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Criminal Procedure and Forensic Aspects of Mutual Legal Assistance between States in Criminal Matters: Experience of Ukraine and the Republic of Azerbaijan

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Abstract

This article, through the description of real experiences, reveals some of the obstacles that arise when applying the international, national, and domestic laws of the Republic of Azerbaijan and Ukraine in the fight against crimes of an international character, and offers alternatives to address them. International legal assistance between States in criminal cases is provided in accordance with international agreements. The instruments of cooperation in the field of mutual legal assistance between States in criminal matters are well known to European judges and prosecutors. However, experience shows that post-Soviet countries have been reluctant to use mutual legal assistance in criminal matters because of the practical problems that often arise. The solutions to these problems are not only found in national or international legal texts and regulations, directives, or conventions. It is concluded that legal assistance among States in criminal cases is essential to extradite offenders facing criminal charges or to execute court sentences, to extradite persons, to transfer convicted persons to serve their sentences and to seize, search for and confiscate the proceeds of crime.

Keywords: criminal law; criminal procedural law; international criminal law; comparative law; constitutional law.

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Aspectos procesales y forenses de la asistencia jurídica mutua entre Estados en materia penal: La experiencia de Ucrania y la República de Azerbaiyán

Resumen

Este artículo, mediante la descripción de experiencias reales, revela algunos de los obstáculos que surgen al aplicar las leyes internacionales, nacionales e internas de la República de Azerbaiyán y Ucrania en la lucha contra los delitos de carácter internacional, y ofrece además alternativas para hacerles frente. La asistencia jurídica internacional entre Estados en casos penales se presta de conformidad con los acuerdos internacionales. Los instrumentos de cooperación en materia de asistencia jurídica mutua entre Estados en materia penal son bien conocidos por los jueces y fiscales europeos. Sin embargo, la experiencia demuestra que los países post soviéticos se han mostrado reacios a utilizar la asistencia jurídica mutua en materia penal debido a los problemas prácticos que suelen surgir. Las soluciones a estos problemas no solo se encuentran en los textos legales y reglamentos, directivas o convenios nacionales o internacionales. Se concluye que, la asistencia jurídica entre los Estados en las causas penales es esencial para extraditar a los delincuentes que se enfrenten a cargos penales o, ejecutar sentencias judiciales, para extraditar a personas, para trasladar a los condenados a cumplir sus condenas y para incautar, buscar y confiscar el producto del delito.

Palabras clave: derecho penal; derecho procesal penal; derecho penal internacional; derecho comparado; derecho constitucional.

Introduction

The relevance of the research is since in any democratic state the highest priority task in ensuring the rights and freedoms of man and citizen, stipulated by the constitution, is the effective fight against crime.

This task is complicated by the processes of globalization of the world community, particularly economic integration of states (for example, the creation of free trade zones in Europe), cooperation in solving environmental problems (for example, global warming and inevitable climate change), development of transport infrastructure (for example, ensuring fast and quality transportation between states), and rapid development of high technology and scientific advances (for example, the invention of vaccines to counter pandemics). These processes generate a parallel increase in crime on an international scale.

We are talking, above all, about the creation of organized crime, arms trafficking, drug trafficking, terrorism, and human trafficking, which calls for states to join forces and coordinate common goals in their practical anti-crime efforts (Reza Vanaki *et al.*, 2021). But at the same time with the obvious advantages of international cooperation in the provision of mutual legal assistance between states in criminal matters, with the high rate of harmonization of criminal procedures in different states, the problem of different understanding of both the essence and the specificity of the procedural actions in different systems of law arises (Epikhin *et al.*, 2020).

1. Literature Review

Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 are important for Ukraine and Azerbaijan Republic in studying the criminal procedural and forensic aspects of mutual legal assistance between states in criminal matters, as well as in the constitutions of these states and their national legislation.

