national legal systems are unable or unwilling to exercise jurisdiction. Thus, in cases of overlapping jurisdictions between the national justice authority and the International Criminal Court, the first of these has priority in principle [26].

The ICC doesn`t aim to substitute national courts and only acts when they don`t operate properly.

The complementary character of the ICC is highlighted in the preamble to the Rome Statute: *"……the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions"*. That`s why, Article 17 reflects the essential elements of the relationship between the court and the national judicial authorities and defines the conditions for the admissibility of a case before the ICC. At the same time, the article interprets the jurisdiction of the ICC by contradiction, determining the circumstances that are necessary for the

exercise of jurisdiction by the court. So that under Article 17.1, the Court shall determine that a case is inadmissible where:

- ✓ The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
- ✓ The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
- ✓ The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under Article 20, para. 3;
- ✓ The case isn`t of sufficient gravity to justify further action by the Court [27].

Paragraphs 2 and 3 of article 17 define the criteria for the unwillingness and inability of the state to conduct legal proceedings at the national level.

The criterion for determining the inability of the state to prosecute is the complete or substantial collapse or absence of the judicial system, when the state is unable to conduct judicial proceedings.

Article 18 of the Statute is another manifestation of the principle of complementary. It requires that, before a case is tried before a court on the initiative of the Prosecutor, he/she must notify all states parties to the Statute and those states that would normally exercise jurisdiction over these crimes.

Only in the case of a request from the UN Security Council (Article 13 (b)), notification isn`t required. In all other cases, the state that has jurisdiction can inform the court that it has investigated or is investigating the case. In this case, the Prosecutor transfers the investigation to the jurisdiction of the state, unless the Pre-Trial Chamber authorizes the prosecutor to conduct the investigation.

Article 19 regulates the procedure for filing admissibility protests in court; Article 20 excludes duplication of prosecutions and proceedings at the national and international levels, and Article 53 - admissibility of an investigation in accordance with the norms of Article 17. A number of provisions specifying the determination of the admissibility of a case by the Court are also contained in the Rules of Procedure and Evidence (chapter 3).

Based on the provisions of the Rome Statute, the following stages of proceedings in the International Criminal Court can be distinguished, which are based on the principle of complementary:

- The initiation of an investigation by the prosecutor if the case has been referred by a State party; by the Security Council or on its own initiative;
- Notification by the Prosecutor of the intention to initiate an investigation to all participating States and those States that would normally exercise jurisdiction over the offense. These states must inform the court within a month whether they have investigated or are investigating this act. In this case, the Prosecutor transfers the case to the state;
- If there are sufficient grounds to initiate an investigation, the Prosecutor applies to the Pre-Trial Chamber with a request to give the appropriate authorization *(an appeal should be made even if the case is being investigated by the state)*. The Pre-Trial Chamber may authorize the prosecutor to conduct an investigation, or deny it, which may be appealed to the Appeals Chamber either by the State concerned or by the Prosecutor;
- If there is enough evidence, the Prosecutor will apply to the Pre-Trial Chamber for an arrest warrant or a court order.
- After the person is placed at the disposal of the court or after his / her voluntary appearance before the court, the Pre-Trial Chamber will hold a confirmation hearing, following which the presidium may establish a Trial Chamber, which will be responsible for the subsequent proceedings.

Accordingly, the principle of complementary is most clearly manifested at the first stage of the trial, which is the initiation of an investigation and determination of the admissibility of the case by the court.

So far, several States parties to the Rome Statute have themselves referred situations related to events on their territory – Uganda, the Democratic Republic of the Congo, the Central African Republic and Mali *("self-referral" states)*. The UN Security Council has brought to justice the situation in the Darfur region (Sudan) and in Libya. Finally, the Pre-Trial Chamber authorized the prosecutor to initiate an investigation on his own initiative in the context of the situations in Kenya, Côte d'Ivoire and Georgia [28].

