

The Right to Defence in Criminal Proceedings: International Law Aspects

Vitalii Gutnyk

<https://orcid.org/0000-0003-1401-4393>

Doctor of legal sciences, Professor
Vilnius University, Faculty of Law
306 room (Dean's Office)
Saulėtekis av. 9 – I block, LT-10222 Vilnius, Lithuania
Phone: (+370 5) 236 61 85
E-mail: tf@tf.vu.lt
Professor of International Law Department,
Ivan Franko National University of Lviv, Ukraine
Universytetska 1, Lviv, 79000, Ukraine
Phone: (+38032)2394710
Email: vitalii.gutnyk@lnu.edu.ua

The article deals with the right to defence in criminal proceedings in accordance with international law norms. It is proved that ensuring the right to defence is one of the basic principles of criminal justice and is a prerequisite for the achievement of a fair trial. Particular attention is paid to the right to self-defence (defence in person), the right to defence through choosing legal assistance, the right to assigned legal assistance. Attention is drawn to the fact that the right to defence in the international human rights courts and the international criminal courts is based on the same principles, respectively its understanding is the same in these international courts.

Keywords: right to defence, criminal proceedings, defence counsel, International Criminal Court.

Teisė į gynybą baudžiamajame procese: tarptautinės teisės aspektai

Straipsnyje kalbama apie teisę į gynybą baudžiamajame procese, vadovaujantis tarptautinės teisės normomis. Pažymima, kad teisės į gynybą užtikrinimas yra vienas iš pagrindinių baudžiamosios teisenos principų ir būtina teisingo teismo proceso sąlyga. Ypatingas dėmesys skiriamas teisei į savigną (asmeninę gynybą), teisei į gynybą savarankiškai pasitelkiant teisinę pagalbą bei suteikiamą (garantuojamą) teisinę pagalbą. Atkreipiamas dėmesys į tai, kad teisė į gynybą tarptautiniuose žmogaus teisių teismuose ir tarptautiniuose baudžiamuosiuose teismuose grindžiama tais pačiais principais, o teisės į gynybą instituto suvokimas šiose institucijose yra vienodas.

Pagrindiniai žodžiai: teisė į gynybą, baudžiamasis procesas, gynėjas, Tarptautinis baudžiamasis teismas.

Introduction

The place and the role of the international law have been redefined against the background of the challenges of the XXI century, they have new landmarks and guidelines. The world community has gradually moved its development path from the concept of state-centeredness to anthropocentrism. In the second half of the twentieth century, the international community has adopted international treaties in the field of human rights protection and created bodies for monitoring compliance .

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Among human rights, the right to defence in criminal proceedings occupies a special place. It is proscribed in the art. 11 of the Universal Declaration of Human Rights 1948, art. 14 (3) of the International Covenant on Civil and Political Rights 1966, art. 6 (3) of the European Convention on Human Rights 1950, art. 8 (2) of the American Convention on Human Rights 1969, art. 7 (c) of the African Charter on Human and Peoples' Rights 1981, and in many other documents.

The concept of the right to defence in criminal proceedings (especially in the context of its interpreting by the UN Human Rights Committee and the European Court of Human Rights (hereinafter – ECtHR) has been taken as a basis for the development of the statutes of modern international criminal courts. In particular, the right to defence is provided in art. 21 (4) (d) of the Statute of the International Criminal Tribunal for the former Yugoslavia (hereinafter – ICTY), art. 20 (4) (d) of the Statute of the International Criminal Tribunal for Rwanda (hereinafter – ICTR) and art. 67 (1) (d) of the Statute of the International Criminal Court (hereinafter – ICC). Indeed, the right to defence in criminal proceedings in international criminal courts is provided in the same wording as in the International Covenant on Civil and Political Rights 1966 and the European Convention on Human Rights 1950. In addition, in interpreting the right to defence, international criminal courts apply the relevant practice of international courts in the field of human rights protection. This makes possible to talk about impact of international human rights law standards on international criminal law in the context of the right to defence.

