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RESEARCH ARTICLE

INTERNATIONAL STANDARDS FOR THE IMPLEMENTATION OF OPERATIONAL AND INVESTIGATIVE ACTIVITIES BY LAW ENFORCEMENT AGENCIES

Sultanov Mirkabil Mirvalievich

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Abstract

The article reveals the essence and features of international standards for the implementation of operational search activities by law enforcement agencies, considers the forms and features of ensuring and protecting human rights and freedoms during the implementation of operational search activities, concludes that universality and the universally binding nature of international standards for law enforcement agencies are made.

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Introduction:-

The processes of globalization taking place in the modern world society are reflected in the increased requirements for the activities of law enforcement agencies. The problem of ensuring and protecting human and civil rights by law enforcement agencies in the implementation of operational and investigative activities becomes one of the problems of socio-economic development.

Today, we need not only new thinking, but also a completely different type of law enforcement officer who understands the basic principles of the rule of law and successfully navigates the modern legal space. Political realities clearly indicated the need for such a subject of the political and legal process, whose activities correspond to the content, ideas and principles of human rights.

At present, the improvement of Russian legislation and law enforcement practice is possible only if international treaties and international legal norms recognized by the state or created with its direct participation are properly understood and implemented.

The legal system in the Republic of Uzbekistan includes not only the Constitution of the Republic of Uzbekistan, laws and other domestic legal acts, but also generally recognized principles and norms of international law and international treaties. This constitutional provision has a General meaning and applies to various spheres of activity of state authorities, including operational and investigative activities.

International legal regulation includes the establishment and maintenance of international standards of human rights and, accordingly, standards of operational and investigative activities, which are the basis for the formation of a modern level of professional legal awareness of law enforcement officers. International legal acts, contributing to the formation of the basic principles of police activity, define the provisions, the implementation of which is of particular importance for the law enforcement system .

In the state mechanism for the protection of human rights and freedoms, law enforcement agencies play one of the main roles. However, research shows that law enforcement officials are not always sufficiently aware of

international standards in their professional activities. This contributes to a certain extent to possible (and often allowed) violations of human rights in the process of implementing law enforcement functions and legal responsibility.

Currently, law enforcement officers are allowed to violate the law in the exercise of their functions, and the problem of deformation of professional legal awareness remains relevant. Therefore, one of the most important tasks in modern conditions is to create a level of professional legal awareness of police officers that would meet the requirements of the rule of law and civil society.

Modern international law notes that crime is a "global problem", and the main responsibility for its prevention is assigned to States. In particular, this is stated in the preamble of the UN Declaration of principles and programme of action on crime prevention and criminal justice of 18 December 1991, the Salvadoran Declaration on integrated strategies for responding to global challenges and the Vienna Declaration on crime and justice .

Article 1 of the UN Declaration on crime and public Security of 12 December 1996 States " shall strive to protect the security and well-being of their citizens and all persons under their jurisdiction by taking effective national measures to combat dangerous transnational activities, including organized crime, illicit trafficking in drugs and weapons, smuggling of other illegal goods, organized human trafficking, terrorist crimes and laundering of the proceeds of dangerous crimes, they also commit themselves to mutually cooperate in these efforts."

Economic losses from crime in the modern world are significant and account for more than 5% of the value of GDP in developed countries and 14% in developing countries. At the same time, the cost of the criminal justice system is from 40% to 50% of all material losses associated with criminal activity. Over the past 30 years, the cost of criminal justice systems has increased on average by 95% in developing countries, 75% in countries with economies in transition, and 50% in developed countries.

Costs in various forms, direct and indirect, for the prevention and fight against crime are growing every year and reach huge amounts that could be used for development and other urgent social problems.

According to the norms of international and national law, the police play a priority role in countering crime among state bodies. In particular, according to article 1 of The Declaration on the police of 8 may 1979, the police is a public service established by law, whose duties include the maintenance and protection of law and order.

The European code of police ethics of 19 September 2001 defines that the police have the following objectives:

1. crime prevention and control;
2. the detection of crime;
3. the promotion of social peace, respect for law and order in society;
4. protection and observance of fundamental human rights and freedoms as they are enshrined, in particular in the European Convention on human rights;
5. providing assistance and services to the population.

Similarly, the Law of the Republic of Uzbekistan "on internal Affairs bodies" of September 16, 2016, defines that the internal Affairs bodies carry out their activities to counter crime, and immediately comes to the aid of everyone who needs its protection from criminal attacks.