2. Methods

The methodological basis of the study is general and special methods of scientific knowledge (statistical, formal-logical, comparative-legal, and structural-logical method), which allowed to reveal the main criminal procedure and criminological aspects of mutual legal assistance between states in criminal cases in Ukraine and in the Republic of Azerbaijan. Methodological basis of the study is a system of general scientific and special methods to obtain its objective and reliable results.

Specificity of the purpose and tasks of the research caused the need to use the following methods: formal logic, dialectical, comparative-legal, formal-logical, system-structural and others. Methods of formal logic (analysis, synthesis, deduction, induction, analogy, abstraction) - for detailed awareness of the content of the issues under study. The dialectical method was used during the research of categories, in particular legal assistance of international nature between states in criminal cases. The use of the comparative legal method allowed to determine the essence, content, and correlation of the national legislation of Azerbaijan the Republic and of Ukraine and international legislation, which is applied by these states in the established order, specialized laws and bylaws that regulate the issues of legal assistance between states in criminal cases.

System-structural method made it possible to systematize national and international normative legal acts and bylaws, to study and analyze their norms about our study, to analyze criminal procedure and criminalistics aspects of legal assistance between states in criminal cases on the example of the Azerbaijan Republic and of Ukraine.

3. Result and Discussion

Results of the research: statistical data on the fight against terrorism in the Republic of Azerbaijan as an example of successful international cooperation in the provision of legal assistance between states in criminal cases, a comparative analysis of the national criminal and criminal procedural legislation of the Republic of Azerbaijan and Ukraine, as well as examples of international legal acts in the specified area are presented in the Republic of Azerbaijan and Ukraine.

The practical significance of the results of the analysis of national and international legislation in Azerbaijan Republic and Ukraine is that the examples given in the article will be useful first of all in the process of law enforcement bodies' system reformation, which is taking place in Ukraine, because both practical workers and scientists are involved in this process, and international legal acts, practice of European Court of Human Rights, and also international experience of law enforcement bodies are implemented in national legislation. Ukraine would benefit from the experience of the Republic of Azerbaijan in effectively combating crime through international cooperation in criminal matters. The analysis and generalized conclusions of the article can also be used in the generalization of the judicial practice, decisions of judicial and other state bodies, used in the preparation of scientific comments to the criminal code, criminal procedure and other codes and laws which regulate the issues of mutual legal assistance between states in criminal matters.

The problem of money laundering remains particularly acute, as evidenced by the initiative of the European Commission, announced in July 2021, to create a new agency for the supervision of the turnover of illegally gained money, which will enable, first, to cut off the money flows of terrorist financing. States, in particular, must commit themselves to treat money laundering as a criminal offence, assist in investigations and take preliminary actions (freezing of bank accounts, seizure of property to avoid concealment, confiscation of funds and income obtained by illegal means or property whose value exceeds the value of the income).

A very commission of crimes not limited to the territory of one state, or having in its composition a foreign element, raises the problem of conflict of jurisdictions of different states and the effect of the extra-territorial nature

of the criminal procedural law of a foreign state in the sphere of national jurisdiction. In this connection: “it becomes important to assess the present situation of the international legal system in the field of legal cooperation in criminal matters in order to create new provisions and improve the application of existing ones” (Report of The Intergovernmental Expert Group Meeting, 1998). From the practical point of view, the experience of the Republic of Azerbaijan is useful for Ukraine in its anti-corruption policy.

In particular, the State program for fighting corruption for 2004-2006, the adoption of the new National strategy for increasing transparency and fighting corruption in 2007, and the action plan for 2007-2011 constitute important progress in the criminalization of corruption in that country. An important role in the successful fight against crime in the Republic of Azerbaijan is played by the legal assistance in criminal cases that is provided in accordance with the concluded treaties between this state and the Kyrgyz Republic, the Republic of Uzbekistan, and the Russian Federation. Active and passive bribery in the public sector, trading in influence, intangible benefits and bribery through intermediaries have been criminalized in accordance with the relevant international standards.