This article is devoted to analyzing of axiological aspects of the right to defence in criminal proceedings in accordance with international law norms. Despite the importance of the study of right to defence in criminal proceedings, the existing scientific research is limited only to separate aspects of the right to defence in criminal proceedings in international law.

In this article the following tasks were solved:

- to define the legal nature of the right to defence in criminal proceedings;
- to characterize the right to defence in the international human rights regimes;
- to find out the specific features of the right to defence in the international criminal courts.

The study was conducted through the critical analysis of the international law doctrine, the practice of international human rights bodies and international criminal courts. Particular attention is paid to the practice of the ICTY, the ICTR and the ICC.

The following research methods were used: comparative legal, historical, formal dogmatic and system-structural.

The subjects of the research were international law norms, the practice of the UN Human Rights Committee, the ECtHR and international criminal courts. The subject of the study is right to defence in criminal procedure.

1. Legal Nature of the Right to defence in criminal proceedings

The issue of guaranteeing human rights in criminal proceedings deserves particular attention, in the center of which is the right to defence. Ensuring this right is the cornerstone of the criminal process. The right to defence, underlined by L. Trocan, is recognized in all democratic countries and is a necessary prerequisite for achieving fair trial (Trocan, 2010, p. 111).

The right to defence has been repeatedly the subject of exploring in the national criminal proceedings (Andritoi, Lupsa, 2014; Bochis, 2016; Colomer, 2013; Gentimir, 2005; Gomien, 1987; Puscasu, 2011; Salahovic, Bubalo, 2016; Taman, 1975) and in the international law (Buromenskyi, Gutnyk, 2019; Jorgensen, 2004; Rana, 2006; Redo *et al.*, 1995; Trocan, 2010). Despite the wide range of various definitions given by scientists, we consider it appropriate to join the opinion that the right to defence in

criminal proceedings is a combination of powers granted to refute suspicions or accusations, mitigate the punishment, and protect their personal interests. The purpose of the defence is the expected, most favorable outcome for the client, which is achieved in the decision of a criminal case (Popeliushko, 2009, p. 25).

The concept of “defence” in criminal proceedings is considered in two ways: 1) a broad one, which includes self-defence and defence with the assisting of another person, in particular a defender; 2) a narrow, which means the protective activities of the defence counsel (Popeliushko, 2009, p. 25). In this article, a broad approach to the concept of “defence” is followed including self-defence (personal defence) and defence through a defence counsel (both at his or her discretion and in the provision of free legal aid).

The right to defence in criminal proceedings has a significant social value. L. Trocan rightly emphasizes that the right to defence in criminal proceedings, as a social value, is necessary in any social society, and the emergence and development of its elements at various stages of the development of civilization show a noticeable progress (Trocan, 2010, p. 111). The right to defence in criminal proceedings originates from Antiquity, in particular from Aristotle’s concepts and philosophical thoughts of stoics. As C. Andritoi and F. Lupsa point out, Roman law contained the norm that no one, even a slave, in criminal proceedings could be convicted without the right to defence (Andritoi, Lupsa, 2014, p. 227). There is no doubt that the right to defence in the period of Antiquity was only a beginning and has since developed considerably so far. But the fact of its occurrence a millennium ago and the unchanging existence at our time gives grounds to talk about its value as one of the basic principles of criminal justice and the conditions for achieving of fair trial.

Traditions related to this right continued during the Renaissance and were associated with the philosophical thoughts of H. Grotius, B. Spinoza, J. Locke, C. Montesquieu and other philosophers. Based on their ideas and philosophical thoughts, bourgeois constitutions and declarations of human rights provided for the right to defence arose. By their critique of the feudal system and the justification of a new concept of human rights, the need for the rule of law in the relations between the individual and the state, this concept has made a significant contribution to the formation of a new legal world outlook, the ideological preparation of bourgeois revolutions and the legal consolidation of their results. Their inalienable component was the demands of freedom, equality, autonomy of a person and its protection against state pressure. These ideas were enriched in the Renaissance and received a new impetus for prosperity during the Enlightenment.