International and national law determines that the legal basis for police activities is the relevant international legal documents. For example, the European code of police ethics States that "police operations must always be conducted in accordance with the country's domestic law and with the international standards to which the country has agreed". According to article 3 Of the law of the Republic of Uzbekistan "on internal Affairs bodies" of September 16, 2016, the legal basis of its activities is generally recognized principles and norms of international law, international treaties.

The main place among the international legal bases for the activities of state police units is played by the system of international law enforcement standards, which is understood as international legal obligations that develop and specify the principle of respect for human rights. This is an obligation of States not only to grant certain rights and

freedoms to persons under their jurisdiction, but also not to encroach on them .in other words, this is a set of rights, freedoms and interests without which it is impossible to be a human being.

International standards define the minimum legal status of an individual that is mandatory for States or recommended to States, including legal protection, and the corresponding powers and responsibilities of state bodies and officials. However, international standards include not only human rights and freedoms, but also the conditions in which they are implemented and which are associated with legal restrictions and even prohibitions.

The very concept of "standard" does not have an unambiguous interpretation by both legal theorists and international scholars. A number of international legal instruments use this concept when defining uniform minimum conditions required of States parties . for example, the standard Minimum rules for the treatment of prisoners adopted by the United Nations Congress on the prevention of crime and the treatment of offenders explicitly state that their purpose is to set out what is generally considered correct in the treatment of prisoners (paragraph 1). Standards in international law are universally recognized norms that, on the one hand, represent the minimum acceptable consensus, and on the other hand, they are models for imitation. This dual role of standards is the reason for their mobility (in the field of human rights-towards the constant expansion of the content of the proclaimed rights).

In this regard, O. I. Tiunov calls international legal standards "a kind of measurement scale in the legislative regulation of various countries".

The system of international law enforcement standards is extensive and includes most types of international legal documents. The main ones are conventions, covenants, protocols, codes, declarations and resolutions.

To date, no generally accepted classification of law enforcement standards has been developed, and it is unlikely that this is necessary – because each classification emphasizes one of the main features of these standards, which, in the author's opinion, is the main one. Therefore, the following are some of the most commonly used classifications.

In 1992, a collection of standards and norms in the field of crime prevention and criminal justice was published for the first time under the auspices of the United Nations. In it, the specialists of the Center for social development and humanitarian Affairs proposed a classification of international law enforcement standards, in which the standards were divided into two large groups: – documents on human rights; – documents on crime prevention and criminal justice . Currently, in a similar collection, taking into account the newly adopted international documents in the UN system, lawyers Of the UN office on crime and drugs have proposed a more detailed systematization of international standards. This classification includes the following groups of documents – - standards relating to persons in custody, non-custodial measures, juvenile justice and restorative justice – - standards relating to legal, institutional and practical mechanisms for international cooperation; – standards related to crime prevention and victim support; - standards related to good governance, judicial independence, and integrity of criminal justice personnel .

It should be noted that on the basis of international documents related to the first group of standards, the legislator forms its own criminal enforcement legislation, which determines the procedure for serving criminal sentences by persons who have committed crimes. In our country, there are also many internal regulations developed by the Ministry of justice and the Ministry of internal Affairs, which are intended to regulate the activities of police officers who implement the state's criminal enforcement policy.

So, the first group of standards, first of all, includes standards that define the rules for the treatment of prisoners. These include the standard Minimum rules for the treatment of prisoners of 30 August 1955; Procedures for the effective implementation of the standard minimum rules for the treatment of prisoners, adopted by the United Nations Economic and Social Council in resolution 1984/47; and the Set of principles for the protection of all persons under any form of detention or imprisonment, adopted by the United Nations General Assembly in resolution 43/173 of 9 December 1988; Basic principles for the treatment of prisoners, adopted by UN General Assembly resolution 45/111; Kampala Declaration on prison conditions in Africa, adopted by Economic and Social Council resolution 1997/36; Status of foreign nationals in criminal proceedings, adopted by Economic and Social Council resolution 1998/22; Arusha Declaration on good prison practices, adopted by Economic and Social Council resolution 1999/27.