The Republic of Azerbaijan is also actively combating the global problem of terrorism (Azerbaijan in the world community, 2021). In the framework of wide social, economic, and legal reforms carried out to improve the activity of the Ministry of Interior, in accordance with international norms and standards, with participation of legal experts from Germany, England, France, Spain and other European countries a number of normative acts and conceptual documents defining legal basis of activity of the Republic of Azerbaijan in the field of fight against crime were developed. In 1992 the Republic of Azerbaijan joined the International Criminal Police Organization, Interpol.

From that moment the foundations of direct cooperation with law-enforcement agencies of foreign countries were laid. This process intensified relations of the Republic of Azerbaijan with such authoritative organizations as the UN, the Council of Europe, which specialize in the field of law enforcement agencies. At the same time, the country’s economic and social situation was developing dynamically, which led to an increase in the inflow of foreign investors into Azerbaijan.

In this regard, there was a need to strengthen bilateral and multilateral legal relations with relevant authorities of these countries, including those related to the fight against crime. During the last 20 years 48 bilateral and 27 multilateral interagency and intergovernmental agreements, memorandums and protocols have been signed by the Ministry of Internal Affairs of the Republic of Azerbaijan and respective organizations from about 40 countries. The subject of the mentioned international legal documents is the exchange of information and experience, cooperation in

the field of police education and training, joint investigative measures based on cooperation in the fight against various types of transnational crime, illicit trafficking in drugs, psychotropic substances, weapons, terrorism, human trafficking, illegal migration, smuggling (Azerbaijan in the world community, 2021).

Within the framework of such international and regional organizations as OSCE (Organization for Security and Cooperation in Europe), “Organization for Democracy and Economic Development - GUAM” NATO (North Atlantic Treaty Organization), BSEC (Organization of the Black Sea Economic Cooperation), ECO (Organization of Economic Cooperation) OIC (Organization of Islamic Conference), CIS (Commonwealth of Independent States) special attention is paid to activities of the Ministry of Interior of the Azerbaijan Republic in this direction (Azerbaijan in the world community, 2021).

As for Ukraine, the basis for international cooperation in criminal matters are acting bilateral and multilateral treaties, consent to the binding of which was confirmed by the Supreme Council of Ukraine in the prescribed manner. Bilateral agreements allow considering more fully the nature of relations between the two states, their interests on each specific issue.

In this regard, the most widespread are bilateral agreements on such issues as avoidance of double taxation, legal assistance in tax cases, legal assistance in criminal proceedings, extradition of offenders, transfer of convicted persons to serve the sentence in the country of which they are citizens, etc.

Among the multilateral treaties we should mention the European conventions on criminal proceedings, which are important both for the Republic of Azerbaijan and Ukraine, namely: European Convention on Extradition of Offenders and its two additional protocols (European Convention on the Extradition of Offenders, 1957), the European Convention on mutual legal assistance in criminal matters with an additional protocol to it, European Convention on the Transfer of Proceedings in Criminal Matters (European Convention on the Transfer of Proceedings in Criminal Matters, 1972), Convention on the Transfer of Sentenced Persons and its Protocol (Convention on the Transfer of Sentenced Persons, 1983), European Convention on the Supervision of Probationers and Parolees (European Convention on the Supervision of Conditionally Sentenced, 1964), Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (Convention on Laundering, 1990), in addition, it is necessary to mention the European Convention on the international recognition of judgments in criminal cases (European Convention on the international recognition of judgments in criminal cases, 1970).

In addition, it should be mentioned that within the framework of the Commonwealth of Independent States, the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (1993) and the Protocol to the Convention (1997) are in force. In the framework of the UN - the Convention against Transnational Organized Crime (2000) (Convention against Transnational Organized Crime, 2000).

These international treaties establish a uniform pattern of law enforcement and judicial cooperation in the fight against crime by all European states.

It is also worth mentioning the International Criminal Court, which was established at the Diplomatic Conference of Plenipotentiaries held in Rome under the auspices of the United Nations on 15-17 July 1998.