In the first half of the twentieth century the right to defence in criminal proceedings was provided in international law. The first international treaties, which provided for the right to defence in criminal proceedings, became the Versailles Peace Treaty, 1919 (Peace with Germany (Treaty of Versailles), 1919) and the Geneva Convention related to the Treatment of Prisoners of War, 1929. Consequently, before the Second World War, the idea of the right to defence received its international legal regulation. The guarantees of the right to defence were perceived as a necessary condition for conducting legal proceedings. The accused had the right to defend himself in person (self-defence) and to legal assistance of defence counsel. If he did not choose a defence counsel, he was given a counsel. However, on the eve of the Second World War there were many gaps in guaranteeing the right to defence; there was no practice of implementing these norms. A catalyst for solving these and many other issues became the Second World War and the activities of the Nuremberg and Tokyo Military Tribunals.

In the Nuremberg and Tokyo Tribunals the right to defence in criminal proceedings was put into practice. At the same time, it should be stressed that the defence had such rights and responsibilities as were determined by the winning states in the Statutes of the Tribunals. Judges did not go beyond

the norms of the Statute in favor of the defendants' right to defence, but on the contrary, in interpreting the provisions of the Statute, they tried to restrict the rights of the accused and their defence counsels (Davidson, 1997, p. 31; May, Wierda, 1999, p. 739). All the achievements of the defence were mainly related to the active position of the defendants and their defence counsels in the proceedings, and were not connected with the desire to provide for defendants the legal means to guarantee the right to defence.

2. Right to defence in the international human rights regimes

In XX century, the right to defence also received its international legal consolidation by international legal acts of human rights.

One of the founders of the modern international mechanism for the protection of human rights is H. Lauterpacht. In his draft of An International Bill of the Rights of Man (1945), H. Lauterpacht provided legal means to ensure the right to defence: the right to protection from arbitrary and unauthorized arrest; the right not to be subjected to prolonged detention preceding trial, excessive bail or unreasonable refusal thereof, against denial of adequate safeguards of evidence and procedure in criminal cases, the refusal of protection in the nature of the writ of *habeas corpus*; against the retroactive operation of criminal laws, and inhuman and cruel punishment (Lauterpacht, 1945, p. 70). These provisions, that H. Lauterpacht described in art. 1, emphasized the special importance of the right to defence already at the beginning of the creation of an international human rights system.

In the first international legal act, which consolidates the list of human rights – the Universal Declaration of Human Rights 1948 – there is mentioned the right to defence. In particular, art. 11 (1) of Universal Declaration of Human Rights fixed that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which all the guarantees necessary for defence are provided.

Actually, during the negotiation process on the drafting of the Universal Declaration of Human Rights, the special value of this right was seen. The drafters stressed that if the right to defence would not be ensured in criminal proceedings, it would not be possible to conduct a fair trial (Summary Report of the Fifty-Fifth..., 1948, p. 15). The judicial system in the protection of human rights, according to the drafters of the Declaration, should be given a leading place. Thus, according to the drafters, "human rights and fundamental freedoms can only be completely assured by the application of the rule of law and by the maintenance in every land of a judiciary, fully independent and safeguarded against all pressure... and unless at all trials the rights of the defense are scrupulously respected, including the principle that trials shall be held in public and that every man is presumed innocent until he is proved guilty" (Report of the Drafting Committee..., 1947, p. 27).

The right to defence in criminal proceedings, as provided in the Universal Declaration of Human Rights, was further regulated in other international legal acts in the field of human rights protection, in particular, in art. 14 (3) (d) of the International Covenant on Civil and Political Rights, art. 6 (3) (c) of the European Convention on Human Rights, art. 8 (2) (d) of the American Convention on Human Rights 1969, art. 7 (c) of the African Charter on Human and Peoples' Rights 1981, as well as in the statutes of international criminal courts, in particular in art. 21 (4) (d) of the Statute of the ICTY, art. 20 (4) (d) of the Statute of the ICTR and art. 67 (1) (d) of the Statute of the ICC. In addition, the right to defence is provided by international humanitarian law, in particular, art. 99 (3) and art. 105 of the Third Geneva Convention (Convention (III) relative to the Treatment of Prisoners of War, 1949), art. 72 the Fourth Geneva Convention (Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949). That is, this right is legally enshrined in all major international legal acts in the sphere of human