UN experts also include such significant standards as those prohibiting torture and other cruel, inhuman or degrading treatment or punishment, as well as standards dedicated to ensuring the rights of persons sentenced to death. These standards include the following documents: Declaration on the protection of all persons from torture and other cruel, inhuman or degrading treatment or punishment, adopted by General Assembly resolution 3452 (XXX) ; Principles of medical ethics relating to the role of health workers, especially doctors, in protecting prisoners or detainees from torture and other cruel, inhuman or degrading treatment or punishment, adopted by General Assembly resolution 37/194; Principles for the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, adopted by General Assembly resolution 55/89; Death penalty, General Assembly resolution 2857 (XXVI) ; Measures guaranteeing the protection of the rights of those facing the death penalty, adopted by Economic and Social Council resolution 1984/50; Implementation of measures guaranteeing the protection of the rights of those facing the death penalty, Economic and Social Council resolution 1989/64; Principles for the effective prevention and investigation of extra-legal, arbitrary and summary executions, adopted by Economic and Social Council resolution 1989/65; Measures guaranteeing the protection of the rights of those facing the death penalty, adopted by Economic and Social Council resolution 1996/15; Question of the death penalty, Commission on human rights Resolution 2003/67.

The standards reflecting the requirements for juvenile justice are the following documents: the UN standard Minimum rules for the administration of juvenile justice (the Beijing rules), approved by UN General Assembly resolution 40/33; the UN Guidelines for the prevention of juvenile delinquency (the Riyadh guidelines), adopted by General Assembly resolution 45/112; the UN Rules for the protection of juveniles deprived of their liberty, adopted by UN General Assembly resolution 45/113; Guidelines for action for children in the criminal justice system, adopted by Economic and Social Council resolution No. 1997/30.

Among the standards that define alternatives to imprisonment and regulate restorative justice are the UN Standard minimum rules for non-custodial measures (the Tokyo rules), approved by UN General Assembly resolution 45/110; the Kadoma Declaration on community service and the recommendations of the seminar on "Criminal justice: the problem of prison overcrowding", held in San Jose, Costa Rica, from 3 to 7 February 1997; Basic principles for the application of restorative justice programmes in criminal matters, adopted by Economic and Social Council resolution No. 2002/12.

Among the standards regulating legal, institutional and practical mechanisms of international cooperation, UN legal experts have included acts containing international model norms, as well as documents of a strategic nature. In particular, the first subgroup includes the following documents: the model extradition Treaty adopted by General Assembly resolution 45/116, as amended by resolution 52/88; Model Treaty on mutual assistance in criminal matters, adopted by General Assembly resolution 45/117, as amended by resolution 53/112; model Treaty on the transfer of criminal proceedings, adopted by General Assembly resolution 45/118; Model agreement on the transfer of foreign prisoners and recommendations for the treatment of foreign prisoners, adopted at the seventh United Nations Congress on the prevention of crime and the treatment of offenders, held in Milan on 6 September 1985; Model Treaty on the transfer of supervision of offenders who have been suspended or released on probation, adopted by General Assembly resolution 45/119; model Treaty on the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property, adopted at the eighth United Nations Congress on the prevention of crime and the treatment of offenders, held in Havana on 7 September 1990; model bilateral Treaty on the return of stolen or misappropriated vehicles, adopted by Economic and Social Council resolution 1997/29; Model bilateral agreement on the sharing of confiscated proceeds of crime or property, adopted by Economic and Social Council resolution 2005/14.

On the basis of these documents, many bilateral and multilateral agreements have been concluded between States in the field of international police cooperation. They also contain norms and standards that are mandatory for all law enforcement officers and are of great importance for police activities both within individual States and in the international arena.

The content of the second subgroup of this group consists of the following universal international agreements: the Declaration of principles and programme of action of the United Nations crime prevention and criminal justice programme, adopted by General Assembly resolution No. 46/152; the Naples political Declaration and the global plan of action against organized transnational crime of 2 September 1994; The Vienna Declaration on crime and justice: meeting the challenges of the XXI century, adopted at the X United Nations Congress on the prevention of

crime and the treatment of offenders April 17, 2000, in Vienna; Plans of action for the implementation of the Vienna Declaration on crime and justice: meeting the challenges of the XXI century; Bangkok Declaration on synergies and responses: strategic alliances in crime prevention and criminal justice, adopted at the XI United Nations Congress on crime prevention and criminal justice on 25 April 2005 in Bangkok.

The third group consists of such essential standards as standards on crime prevention.