As to the previously mentioned international treaties, the treaties on legal assistance in criminal matters (which contain the whole range of issues regarding cooperation of competent authorities in criminal matters) should be attributed to such treaties. Such treaties were mostly concluded during the existence of the Soviet Union, but, despite this, some of them are still valid today. At the same time, it should be noted that the practice of concluding international treaties follows through the conclusion of treaties on cooperation between states regarding certain types of legal assistance: on legal assistance in criminal cases, on extradition of criminals, on the transfer of convicted persons. As of today, the total base of international treaties in force in Ukraine consists of 18 multilateral and 37 bilateral international treaties in this field.

It should be noted that it is precisely the existence of an international treaty that is a prerequisite for taking decisions on the extradition of offenders, and on the transfer of convicted persons. Thus, in accordance with article 10 of the Criminal Code of Ukraine, foreigners may be extradited for prosecution and trial or transferred to serve a sentence, if such extradition or transfer is provided for in international treaties of Ukraine (Criminal Code of Ukraine, 2001).

The same provision is specified in Article 12 of the Criminal Code of the Republic of Azerbaijan, according to which foreign citizens and stateless persons who have committed a crime outside the Republic of Azerbaijan may be held criminally liable under the present Code in cases where the crime is directed against citizens of the Republic of Azerbaijan, the interests of the Republic of Azerbaijan, as well as in cases stipulated by an international agreement of the Republic of Azerbaijan, if they have not been convicted in a foreign state (Criminal Code of the Republic of Azerbaijan, 1999).

In connection with the processes of world globalization, which also affects the fight against crime, the question arises of how a person who has committed a crime and is hiding in another state can be held criminally

responsible for the crime he has committed. There are several ways to resolve this issue, the first of which is the extradition (or extradition) of that person.

In Ukraine, the question of extradition is resolved when the territorial principle (the place where the crime was committed and where the offender is located) is combined with the citizenship of the person concerned, that is, the principle of citizenship is decisive for extradition. According to Article 25 of the Constitution of Ukraine, a citizen of Ukraine cannot be expelled from Ukraine or extradited to another country (Constitution of Ukraine, 1996). The principle of nationality is also reflected in the Criminal Code, which provides those Ukrainian citizens and stateless person permanently residing in Ukraine who have committed crimes outside the borders of Ukraine may not be extradited to a foreign State to face criminal charges or to stand trial (Article 10, clause 1 of the Criminal Code of Ukraine) (Criminal Code of Ukraine, 2001).

It should be noted that non-extradition of one's own citizens does not mean that they remain unpunished. Each state, at the request of another state, is obliged to initiate criminal proceedings or to take over, in accordance with its national legislation, the criminal prosecution of its nationals who are accused of committing a crime in the territory of another state. At the same time, this is also another way of bringing a person to justice - the transfer of criminal proceedings.

Regarding the above procedure with the European states, the legal basis is the European Convention on the Transfer of Proceedings in Criminal Matters, 1972, and regarding the CIS countries - the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, in 1993 (the so-called Minsk Convention) (Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, 1993) and some international treaties, which we mentioned earlier. As an example, the Treaty between Ukraine and the Republic of Poland on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (1993).

There is also a third way of bringing a person to criminal responsibility, which should be mentioned in our study - the transfer of execution of a sentence, by which the person was convicted on the territory of another state for a committed crime but escaped punishment by fleeing to the state of his citizenship. This possibility is provided for by the European Convention on the International Recognition of Criminal Judgements, 1970 and the Additional Protocol to the Convention on the Transfer of Sentenced Persons, 1997. (Article 2 of the Protocol), as well as the transfer of the execution of a sentence based on the European Convention on the Supervision of Probation or Parole Offenders, 1964. It should be noted that the legislation in Ukraine identifies two central bodies for the implementation of the above-mentioned European conventions in the field of criminal proceedings (in

particular, on the transfer of proceedings in criminal cases; on laundering, detection, seizure and confiscation of proceeds of crime) (Convention on Laundering, 1990): The Ministry of Justice of Ukraine - at the stage of criminal proceedings and the Prosecutor General's Office of Ukraine - at the stage of pre-trial investigation.