rights protection, norms of international humanitarian law and the statutes of international criminal courts, which confirms its integrity and inalienable. Moreover, we support the scholars, who define the right to defence as customary right (Henckaerts, Doswald-Beck, 2005, p. 352; Markovic, 2005, p. 952; Redo *et al.*, 1995, p. 56; Sherman, 2017, p. 278; Weissbrodt, Templeton, 2008, p. 358).

Analyzing the right to defence in criminal proceedings through the prism of the concept of generations of human rights, we arrive to the conclusion that it belongs to the rights of the first generation as a civil right. In particular, it was provided in the UK in art. 20 of the Habeas Corpus Act 1679, in France in art. 96 of the French Constitution of 1793, in the USA in Sixth Amendment to the United States Constitution 1791 and other internal acts of Western European states. Hence, like other rights of the first generation, this right is inalienable and can not be restricted .

The right to defence in criminal proceedings is absolute in its legal nature; it is possessed by every person against whom criminal proceedings are being conducted. Therefore, during criminal proceedings, nobody can be deprived of the right to defend himself.

At the same time, the right to defence in criminal proceedings is of a complex nature. Traditionally, its elements include: the right to personal defence (self-defence), the right to legal assistance of a lawyer of his own choice (the right to defence through a chosen defence counsel) and the right to free legal aid (Schomburg, Wild, 2004, p.539). And in case if the right to defence is disassembled for certain parts, some restrictions on its elements may take place. For example, the UN Human Rights Committee and the ECtHR proceed from the fact that the right to self-defence (without the legal assistance of a defence counsel) may be limited in the interests of justice, by assigning a defence counsel, including against the will of the person being held criminal proceedings (Carlos Correia de Matos v. Portugal, 2006, § 7.4; Galstyan v. Armenia, 2007, § 91).

However, limiting individual elements of the right to defence should not be taken as a restriction of the right to defence as a whole. The state simply intervenes in this way to realize the right to defence in order to ensure more effective defence of the person and interests of justice. Thus, in the context of limiting the right to personal defence (without the participation of a defence counsel) and the assignment of a defence counsel (for example, in case of complexity of the case), the state thus provides the suspect or the accused with an additional guarantee of the right to defence – the attraction of professional legal aid. Any restrictions on the individual elements of the right to defence in accordance with the practice of international courts are offset by other guarantees that are necessary for more effective defence.

Then the question arises: is the right to defence, which belongs to the first generation of human rights and which is born as a civil right, still civil?

In general, in the legal doctrine, the distinction between the rights of the first generation (civil and political rights) and the rights of the second generation (socio-economic) is traced in the fact that in the first case, the state's task is to ensure noninterference, which makes possible the realization of the corresponding rights and freedoms, then as in the second case – the state must take active steps towards its implementation (Repetskyi, 2012, p. 182). Therefore, in relation to the provision of civil and political rights, the role of the state is negative – not to interfere, whereas in the case of socio-economic human rights, such role is positive – the state must take appropriate action.

There is no doubt that in modern realities it is difficult to determine any right as absolutely positive or negative. As J. Donnelly points out, all human rights for effective implementation require both positive actions and restrictions on the part of the state (Donelli, 2004, p. 42). Thus, although the criteria for the negativity or positiveness of the obligations of States regarding the realization of human rights make distinction between historical generations of human rights, today, the distinction between such civil and political rights on the one hand, and socio-economic ones on the other, has lost its significance.

Instead, it seems appropriate to support the opinion of those scholars who make distinction between these groups of rights on the basis that the realization of socio-economic rights, in contrast to civil and political rights, depends on the level of economic development and requires appropriate material costs and institutional support (Galligan, 1997, p. XXIII). Actually, similar logic has become the reason for the adoption on December 16, 1966 not one, but two separate Covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The International Covenant on Civil and Political Rights imposes on the States Parties the obligation of “respect and to ensure”, while States parties to the International Covenant on Economic, Social and Cultural Rights undertake to take the maximum possible measures, that is, within the existing ability to gradually ensure the realization of the rights provided in the Covenant (Repetskyi, 2012, p. 181).

