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Use of specific forms of international cooperation in special criminal proceedings

Історичні передумови формування підвалин сучасної гуманітарної політики України

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Abstract

The purpose of the article is to analyze the peculiarities of the use of certain forms of international cooperation in special criminal proceedings. The subject of the article is international cooperation. Methodology. Taking into account the specifics of the topic, the purpose and tasks of the research, the following methods were used: dialectical, historical and legal, dogmatic, comparative and legal, formal and logical, systematic, consolidation. Research results. On the basis of the analysis of the criminal procedural legislation of Ukraine, special literature and foreign information sources, the main forms of international cooperation in special criminal proceedings are defined and revealed, domestic and foreign experience in relation to the essence and features of the mentioned issues is systematized. Practical meaning. The necessary conditions have been defined, the implementation of which will ensure the effective functioning of the institute of special criminal proceedings in terms of cooperation with international organizations that

Анотація

Метою статті є аналіз особливостей використання окремих форм міжнародного співробітництва у спеціальному кримінальному провадженні. Предметом статті є міжнародне співробітництво. Методологія. Враховуючи специфіку теми, мету та завдання дослідження були використані такі методи: діалектичний, історико-правовий, догматичний, порівняльно-правовий, формально-логічний, системний, узагальнення. Результати дослідження. На підставі аналізу кримінального процесуального законодавства України, спеціальної літератури та іноземних інформаційних джерел визначено і розкрито основні форми міжнародного співробітництва у спеціальному кримінальному провадженні, систематизовано вітчизняний та зарубіжний досвід стосовно сутності та особливостей зазначеної проблематики. Практичне значення. Визначено необхідні умови, виконання яких забезпечить ефективне функціонування інституту спеціального кримінального провадження у частині співпраці з

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perform law enforcement functions and law enforcement agencies of foreign countries. Value/originality. It has been proven that the regulatory and legal provision of the international search for persons, which was reflected mainly in the form of secondary regulatory and legal acts of Ukraine, needs significant improvement.

Keywords: cooperation, extradition, interaction, international search, investigation, special criminal proceedings.

Introduction

An important foreign policy task for our state is the formation of a safe international environment. In order to prevent the continuation of criminal activities, to bring perpetrators to justice and prevent criminal manifestations in the future, close systematic cooperation of States, including during the implementation of special criminal proceedings, in particular, regarding the search, detention and extradition of offenders, is required. Such areas of work of law enforcement agencies of Ukraine can be performed only in cooperation with law enforcement agencies of other States. At the same time, scientists pay little attention to the issues of international cooperation in specific criminal proceedings, while they are extremely relevant, both for practice and for the theory of criminal procedural law of Ukraine and European legal doctrine.

Thus, the purpose of the article is to analyze the peculiarities of the use of certain forms of international cooperation in special criminal proceedings.

Methodology

The methodological basis for the research is the set of general scientific and special scientific methods that were used in their relationship and interdependence and provided an objective analysis of the subject matter under consideration. Taking into account the specifics of the topic, the purpose and tasks of the research, the following methods were used:

Dialectical method allowed to consider all the issues of the topic in dynamics, to reveal their interrelation and correlation and contributed to the understanding of the research object in terms of the combination of the needs of scientific research and the law enforcement practice.

міжнародними організаціями, які виконують правоохоронні функції, та правоохоронними органами іноземних держав. Цінність/оригінальність. Доведено, що нормативно-правове забезпечення міжнародного розшуку осіб, яке знайшло своє відображення переважно у вигляді підзаконних нормативно-правових актів України, потребує суттєвого удосконалення.

Ключові слова: співробітництво, екстрадиція, взаємодія, міжнародний розшук, розслідування, спеціальне кримінальне провадження.

Historical and legal method provided an opportunity to investigate the genesis of the concept of "international cooperation", the emergence and development of scientific opinion regarding its order and mechanism.

Dogmatic method was used in the interpretation of legal categories, to deepen and clarify the conceptual and categorical apparatus (the concepts of international cooperation, extradition, etc.).

Comparative and legal method helped to establish general and special features of the doctrinal understanding of the phenomenon of international cooperation, legislation and law enforcement practice.

Formal and logical method was applied when comparing the rules of the Code of Criminal Procedure of Ukraine and other legal instruments, substantiating conclusions and proposals for their amendment or clarification.