In addition, the Ministry of Justice acts as a central body for the implementation of the European Convention on the International Recognition of Criminal Judgements, the European Convention on the Supervision of Probation or Parole Offenders, and the Convention on the Transfer of Sentenced Persons and its Protocol.

Apart from the bilateral level, Ukraine also cooperates at the regional level, which can be explained by the coincidence of interests and the nature of relations between the countries of a particular region. Thus, Ukraine is a member of the Council of Europe and the Organization for Security and Cooperation in Europe.

The third direction covers cooperation within the framework of universal international organizations and, first, it concerns the United Nations and its specialized agencies, as well as the international criminal police organization (Interpol). Universal and regional international organizations, regardless of their scale and influence, continue to play an important role in combating new global threats, such as transnational crime.

Thus, international organizations, along with assistance in eliminating and preventing threats, create ample opportunities to protect the interests of Ukraine and the Republic of Azerbaijan in global politics. A scientific analysis of the topic, relevant both theoretically and practically, was conducted.

Based on the comparative analysis of the national normative and legal as well as international acts, adopted and used by Ukraine and the Republic of Azerbaijan as provided by law, we can conclude that we can consider the provision of mutual legal assistance between states in criminal cases as a form of interaction between state authorities and respective officials with the respective competent authorities and officials of foreign states, as well as international organizations.

This form of interaction is carried out in the established criminal procedural legislation, both the States themselves interacting with each other, and international legal acts, bilateral and multilateral treaties on mutual legal assistance between States in criminal matters. In its content, it is a joint procedural action of foreign states to collect evidence and its verification, the implementation of criminal prosecution and other forms of assistance for the proper solution of a particular criminal case.

An important aspect of international cooperation, which is the cooperation of law enforcement agencies of different states, is the concluded treaty on assistance in the investigation of criminal offences, but cooperation between countries does not always consist in signed treaties but can also be based on the principle of reciprocity, which is one of the basic principles of international law.

The fundamental characteristic that distinguishes international legal assistance in criminal proceedings from other forms of international legal cooperation is the fact that in the implementation, the requesting State (the requesting party) partially transfers its competence to resolve criminal proceedings under its jurisdiction to another State (the requested party). The transfer of competence includes the following recognition of evidence obtained under the rules of foreign criminal procedure law as admissible and compliant with the national legislation of the requesting State (the requesting party).

In accordance with the Article 1 of the European Convention on Extradition of Offenders and the relevant articles of bilateral treaties on the extradition of offenders, States are obliged to extradite to one another person's present in their territory and wanted by the competent authorities of the State in whose territory the offence was committed for the purpose of prosecution or to enforce a sentence of conviction which has entered into legal force (European Convention on the Extradition of Offenders, 1957).

Ukraine has ratified that Convention and, in addition, the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, as well as Ukraine's bilateral treaties on extradition and legal assistance, which contain provisions on extradition, provide grounds for extradition. Extradition is carried out in connection with offences punishable by at least one year's imprisonment or a more severe penalty.

Extradition for the purpose of enforcing a sentence is generally carried out if the person is sentenced to imprisonment of at least six months or a heavier sentence. However, the lower limit of the sentence must be four months. Thus, extradition is the process of surrendering an offender under international law to another state for the imposition of a criminal penalty. The conditions under which a State may refuse to extradite offenders are also provided for in the relevant articles of the European Convention and in bilateral international treaties (European Convention on the Extradition of Offenders, 1957).

Ukraine has signed the above-mentioned agreements on extradition of criminals with such countries as Azerbaijan, Poland, Latvia, Lithuania, Estonia, Moldova, Georgia there are also agreements of our state concerning the European Convention on mutual legal assistance in criminal matters with the states that are members of the Council of Europe: Austria,

Germany, Turkey, Switzerland, Italy, Spain. Currently there are no such agreements between Ukraine and the USA and Ukraine and Canada.