So, going back to the right to defence in criminal proceedings, determining whether it is a civil or socio-economic right, it is necessary to answer the question: What is the state’s obligation to realize this right and where does such duty end? If this right is treated as civil, then the state must ensure its unconditional guarantee; if this is a socio-economic right, then the state, based solely on its level of economic development, must use within its limits the necessary steps to ensure it, including through material and institutional support.

On the one hand, the right to defence is civil, because it emerged as the right of the first generation. In addition, it is envisaged in the International Covenant on Civil and Political Rights of 1966, and therefore, for these reasons, is also civil. On the other hand, by virtue of international standards, States undertake not only to provide protection, but also effective defence, including effective legal assistance (General Comment No. 32, 2007, para. 38; *Borisenko v. Hungary*, 2002, para. 7.5; *Valichon Aliboev v. Tajikistan*, 2005, para. 6.4; *Kelly v. Jamaica*, 1991, para. 5.10; *Vasilskis v. Uruguay*, 1983, para. 11; *Airey v. Ireland*, 1979, para. 24; *Artico v. Italy*, 1980, para. 33; *Sakhnovskiy v. Russia*, 2010, para. 95; *Gregačević v. Croatia*, 2012, para. 57). However, as emphasized by L. Puyenbroeck, G. Vermeulen, each state independently forms its own system of legal assistance, including free of charge, which, in its opinion, is the most effective (Puyenbroeck, Vermeulen, 2011, p. 1029). Thus, the level of quality of legal assistance depends, among other things, on the financial capacity of the state to organize a system of free legal aid and to attract professional lawyers to such procedures. For these reasons, the right to defence, in particular as regards free legal aid, depends on economic factors, and therefore has features-elements of socio-economic rights. In addition, there is no doubt that in countries where there is a significant stratification between the social strata of the population, the access to qualitative legal aid and, consequently, the providing of effective defence is unequal.

Consequently, the right to defence in criminal proceedings in its nature is a civil right. At the same time, the study of its constituent elements makes it possible to conclude that they may have features of socio-economic right. However, it seems that this does not affect the qualification of the right to defence as a whole as a civil right. Therefore, the state must ensure unconditional guarantee of the right to defence as a whole.

The next question is: are the standards of the right to defence the same for all states? To clarify this, firstly the existing conceptions of human rights must be explored and determined which one is applied in the context of the right to defence.

Traditionally, two main concepts (theories) of human rights are distinguished: universalism and relativism.

According to the theory of universalism, human rights are global in nature and all states must provide them. Proponents of this theory refer to the universality of human nature and they proceed from the assumption that standards of human rights contained in international legal acts have the same

meaning for any country, region and contain the necessary conditions for the existence of an individual, without which it is impossible for him to have normal livelihoods, and therefore have a universal effect (Ghai, 2000, p. 1096). Therefore, based on this theory, the right to defence and its constituent elements must be ensured at the same level in all states, universal and regional human rights protection systems.

In contrast to universalism, the theory of cultural relativism is reduced to the fact that international legal order, based on universal, generally accepted objective moral and rational standards, is unattainable (Mushkat, 2002, p. 1029). Only local cultural traditions (including religious, political traditions, and legal practice) properly determine the existence and limits of civil and political rights received by a person from the society (Teson, 1985, p. 870), therefore, in this case, it is impossible to talk about any universal standards of human rights. Therefore, within the framework of the concept of relativism, we can only talk about regional human rights standards reflecting the peculiarities of the cultural traditions of a particular region.

In recent years, the theory of pluralism, which is a mixture of the theory of universalism and relativism, has become, in our opinion, the most appropriate for understanding the legal nature of the standards of the right to defence.