Systematic method made it possible to establish the peculiarities of performing certain procedural actions in the course of international cooperation (in particular, when conducting the stages of international search).

Consolidation method was useful in summing up the results of the research.

Literature Review

Speaking about the issue under consideration, Vyazovchenko (2018, p. 57) believes that international cooperation in criminal proceedings is carried out on the basis of current rules of international and domestic legislation or in accordance with the principle of reciprocity and providing legal assistance, criminal prosecution,

extradition of persons for the purpose of revealing and investigating crimes and achieving the purpose of criminal justice.

Instead, Volevodz (2002, p. 56) claims that international cooperation in the field of criminal proceedings (criminal justice) is an activity carried out by investigators, prosecutors and courts in accordance with the requirements of the legislation regulating criminal justice, coordinated with competent bodies and officials of foreign States, as well as international organizations to obtain and provide assistance in pre-trial proceedings and court proceedings, as well as in taking other measures necessary for the appropriate resolution of criminal proceedings.

We agree with the view of Asgarova (2022, p. 192), who states that the prevention, investigation, and cessation of transnational crime, as well as the prosecution of the perpetrators of a crime of an international nature cannot be carried out unilaterally by a State without the assistance of other States and competent international organizations in this field.

Humin et al., (2021, p. 245) add that international cooperation plays an important role in strengthening and developing relations between States under modern conditions. The desire of each State to combat crime creates the basis for concluding relevant international agreements, in which special attention is paid to the actual international search and extradition of persons suspected (accused) of committing criminal offenses, hiding from the execution, as well as the application of other measures of international cooperation.

The subject of our research is covered in the monographic work by Zuiiev (2017). It is substantiated that the specified group of guarantees is the system that includes guarantees of the rights and freedoms of the individual, as well as guarantees related to the organization of the process of international cooperation. The conditions for appealing procedural decisions, acts and omission by State authorities, as well as individual officials connected with international cooperation, with the provision of international legal aid and extradition during criminal proceedings, were studied.

Antoniuk (2016) in the study "Procedural principles of international cooperation in the investigation of criminal offenses" raised the issue of improving the institution of extradition; namely, she supplemented the list of documents

necessary for drafting a petition for the extradition of the requested person with a copy of the written notice of suspicion to the person and the voluntary consent of the suspect (the accused) to use the simplified extradition procedure.

It should also be noted that the concept of "international cooperation" is related to the category of "international legal assistance". A number of scientists equate these terms. For example, Vynohradova (2009) notes that the provision of international legal assistance (international cooperation) in the field of fighting crime is the coordinated activity of various States to protect the interests of individuals, society and the State, regulated by the rules of international and national law.

In opinion of Zavydnyak (2020, p. 104), international legal assistance in criminal proceedings is one of the types of international cooperation, since the categories "international cooperation" and "international legal assistance" are not equal in scope and content of law enforcement actions, but are related as a whole and a part. Taking into account the above, we believe that international cooperation during the investigation of crimes of transnational nature is the activity of States, their competent authorities and international organizations established by the norms of international and national legislation, which lies in providing international legal assistance during the investigation of such offenses.

Results and Discussion

According to Art. 542 of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 4651-VI, 2012), international cooperation during criminal proceedings lies in taking necessary measures to provide international legal assistance by service of documents, performance of certain procedural actions, extradition of persons, who have committed criminal offenses, temporary transfer of persons, taking over criminal prosecution, transfer of convicted persons and execution of sentences.

The relevant areas of work regarding international cooperation were implemented in the organizational and procedural forms of interaction of law enforcement agencies through joint international legal instruments, adopted in accordance with established procedure by the participating countries in legal relations on a given issue. In the absence of an international agreement with Ukraine, international legal assistance or other forms of cooperation can be

provided based on the request of another State or requested on the basis of reciprocity (Udalova et al., 2015, p. 8).

The International Criminal Police Organization (hereinafter referred to as the ICPO), which unites 190 Member States, is one of the most powerful intergovernmental mechanisms for organizing and conducting international investigations. Its main purpose is to coordinate the efforts of law enforcement systems of different countries in performing measures for the criminal investigation of international criminals (Khakhutsiak & Vereshchak 2022, p. 302).