An analysis of the provisions of the Rome Statute related to the principle of complementary once again confirms the position that the main burden of suppressing international crimes falls on the national judicial system. It`s up to the national criminal justice authorities to prosecute and punish those responsible for crimes within the jurisdiction of the International Criminal Court.

So that Article 125 of the Constitution of the Republic of Azerbaijan provides that judicial power in the Republic of Azerbaijan shall be exercised by the courts of law, through the administration of justice. Judicial power shall be exercised by the Constitutional Court, the Supreme Court, the courts of appeal, general courts and other specialized courts of the Republic of Azerbaijan. Judicial power shall be exercised through constitutional, civil and criminal proceedings, and through other means prescribed by law.

On the other hand, according to both Article 125 (part VI) of the Constitution and Article 1 of the Law on Courts and Judges of the Republic of Azerbaijan (June 10, 1997), the use of legal means that are not prescribed by law, for the purpose of altering the powers of the courts, and the establishment of extraordinary emergency courts shall be prohibited.

As for the judicial system, it is possible to see the following judicial stages under Article 19 of the Law on Courts and Judges:

- Region (city) courts;
- Courts on grave crimes;
- Court of Grave Crimes of the Nakhchivan Autonomous Republic;
- Military courts;
- Administrative courts;
- Commercial courts;
- Supreme Court of the Nakhchivan Autonomous Republic;
- Courts of appeal;
- Supreme Court of the Republic of Azerbaijan.

Obviously, each court of the Republic of Azerbaijan is an independent legal entity and has a stamp depicting the State Emblem of the Republic of Azerbaijan.

The Rome Statute is also based on the above principle and provides that no person may be tried by the Court for an act constituting the basis of an offense for which that person has been found guilty or acquitted by the Court (Article 20 (1)).However, it does provide for an exception whereby a person who has been convicted by domestic jurisdictions for a crime within the jurisdiction of the ICC may be re-convicted in cases where:

a) The proceedings were intended to shield the person concerned from criminal liability for crimes within the jurisdiction of the Court; or
b) the proceedings were not conducted independently or impartially in accordance with due legal procedure recognized by international law, and was conducted in such a way that, in the existing circumstances, did not meet the purpose of bringing the person concerned to justice.

5. CONCLUSION

In a number of cases, constitutional approaches to the administration of justice in criminal cases may provide grounds for establishing contradictions with the norms of the Rome Statute on complementary, since the former establish in a fairly clear and definite form a list of bodies administering justice, among which the International Criminal Court is not mentioned, even taking into account the limited range of acts over which he exercises jurisdiction. On the other hand, constitutional norms not only establish the system of judicial bodies, but also specifically stipulate the order through which justice is administered. At the same time, the activities of international courts, including the International Criminal Court, related to the consideration of specific cases, are outside the framework of the constitutional concept of “administration of justice”, which is implemented only by the national criminal justice system.

When considering the principle of complementary, it should be borne in mind that, firstly, the International Criminal Court doesn`t replace, but complements the national criminal justice bodies, which are mainly responsible for prosecuting genocide, war crimes, etc. If the national judicial system is functioning properly and is able to prosecute those responsible for crimes within the jurisdiction of the International Criminal Court, then there is no need for the latter to intervene.

Secondly, the International Criminal Court doesn`t belong to the category of special or extraordinary courts, the creation of which is prohibited by the norms of national Constitutions. It`s a body with international criminal jurisdiction, established with the consent of the participating States, operating on the basis of norms and rules recognized and endorsed by the international community, including those related to human rights.

Thirdly, the addition of the national criminal justice system, which is unable or unwilling to prosecute the perpetrators, is an important guarantee of preventing impunity for persons committing crimes against humanity, genocide, war crimes, etc. Such persons shouldn`t be able to evade criminal responsibility for their actions.

Taking into account the above, the constitutional justice bodies have sufficient grounds to conclude that there are no contradictions with national constitutions in connection with the principle of complementary enshrined in the Rome Statute. In this case, naturally, there is no need for constitutional changes.

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