The concept of pluralism is a combination of the universal content of certain values, human rights standards with the recognition of the need to take into account the peculiarities of the culture in which individuals live (Freeman, 1995, p. 12). Proponents of this theory insist that there are some necessary universal human rights standards that transcend the heterogeneity of cultures and take into account the moral criterion (Stone, 2000, p. 1214). In our opinion, such standards also include the standards of the right to defence. Indeed, as L. Trocan emphasizes, the right to defence as a social value is necessary in any society, and the development of its elements at various stages of civilization witnesses significant progress (Trocan, 2010, p. 124).

Hence, based on the above, guided by the theory of pluralism in the understanding of human rights, we arrive to the conclusion that the right to defence in criminal proceedings, based on its special legal nature, is a certain universal value that is present in all legal systems of our time. However, there may be features of the realization of certain elements of the right to defence, associated with certain specifics of national or regional legal systems.

Naturally, there may be a question: what does the level of guaranteeing the right to defence in the regional international legal systems human rights depend on? It seems that such level depends on the level of maturity of the states belonging to one or another regional system of human rights and on the peculiarities of their national legal traditions. Accordingly, the international legal standard for ensuring the right to defence is significantly higher in those systems, which include the states in whose national legal order the right to defence is guaranteed at a higher level.

3. Right to defence in the international criminal courts

The right of the accused to defence is provided in art. 21 (4) of the Statute of the ICTY, art. 20 (4) of the Statute of the ICTR, art. 67 of the Statute of the ICC. These provisions actually repeat the relevant provisions of the International Covenant on Civil and Political Rights and the European Convention on Human Rights. In particular, the accused has the right to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it; to have adequate time and facilities for the preparation of the defence and to communicate freely with counsel

of the accused's choosing in confidence, the right to appeal sentences. The Statute of the ICC also establishes the following rights of the accused: the right to raise defences and to present any evidence admissible under this Statute; to make an unsworn oral or written statement in his or her defence and Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal; the right to compensation for a unlawful arrest or detention or conviction. The latter have not found their normative attachment in the above-mentioned documents. Such additional rights of the accused were not enshrined in the abovementioned documents, but they logically follow from other norms and practices of the international courts.

International criminal courts themselves establish standards for ensuring the right to defence, which they observe in their practice. R. Cryer points out that international criminal courts are not parties to international human rights treaties, and therefore are not formally bound by them (Cryer *et al.*, 2010, p. 430). At the same time, the standards of the right to defence in international criminal courts are based on the relevant provisions of the International Covenant on Civil and Political Rights and the European Convention on Human Rights. These provisions are used by international criminal courts as an international custom. As Trial Chamber of the ICTR points out in the Furundzija case, the rules of the Statute can serve as an indicator of legal opinions, that is, the *opinio juris* of a large number of states (Prosecutor v. Furundzija, 1998, § 227).

The statutes of international criminal courts, in contrast to the International Covenant on Civil and Political Rights and the European Convention on Human Rights, do not contain norms that would oblige States to provide the appropriate level of guarantees of the right to defence in domestic legal systems. At the same time, the Rome Statute enriches the judicial practice of national courts and stimulates the prosecution, demonstrating considerable attention to the prevention of serious human rights violations (Schabas, 2011, p. 58). Therefore, despite the absence of an obligation for States to adhere to the appropriate level of standards of international criminal courts, based on the history of such standards of the right to defence, their legal nature, based on the provisions of the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and the practice of the UN Human Rights Committee and the ECtHR, it can be argued that the statutes of international criminal courts implicitly affect the domestic criminal and criminal-procedural legislation.