Republic of Azerbaijan has extradited 12 persons suspected of inciting religious hatred and committing terrorist acts, including 3 members of the terrorist organization Al Qaeda, 3 activists of Misir Islam Jihadi, 5 members of Al-Jamaa Al-Islamiya and 1 member of Caucasus Islam Army, based on the petitions sent by the cooperating countries. Moreover, 11 terrorists were detained in Azerbaijan and handed over to the special services of other countries, and six terrorists were arrested in Great Britain, the Netherlands, Germany, Pakistan and the United Arab Emirates based on the information of the special services of Azerbaijan.

The national security agencies of Azerbaijan revealed 14 activists of terrorist organization “Jeysullah”, 6 members of “Hizbut-Tahrir” and 1 member of “Al-Jamaa Al-Islamiya”. Because of the links with terrorist organizations the activity of branches of foreign organizations in Baku – “International Humanitarian Appeal” from the United Arab Emirates, “Al-Haramain” from Saudi Arabia, “Revival of Islamic Heritage” and “Fund for the Sick” from Kuwait, “International Charitable Foundation” from USA and “Qatar” organization from Qatar was suspended (International Convention on the Elimination of all Forms of Racial Discrimination, 2008).

Three employees of these organizations were handed over to Egypt and 23 employees were deported from the territory of the Republic of Azerbaijan. During last year’s 33 foreigners directly connected with international terrorism were extradited. Only after September 11, 2001, events 5 citizens of Egypt and 1 citizen of Uzbekistan were extradited to terrorist organizations “Al-Qaeda”, “Al-Jamaa Al-Islamiya” and “Egyptian Islamic Jihad”.

Activity of the branches of 7 charitable organizations in Baku was suspended due to links with terrorist organizations (Reports submitted by States, 2007). On the examples of the Republic of Azerbaijan further development of the institute the extradition of criminals will take place on the basis of what he actually constitutes combining the sovereign rights of the state with human rights and existing one’s difficulties in applying the principle of double criminal responsibility.

The development of bilateral interstate relations with other countries, accession of Ukraine and the Republic of Azerbaijan to multilateral international treaties contributes both to improvement of cooperation between law enforcement agencies of different countries in investigation, prosecution, and trial of criminal cases, and to increase the global status of Ukraine and the Republic of Azerbaijan as European states.

It should also be noted in our study about the existing contractual legal framework of bilateral relations between the Republic of Azerbaijan and Ukraine.

As of June 2021, 141 international agreements were signed between Ukraine and the Republic of Azerbaijan, of which: 64 interstate and intergovernmental, 41 interdepartmental, 14 political and 20 other documents.

Cooperation of states, including Ukraine and the Republic of Azerbaijan in the field of combating criminal offences develops at three levels: bilateral, regional, and universal (general), at each of them international agreements (international treaties) on cooperation are concluded.

The basic political documents between Ukraine and Azerbaijan are the Treaty of Friendship and Cooperation of 09/12/1992 and the Agreement of Friendship, Cooperation and Partnership of 16/03/2000, which define the main directions, forms, and methods of cooperation between states, including in the field of combating crime. Declaration on Friendship and Strategic Partnership between Ukraine and the Republic of Azerbaijan dated 22/05/2008 defines the level of cooperation between the states as strategic.

The key legal acts of Azerbaijani Ukrainian relations are: Agreement on economic cooperation, agreements on air traffic, on cooperation in customs affairs, military-technical, scientific and technical cooperation, cooperation in the field of tourism, communications, on mutual recognition and equivalence of educational documents and academic titles, youth policy and sports, visa-free travel of citizens, the principles of cooperation in the oil industry, cooperation in the field of culture and art, cooperation in the field of education, etc.