They are reflected in the following international documents: Guidelines for cooperation and technical assistance in the fight against urban crime, adopted by Economic and Social Council resolution No. 1995/9; UN Declaration on crime and public security, adopted by General Assembly resolution No. 51/60; Regulation of firearms for crime prevention, public health and public safety, adopted by Economic and Social Council resolution No. 1997/28; Guidelines for the prevention of crime, adopted by Economic and Social Council resolution No. 2002/13 19.

In the same group of standards, UN lawyers include international documents on the protection of victims of crime and the protection of women from violence. These documents recommend appropriate measures to be taken at the national, regional and inter-state levels. These include the following acts: Declaration of basic principles of justice for victims of crime and abuse of power, General Assembly Resolution 40/34; Implementation of the Declaration of basic principles of justice for victims of crime and abuse of power, Economic and Social Council resolution no. 1989/57; action Plan for the implementation of the Declaration of basic principles of justice for victims of crime and abuse of power, adopted by Economic and Social Council resolution no. 1998/21; Guidelines on justice in matters involving child victims and witnesses of crime, adopted by Economic and Social Council resolution no. 2005/20; Declaration on the elimination of violence against women, adopted by General Assembly resolution 48/104; Model strategies and practical measures for the elimination of violence against women in the field of crime prevention and criminal justice, adopted by General Assembly resolution 52/86.

The fourth group of documents includes standards of good governance, judicial independence and integrity of criminal justice officials. These include the following documents: the Code of conduct for law enforcement officials, adopted by General Assembly resolution 34/169; Guidelines for the effective implementation of the Code of conduct for law enforcement officials, adopted by Economic and Social Council resolution 1989/61; Basic principles on the use of force and firearms by law enforcement officials, adopted at the eighth United Nations Congress on the prevention of crime and the treatment of offenders, 7 September 1990 in Havana; Basic principles on the independence of the judiciary, adopted at the seventh United Nations Congress on the prevention of crime and the treatment of offenders, 6 September 1985; Procedures for the effective implementation of the basic principles on the independence of the judiciary, adopted by Economic and Social Council resolution 1989/60; Basic principles on the role of lawyers, adopted at the eighth United Nations Congress on the prevention of crime and the treatment of offenders, 7 September 1990 in Havana; Guidelines on prosecutions, adopted at the eighth United Nations Congress on the prevention of crime and the treatment of offenders, 7 September 1990 in Havana; international code of conduct for public officials, adopted by General Assembly resolution 51/59; The UN Declaration on combating corruption and bribery in international commercial transactions, adopted by General Assembly resolution 51/191.

As you can see, the systematization proposed by the UN staff is quite extensive and includes most of the existing international law enforcement standards adopted at the world level. However, this classification has a number of serious drawbacks.

First, it covers only those standards that are set out in United Nations documents.

Standards set out in other international legal instruments are not taken into account by experts in this classification.

Secondly, in this classification, are taken into account in the basic documents containing norms of "soft law", i.e. not negotiable. This means that States should try to bring their national legislation into line with them, but they are not obliged to follow these rules precisely. Thus, if the first classification was too General and vague, the second suffers from a certain incompleteness.

The above systematization shows the priority place in the formation of United Nations standards, in particular General Assembly resolutions. For States, these resolutions are Advisory in nature and therefore do not impose any direct obligations on States. However, they are of high practical significance for criminal law activities and are

reflected in legally binding acts at the level of national legislation and international law. The importance of resolutions is emphasized in many international legal instruments. For example, paragraph 3 of the Salvadoran Declaration States that States affirm the value and significance of UN standards and norms in crime prevention and criminal justice, and seek to use these standards and norms as guidelines in the development and implementation of national policies, laws, procedures and programmes in the field of crime prevention and criminal justice.

It should be noted that the value of the standards contained in resolutions lies not only in the fact that, according to experts, they help in developing national legislation, improving legal systems and implementing international cooperation, but also in their peculiar legal "flexibility" of such documents. Standards and norms that do not have the force of law combine the clarity of an international legal instrument with the flexibility of a non-binding instrument. They give member States a clear indication of what they need to do to establish and strengthen the rule of law or implement critical criminal justice reforms. Because the standards and norms are not binding, they also allow each state to adapt them flexibly to its own needs and legal and constitutional specificities. At the same time their non binding nature makes it easier to develop and update them in comparison with binding legal documents

Due to the high moral and political status of resolutions of the General Assembly and other UN bodies, the provisions of some of them have acquired the status of international custom, for example, the Universal Declaration of human rights, adopted by General Assembly resolution 217 A (III).