Rights of the accused that are included in international human rights instruments were borrowed in the creating of the ICTY, the ICTR and the ICC. As a result, we can talk about primacy of the right to defence, which is reflected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the practice of the UN Human Rights Committee and the ECtHR to the Statutes of international criminal courts. Therefore, there is no continuation in the field of normative content and legal means of realizing the right to defence by international criminal courts from the Nuremberg and Tokyo Tribunals. This is also evidenced by the practice of the ICTY and the ICTR. Trial chambers of the ICTY in the case S. Milosevic (Prosecutor v. S. Milosevic, 2004, § 17), V. Seselj (Prosecutor v. V. Seselj, 2003, §§ 18 and 19), Z. Tolimir, R. Miletic, M. Gvero (Prosecutor v. Z. Tolimir, R. Miletic, M. Gvero, 2005, § 18), J. Prlic, B. Stojic, S. Praljak, M. Petkovic, V. Coric and B. Pusic (Prosecutor v. J. Prlic, B. Stojic, S. Praljak, M. Petkovic, V. Coric, B. Pusic, 2006, § 10) and other, considering the question of the possibility of appointing a defence counsel for accused, examined the normative content of the right to defence in the ICCPR, the ECHR and the practice of the UN Human Rights Committee and the ECtHR. Similarly, in the ICTR (Prosecutor v. P. Munyarugarama, 2012, § 41) and the ICC (Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, 2012, § 35; Prosecutor v. Jean-Pierre Bemba Gombo, 2011, § 21; Prosecutor v. Thomas Lubanga Dyilo, 2016, § 11) in cases relating to the rights to defence referred to the above-mentioned

Convention and the Covenant, as well as the practice of the UN Human Rights Committee and the ECtHR. In addition, the analysis of the draft of the ICC makes it possible to maintain that its norms relating to the right to defence are based on the relevant provisions of the ICCPR, the ECHR and the case law of the UN Human Rights Committee and the ECtHR.

Thus, international judicial bodies in the field of human rights protection are international control bodies for compliance by States parties of their obligations under international treaty (Article 19 of the European Convention on Human Rights, Article 33 of the American Convention on Human Rights, 1969, Article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights in 1998, Article 40 of the International Covenant on Civil and Political Rights). Consequently, the standards developed by such courts in the course of their activities in the area of the right to defence in criminal proceedings are the same for all States and for all criminal proceedings.

International criminal courts have been established directly to bring to justice those who committed the most serious crimes of international concern (article 1 of the Statute of the ICC, article 1 of the Statute of ICTY, article 1 of the Statute of the ICTR). According to their nature, the main difference between international human rights court and international criminal court is that the first one is international control body over the observance of human rights, while the second one is responsible for prosecuting those who are suspected or accused of committing the most serious crimes (genocide, war crimes, crimes against humanity, crime of aggression).

Therefore, although the international criminal courts perceive the ideology of international bodies in the field of human rights protection, given the purpose of their creation and jurisdiction, additional guarantees of the right to defence have been established. For example, the practice of the UN Human Rights Committee and the ECtHR do not establish requirements for the qualification of a defence counsel; this question falls within the competence of the state. Instead, international criminal courts not only establish requirements for the qualification of defence counsel, but these requirements are much higher than for defence counsel in criminal proceedings in national legal order.

As a consequence, we conclude that the right to defence in criminal proceedings in international human rights and international criminal courts is based on the same principles, its understanding is the same in the international courts. At the same time, there may be certain modifications in the understanding of the individual elements of this right, taking into account the particularities of the jurisdiction of an international court.

Conclusion

Hence, the study of international law aspects of the right to defence in criminal proceedings gives opportunity to make the following conclusions.

1. Ensuring the right to defence is one of the basic principles of criminal justice and is a prerequisite for the achievement of a fair trial. It is provided in all democratic states and proscribed in the main international legal documents in the field of human rights, also in the international humanitarian law and in the statutes of international criminal courts.
2. Right to defence in international criminal proceedings is a comprehensive right that includes its main elements such as: the right to self-defence (defence in person), the right to defence through choosing legal assistance, the right to assigned legal assistance.
3. The international legal norm on the right to defence in criminal proceedings is customary, general and inherent, in the sense that in a democratic society every person has the right to defence in a

criminal proceeding. On the other hand, filling it with content largely depends on the practice of international judicial bodies, regional and national characteristics.