According to Art. 2 of the Charter of the International Criminal Police Organization (INTERPOL, 1956), the objectives of the ICPO are to provide and support the broadest mutual aid between all criminal police agencies within the limits of the legislation of different States and in the line with the Universal Declaration of Human Rights, as well as to create and promote all institutions that can efficiently enhance the and termination of criminal offenses.

International tracing is the bulk of the work of this international organization. At the same time, international search for a suspect, accused is one of the complex problems of special criminal proceedings; it applies both to regulation and implementation of legislative prescriptions.

The study of scientific literature gives us reason to state the existence of different definitions of international search, the basis of which are different criteria depending on the area of law in which such a concept was developed by scientists. In our opinion, the definition of an international search by Kompaniiets (2003, p. 142) is quite reasonable; according to the scholar, search is understood as both declared, conducted and terminated in Interpol Member States, representing the totality of searches and actions in the territory of each country by its law enforcement agencies in compliance with national legal standards and departmental legal instruments on behalf of the competent service of the General Secretariat of the named international organization and with its coordination.

However, it is necessary to add that Interpol not only coordinates the actions of the police of several States, but also assists in providing information from its files. Besides, Interpol announces an international search and not only signals its initiation by issuing a circular to the

police of all participating countries, but also defines the limits of conducting search activities, that is, decides whether it is necessary to involve the police of all States in this international organization, or be limited to countries of one or two neighbouring regions.

The question for special criminal proceedings is whether an order declaring an international search is sufficient or whether confirmation of the international wanted person is required. Currently, a Draft Law, which provides the basis for carrying out special pre-trial investigation - issuing of an order declaring a suspect who refuses to appear before an investigator, the prosecutor as wanted, has already been registered. That is, the requirement for the investigator, the prosecutor to prove the fact of the announcement (implementation) of an international search is finally canceled. On the one hand, this will solve the urgent problem of law enforcement, and on the other one, it will create new ones, because, in our opinion, the declaration of an international wanted person and its implementation are not the same thing, as Interpol may refuse an international search for various reasons for various reasons. In this case, a situation arises when the international search will not be performed. That is, in fact, special pre-trial investigation is taking place, and the suspect is not wanted. In this case, the very purpose of special criminal proceedings is nullified - ensuring the inevitability of criminal responsibility for the perpetrator hiding from investigation and court - is eliminating.

The structure of Interpol provides for the functioning of the National Central Bureau of Interpol in each Member State - the unit that directly ensures international cooperation of law enforcement agencies of its state within the Interpol. As a matter of fact, these are «Interpol Strongholds» on the ground (Chornous, 2013, p. 197).

Resolution of the Cabinet of Ministers of Ukraine No. 220 (1993) establishes that the interaction of law enforcement agencies of Ukraine with the competent authorities of foreign countries in solving issues of combating crime that is transnational in nature or goes beyond the borders of the country is carried out only through the National Security Service of Interpol, represented by the National Police.

The first stage of conducting an international search for persons who have committed a criminal offense is to send a request to search for perpetrators on the territory of Ukraine.

Thus, the purpose of search – locating a wanted person – should be specified in the request (Leshukova, 2004, pp. 170–172). At the same time, along with the general content of the request to Interpol for an international search on the official website of Interpol, in the case of searching for suspects, accused persons, defendants in criminal proceedings or convicted persons who are evading criminal punishment and hiding abroad, the request additionally specifies measures, which, in the opinion of the initiator of the search, should be used on the territory of another State, in particular:

- a) control over the movement of the wanted person;
- b) detention and arrest of the wanted person with his (her) subsequent extradition (Vaccani, 2011).

The next stage of the organization for search is the review of the received documents, their analysis, verification, decision-making on the announcement of an international search, printing and mailing by post (or through own communication) the relevant formalized reports (circulars) on the initiation of the search to NCBs of participating countries.

Before the publication of an international notification, the General Secretariat of Interpol performs legal examination of the information in the request for its publication. The subject matter of legal examination is the existence of grounds for the publication of an international notice, its compliance with the Art. 3 of the Constitution of the INTERPOL, rules of international law on the issues of criminal justice, protection of personal information, etc. The published international notification is considered an official act of the MOCP and is sent to all Interpol Member States.