The Republic of Azerbaijan, as an Agreement between the Republic of Azerbaijan and Ukraine on the transfer of persons sentenced to imprisonment for further serving their sentence (1998), the Convention between Government of the Republic of Azerbaijan and the Cabinet of Ministers of Ukraine the on the avoidance of double taxation and prevention of tax evasion on income and property (2000), Agreement between the Government of the Republic of Azerbaijan and the Cabinet of Ministers of Ukraine on cooperation in the field of combating economic and financial violations (2000), Agreement between the Government Of the Republic of Azerbaijan and the Cabinet of Ministers of Ukraine on cooperation in combating smuggling and violation of customs regulations, as well as illegal circulation of ammunition, explosives, drugs, psychotropic substances and precursors (2004) (Legal framework between Ukraine and Azerbaijan, 2021).

In both the Republic of Azerbaijan and Ukraine the legal basis for international cooperation in criminal matters is primarily the Constitutions of these countries, as well as international treaties, consent to which is legally binding, other laws and regulations of these states. It should be

noted that in some cases international interdepartmental agreements on cooperation in the fight against crime contain some disadvantages. One of the reasons for this is that in contradiction with the current norms of law enforcement agencies do not register the named contracts in the prescribed manner.

The international cooperation in criminal matters between States is, on the one hand, an effective method of combating crime, but, on the other hand, implies several problematic aspects that need to be addressed immediately within the legal framework. Thus, one of the main directions of international cooperation in the fight against crime is international cooperation in criminal proceedings.

Today, unfortunately, there is not a single international treaty of Ukraine, the title of which includes the phrase “international cooperation in criminal proceedings. This is primarily since among our domestic legal scholars there is no unified approach to defining the content and basic principles of international cooperation in criminal proceedings. At the same time, the full implementation of tasks of criminal proceedings is sometimes impossible without involvement of employees of operational units, acting based on the instructions of an investigator, as subjects of international cooperation.

Exploring the theme of international cooperation in criminal proceedings, Karaseva (1999) singles out the following main directions: 1) mutual observance of immunity rules established by international law; 2) development and observance of international standards, guarantees of human rights and freedoms, to some extent involved in criminal proceedings; 3) legal assistance (performance of operative-search and procedural actions by mutual consent etc.); 4) extradition; 5) transfer for serving the sentence or compulsory execution of a criminal proceeding; 6) mutual assistance in criminal proceedings.

Unfortunately, the legal status of employees of operational units involved in the implementation of international legal assignments in the current Criminal Procedure Code of Ukraine is not regulated (Criminal Procedure Code of Ukraine, 2012). These provisions are not enshrined in the Criminal Procedure Code of the Republic of Azerbaijan (Criminal Procedure Code of the Republic of Azerbaijan, 2000).

On the other hand, it is important to note positive aspects of cooperation between states in the provision of legal assistance in criminal cases. Thus, the Ministry of Justice of Ukraine has recently concluded several agreements on cooperation in the field of forensic examinations with the Ministries of Justice of the Republics of Azerbaijan, Belarus, Uzbekistan, and Georgia.

This certainly contributes to the exchange of information, implementation of measures regarding scientific developments and expert findings, as well as approbation of methods of forensic research and technical means. The

mentioned contractual relations in the field of international cooperation of forensic institutions envisage exchange of information on the topics of scientific research developments, exhibitions of modern forensic equipment, direct exchange of scientific and reference materials and documentation (including information and reference data in electronic versions prepared in accordance with international standards).

One of the most important components of international cooperation in the field of forensic examination is carrying out forensic examinations on behalf of another state and engaging foreign specialists to carry out forensic examinations in Ukraine. According to Article 22 of the Law of Ukraine “On Forensic Expertise”, in case of performing forensic examination upon request of a respective body or person of another state with which Ukraine has an agreement on mutual legal assistance and cooperation, the legislation of Ukraine shall apply, unless otherwise provided by the said agreement. Payment for the cost of forensic examination shall be made on agreement between the client and the executor of the forensic examination.