4. The right to defence in criminal proceedings is an absolute civil right. No one can be deprived of the right to defence in any sphere, including in the field of criminal justice. At the same time, certain elements of this right, including the right to free legal aid, may have signs of social and economic right.
5. The level of international legal regulation of the right to defence depends to a large extent on the social homogeneity of the countries participating in international cooperation. The international legal standard for ensuring the right to defence is higher in those groups of states with a high level of guarantees (in domestic legal order).
6. The right to defence in the international human rights courts and the international criminal courts is based on the same principles, respectively its understanding is the same in the international courts mentioned. However, there may be certain differences in the understanding of the individual elements of this right, taking into account the particularities of the jurisdiction of an international court.
7. International Criminal Courts perceive the ideology of international bodies in the field of human rights protection, but take into account the purpose of their creation and jurisdiction, they establish additional guarantees of the right to defence. For example, the practice of the UN Human Rights Committee and the European Court of Human Rights do not establish the requirements for the qualification of a defence counsel; this issue is within the competence of the state. Instead, international criminal courts not only establish the requirements for the qualification of defence counsel, but these requirements are much higher than in accusation procedures in national criminal proceedings.

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The Right to Defence in Criminal Proceedings: International Law Aspects

Vitalii Gutnyk

(Vilnius University)

(Ivan Franko National University of Lviv)

S u m m a r y

The article deals with the right to defence in criminal proceedings in accordance with international law norms. Ensuring the right to defence is one of the basic principles of criminal justice and is a prerequisite for the achievement of a fair trial. The right to defence in criminal proceedings is a comprehensive right that includes its main elements such as: the right to self-defence (defence in person), the right to defence through choosing legal assistance, the right to assigned legal assistance. International legal norm on the right to defence in criminal proceedings is customary, general and inherent; in a democratic society every person has the right to defence in a criminal proceeding.

It is emphasized that the right to defence in criminal proceedings is an absolute civil right. No one can be deprived of the right to defence in any sphere, including in the field of criminal justice.

Right to defence in the international human rights courts and the international criminal courts is based on the same principles, respectively its understanding is the same in the international courts mentioned.

Teisė į gynybą baudžiamajame procese: tarptautinės teisės aspektai

Vitalii Gutnyk

(Vilniaus universitetas)

(Lvivo nacionalinis Ivano Franko universitetas)

S a n t r a u k a

Straipsnyje kalbama apie teisę į gynybą baudžiamajame procese pagal tarptautinės teisės normas. Teisės į gynybą užtikrinimas yra vienas iš pagrindinių baudžiamosios teisenos principų ir yra būtina teisingo teismo proceso sąlyga. Teisė į gynybą baudžiamajame procese yra universali teisė, apimanti pagrindinius elementus: teisę į savigyną (asmeninę gynybą), teisę į gynybą savarankiškai pasirenkant teisinę pagalbą bei teisę į suteikiamą teisinę pagalbą. Apibendrinus tarptautinės teisės normas, susijusias su asmens teise į gynybą baudžiamajame procese, pastebima nekvestionuojama deklaracija – demokratinėje visuomenėje kiekvienas asmuo turi teisę į gynybą.

Pabrėžiama, kad teisė į gynybą baudžiamajame procese yra absoliuti žmogaus teisė. Joks asmuo negali netekti teisės į gynybą jokioje srityje, įskaitant baudžiamosios teisenos sritį.

Teisė į gynybą tarptautiniuose žmogaus teisių teismuose ir tarptautiniuose baudžiamuosiuose teismuose grindžiama tais pačiais principais, o jų supratimas minėtuose tarptautiniuose teismuose yra vienodas.

Vitalii Gutnyk is doctor of legal sciences, professor of International Law Department at Ivan Franko National University of Lviv, Ukraine. His research interests are right to defence in international criminal courts, case-law of the international criminal courts, international humanitarian law.

Vitalii Gutnyk yra teisės mokslų daktaras, Lvovo nacionalinio Ivano Franko universiteto, Ukraina, Tarptautinės teisės departamento profesorius. Jo mokslinių tyrimų interesai yra teisė į gynybą tarptautiniuose baudžiamuosiuose teismuose, tarptautinių baudžiamųjų teismų praktika, tarptautinė humanitarinė teisė.