According to the INTERPOL standards, the search for persons is divided into five types (five series – "A", "B", "C", "D", "F") (Kultenko, 2009). For each of them, Interpol introduced its own form - circular: "red" - "A", "green" - "C", "blue" - "B", "yellow" - "F" and "black" - "D", each of which has its own meaning and purpose. They received such names because there is a rectangle measuring 3.5 x 4.0 cm of the corresponding color in the upper right corner of each of them (Starzhynskiy, Starzhynskiy, & Khotenets, 2006, p. 46).

Today, the most difficult question for the police units involved in the international search is the issue of whether the Interpol red circular can be considered as a legal document, referring to

which police officer of any country can arrest the person specified in it. Thus, in some countries it is regarded as an order for the unconditional and lawful detention of a wanted person, and in others - as the basis for the necessary fulfillment of additional requirements for recognizing the "red" notice as a proper document (sending a copy of an arrest warrant or a special request from the requesting State).

In 1997, at the 66th session of the Interpol General Assembly, a proposal was made to the ministries of justice of the Member countries to recognize the "red" notice as the grounds for arrest in their countries. Of the 92 countries that attended the session, 65 gave a positive response. Among the countries that disagreed with this decision were the USA, the Russian Federation, Ukraine and others, who confirmed that this message is not considered as a proper criminal procedural document. However, despite the scattered views of the representatives of the participating countries of the Interpol on this issue, the special resolution was adopted. It states that the "red circular" is a document intended for both police authorities and justice authorities (court, prosecutor's office) and can be considered as a justified request for preliminary arrest, as it is issued on the basis of national arrest warrants (or other documents of the same force).

The stage of direct international search consists of actions carried out in the countries after the NCB with the General Secretariat of Interpol after being informed that the search has begun. For each message received, the NCB decides separately whether to set a target of searching for the person named in the communication before the territorial authorities of their country, or simply enter the information about the person in the relevant databank in each NCB. The list of necessary search actions may differ depending on the specific case. But it will always be only those actions and operational search measures provided for by national legislation and departmental regulations of the executing State (Leshukova, 2004, p. 165).

In accordance with Part 4, Art. 575 of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 4651-VI, 2012), a request for extradition shall be submitted to the relevant central authority of Ukraine via public prosecutor's offices in the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol, or public prosecutor's offices charged with similar powers within a 10 day period from the date of seizure of a person in the territory of a foreign state. Within the specified time period,

the manager of a relevant pre-trial investigation agency within the structure of a central law enforcement authority, a security authority, an authority monitoring compliance with tax laws, or an authority under the State Bureau of Investigations of Ukraine shall submit a request for extradition directly to the Prosecutor General's Office of Ukraine.

Where there are grounds specified by the international treaty of Ukraine, a central authority of Ukraine may submit a request to a foreign competent authority for extradition of a person to Ukraine. A request for extradition shall be submitted by the manager of a central authority of Ukraine or a duly authorized person within five days from the date of receipt of a petition (Law of Ukraine No. 4651-VI, 2012).

In case of notification by the competent body of a foreign state about obtaining the consent of the detained person for his extradition (extradition) to Ukraine, the preparation of the petition is carried out exclusively at the request of the authorized (central) body of Ukraine. The content of the petition and the list of documents attached to the petition are determined by the authorized (central) body of Ukraine in accordance with the requirements of the Criminal Procedure Code and international treaties of Ukraine.

Thus, in the case of receiving data on the whereabouts of a wanted person on the territory of a foreign state, the Ukrainian Bureau of Interpol communicates the information received to the originator of the search (for example, the Main Investigative Department of the National Police of Ukraine or the Department of Criminal Investigation of the National Police of Ukraine or other law enforcement agencies or their structural subdivisions), which prepares relevant materials for the General Prosecutor's Office on detention, arrest or extradition.

The Prosecutor General's Office, after studying and verifying the materials, if they are properly processed, sends a request for the extradition of the wanted person to the relevant body of a foreign state, and can send a certified copy of the request to the Interpol National Security Agency for prompt notification of the law enforcement agencies of that country. In the case of receiving from the authorities of a foreign State the consent to the extradition and a notification of the detention (arrest) of the perpetrator, the Prosecutor General's Office gives instructions to the National Police of Ukraine and the Ministry of Justice of Ukraine (State Criminal

Enforcement Service) to organize the reception of this person.