Article 23 of the Law of Ukraine “On Forensic Expertise” provides for attraction of specialists from other states for joint performance of forensic expertise. When necessary, heads of specialized institutions and departmental services carrying out forensic examinations shall have the right with the consent of the body or person who assigned the expert examination to include leading experts from other states in the composition of expert commissions.

Such joint expert commissions shall conduct forensic examinations in accordance with the norms of Ukrainian procedural legislation. The payment to foreign specialists for their participation in forensic examination and reimbursement of other expenses associated with its conduct shall be made by agreement between the parties. International cooperation of Ukraine with other states in the field of forensic expertise is the positive factor that accelerates its progressive development (Law of Ukraine “On Forensic Expertise”, 1994). At the same time, it should be noted that the Law of the Republic of Azerbaijan “On forensic activities” does not provide for international cooperation in this field.

Conclusions

Crime in its national and transnational scales destabilizes international relations, influencing politics, economics, mass media, public administration, judicial authorities, skillfully using insufficiently effective international legal measures and imperfect mechanisms of counteraction to criminal offenses available in some countries.

From the first years of its independence our state began to actively enter the sphere of international cooperation, one of the elements of which are common actions with foreign states to combat criminal offenses. International cooperation in combating offenses does not exist by itself. It is a component of international relations, and even those states that do not have close political and economic contacts, as a rule, do not neglect contacts in the field of combating offenses.

As we have outlined earlier, cooperation between States in criminal matters takes place in order to achieve the goals of justice, both during the investigation and trial of a criminal case and after the entry into force of a court decision (sentence) and involves many aspects of criminal procedure and forensic nature. The forms in which this kind of cooperation between States can be organized vary in form and content.

Of course, the main of them are the provision of legal assistance in criminal cases, which consists primarily of procedural actions, which reflects the essence of the process of investigation and judicial consideration of criminal cases, during which there is a need to collect evidence, including, outside of one state, by interviewing the accused, victims, witnesses, receiving expert opinions, conducting searches, judicial examination, seizure and transfer of documents, personal delivery of documents and their forwarding.

It should also be noted that legal assistance between States in criminal cases is essential for extraditing criminals to face criminal charges or enforcing court judgements, for extraditing criminals, for transferring convicted persons to serve their sentences and for seizing, searching for and confiscating the proceeds of crime.

At present, the process of development of Ukraine as an independent, sovereign, democratic state governed by the rule of law continues. This process is undoubtedly impossible without the creation of an integral effective state system to protect the rights and freedoms of citizens and general civil interests.

Of particular importance for such development is the intensification of lawmaking activities to improve the criminal procedural legislation, as well as its democratization by bringing it in line with the provisions of the Constitution of Ukraine and international legal acts. Our study examined the normative legal acts, both national and legally implemented, in the Republic of Azerbaijan and in Ukraine, which provide a legal basis for international cooperation in matters related to crime. The relevant provisions of international law are part of the treaties on combating transnational crime, as well as bilateral and multilateral agreements establishing a general framework for international cooperation in criminal matters.

The scope and elements of international cooperation in criminal matters are first outlined, followed by a discussion of international cooperation in

criminal matters and human rights using the Republic of Azerbaijan and Ukraine as examples. The principle of mutual recognition, new instruments of international cooperation such as extradition and execution of criminal sentences and measures are also examined, the transfer of convicts and the execution of custodial sentences, as well as the execution of monetary sanctions and asset recovery.

The results of the study, analysis, and comparison of regulatory and legal as well as international acts adopted and used by the Republic of Azerbaijan and in the Ukraine, manner prescribed by law will be useful, first, for law enforcement officers. Analysis and generalized conclusions in the article can also be used in the generalization of judicial practice, decisions of judicial and other state authorities, used in the preparation of scientific comments to the criminal and criminal procedure and other codes and laws that regulate the issues of legal assistance between states in criminal cases in the Republic of Azerbaijan and Ukraine.

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