General Assembly resolutions can also serve as a basis for the development of international human rights instruments. Thus, the Declaration on the protection of all persons from torture and other cruel, inhuman or degrading treatment or punishment of 10 December 1984, adopted by resolution 3452 (XXX) of the UN General Assembly, was used in the drafting of the Convention against torture and other cruel, inhuman or degrading treatment or punishment of 10 December 1975.

The formation of international legal standards, taking into account the UN standards, is also taking place at the regional level within the framework of interaction between a number of States. A characteristic difference between regional standards, for example, European ones, and universal ones is that the former have a mechanism for implementing the norms contained in the relevant regional international legal acts. These norms presuppose the specification of human rights and freedoms that were previously enshrined in universal standards of international legal acts, as well as the fuller realization of these rights and freedoms, their observance and protection .

In the legal literature, you can find other classifications of standards. In particular, the coordinator of the Department for relations with the armed and security forces of the International Committee of the red cross, Case de Rover, divides international documents that contain General rules of conduct for law enforcement officers into "hard law", i.e. Treaty law, and "soft law", i.e. guidelines, codes of conduct. The provisions of Treaty law oblige States parties to bring their national legislation into line with the norms of the signed Treaty, as well as to implement and / or change the relevant policies and practices. "Law enforcement officers form one of the groups of civil servants who must comply with the provisions of contracts in their daily work." As for "soft law", these rules and standards of conduct, "although not legally binding, but the content of these documents has a significant impact on law enforcement practice, and therefore their compliance is strongly recommended."

A number of norms of "soft" international law are called principles. "Some of them have long been called principles, while others have become so called because of their significance and role in international legal regulation." These include, in particular, the 10 basic human rights standards developed by Amnesty international for law enforcement officials.

The importance of the "hard" law in regulating the activities of police units for international lawyers is not in doubt.as for the "soft" law in determining the legal status of law enforcement officers, this issue is debatable in the doctrine. Some scientists believe that the principles of international law that determine the standards of behavior of law enforcement agencies, in themselves, "without inclusion in the legal system of States are generally binding, the violation of a basic principle by a state can be considered by the international community as an attack on the entire international legal order".

A.V. Meleshnikov believes that the norms and principles of international law can only fill in the gaps in domestic legislation, "but they cannot be applied instead of the norms of national law that contradict them." Other authors

believe that in order to adopt a "soft" law, these rules must be recognized by "all or an overwhelming majority of States". Some scientists, mostly theorists of state and law, generally ignore the question of the principles of law that form the basis of "soft law", even in the chapters of their works dedicated specifically to legal concepts. At the same time, the Law of the Republic of Uzbekistan "on internal Affairs bodies" in article 3 explicitly States that "the legal basis for police activities is the Constitution of the Republic of Uzbekistan, generally recognized principles and norms of international law, international treaties ...". In General, we can say that the rules of "soft" law are mostly common and specified in the internal and internal legal acts regulating police activities.

In our opinion, international standards can be classified according to the degree of objectification (i.e., depending on the type of international document that contains any rules of conduct for law enforcement officers). These standards are found in almost all known sources of international law, which include:

1. international conventions, both General and special;
2. international custom as proof of universal practice recognized as a legal norm;
3. General principles of law recognized by civilized Nations;
4. judicial decisions and doctrines of the most qualified specialists in public law of various Nations as an auxiliary tool for determining legal norms. In addition to these sources, indicated in most works on international law, some authors and international lawyers refer to sources of international law as domestic legal acts and decisions of international organizations. Thus, we can talk about the current diverse system of international law enforcement standards. Each of the classifications of these standards has its own advantages and disadvantages, none of them is currently generally accepted.

These classifications are primarily theoretical in nature and serve for a more thorough study of the system of standards, insight into their essence, and a better understanding of their multifunctional purpose.

The participation of most of the world community in development under the auspices of the UN international standards, and also compliance by States that are not parties to separate international legal instruments, norms and principles which they set out, suggests the universal and compulsory nature of many of the standards for the entire international police community.

Analyzing most of the standards in terms of their main activities, we can conclude that from the point of view of modern international law, law enforcement standards are a consequence of the principle of human rights protection. And in their entirety, the standards serve as a criterion for the international legal status of a person and a citizen. It is important that these standards, in all their diversity, become an effective mechanism for the daily activities of law enforcement officers as soon as possible.

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