According to Art. 541 of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 4651-VI, 2012), extradition is the surrender of a person to a state the competent authorities of which search for this person for prosecuting or serving a sentence. Extradition includes: sending official request for establishing whereabouts of the person sought in the territory of the requested state and for surrender of such person; verification of circumstances which are likely to hinder the surrender; taking decision on the request; actual transfer of such person into jurisdiction of the requesting State.

We support the view by Boyko (2019, p. 84), who noted that when extraditing criminals and transferring convicts, they are not simply moved to another country (in geographical space), but are transferred to another legal system (in social space), that is, to another coordinate system that has its own points of reference (types and size of penalties, statutes of limitations, convictions, etc.), which may be less favorable for a person than those in which he was before the extradition or transfer.

Currently, the problem of extradition both in Ukraine and in other countries has emerged as a problem of a legislative nature. For example, Popko (2019) include the following problems encountered during extradition: the difference in the qualification of acts according to the laws of the countries; incomplete requests received by the Interpol National Security Agency, which require additional information; the problem of financing the extradition procedure, etc.

These requirements are also relevant in the case of request for extradition, if special criminal proceeding is being conducted. In such a case, the legislation of the requested State needs to be carefully studied, in particular in terms of the admissibility of the in absentia procedure under domestic law and/or the extradition of persons to whom it was applied, in some cases it may be appropriate to apply to the competent authorities of this State with a notification of the intention of the extradition request in the proceedings in absentia and the expression of the request to indicate the requirements and conditions that the requesting party should comply with. This will allow an objective conclusion to be drawn as to the nature and scope of the procedural possibilities and obligations regarding cooperation in a specific case under the existing circumstances (Shumeiko, 2020, pp. 169–170).

The last stage in the implementation of the international search for persons who have committed criminal offenses on the territory of Ukraine is the termination of the international search. Thus, the international search for persons evading criminal responsibility and punishment is terminated in connection with the achievement of the purpose of the search or the expiration of its term.

The notice on the termination of the international search for a person by the declaring authority is issued by the declaring authority, and a copy of the resolution is transferred to the National Security Service of Interpol in Ukraine; the latter sends a notice of its termination to the Member countries of Interpol, on the territory of which the search was conducted, or submits a cease and desist message to the authority issuing the circular and directs it to all Interpol NCBs of the countries participating in the search for the purpose of canceling the search.

In this regard, the General Secretariat of Interpol has developed and implemented a unique system of international notices ("red notice"; "blue notice"; "yellow notice"; "black notice"; "green notice"), which it sends to all Member States of the organization through automated search system (ASF). Each notification (circular) has an individual purpose, that is, it is issued only to one specific person based on the request of the National Security Agency of Interpol.

Conclusion

The international search for suspects, accused, convicted in the Interpol system is part of the cooperation of the States in the fight against crime. Therefore, it can be conducted only with strict adherence to the general principles of international law, primarily the principles of cooperation, sovereign equality of the States, non-interference in their internal affairs, and respect for human rights. It is worth adding to them the main principle of criminal justice, which unites all countries of the world community in the fight against crime, ensuring the inevitability of responsibility for the committed illegal act, which fully corresponds to one of the tasks of special criminal proceedings.

Legal framework for the international search for persons reflected primarily through by-laws and regulations, needs significant improvement. The systematic analysis of the Criminal Procedure Code of Ukraine indicates that the lack of documents on the international search through Interpol channels, if there is only a formal

warrant for the search for the person, is the basis for the conclusion that the person is not internationally wanted. It should be stated that, under inadequate criminal procedural legislation and inconsistent judicial practice, without the intervention of the legislative body, it will be impossible to solve the problem that has arisen without legislative intervention, which, in turn, significantly affects the practical implementation of other forms of international cooperation, including during special criminal proceedings, in particular, extradition, since it involves not only the fact of extradition itself, but also a set of procedural actions and organizational measures aimed at preventing the person's attempts to evade the investigation authorities, continue to engage in criminal activities, his (her) search, securing sources of evidence, verification of circumstances that may prevent extradition, compliance with the rights and freedoms of the person subject to extradition, etc.

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