

A. B. Antoniuk,
*Doctor of Law,
Associate Professor of
Criminal process and
criminology state University
Fiscal Service of Ukraine*

ORIGIN OF INTERNATIONAL COOPERATION DURING CRIMINAL PROCEEDINGS AS LEGAL INSTITUTE OF COOPERATION: PAST AND PRESENT

The article is devoted of the process of international cooperation in criminal proceedings as a legal institution. Questions concerning international agreements in different periods of world culture, and also the international principles that serve as the basis for international cooperation of the criminal proceedings.

Keywords: *international cooperation, agreement, principles, criminal proceedings.*

One effective support elements of civilized relations with other countries in combating crime and protecting the rights and freedoms of man and citizen is international cooperation states.

Cooperation between countries in specific matters phenomenon is not new and dates back to the reign of kings and emperors. Thus, even in 1296 BC The contract between the Egyptian Pharaoh Ramses II and Hittite king Hettushylem III was predicted typical situation: "If someone flee from Egypt and go to the country of the Hittites, the king of the Hittites be no delay, but will return to the country of Ramses" [12, p. 154]. It is worth noting that in history defined periods

conclusion of international agreements, namely the first period include a period of time as from ancient times to the end of the XVII century (agreements between England and Scotland in 1174, the Paris Treaty in 1303, the Union Treaty between France and Spain in 1612, Cathedral of the code in 1649 and others); the second period include a period of world history as the XVIII - beginning of XIX century (1833), namely contracts against the military of criminal offenses (Treaty between the United States and Great Britain 1734, 1802 Am'yenskyy agreement (an agreement between France, Spain and England); third period accounts for 1833 - 1919 years (first adopted laws on extradition, extradition and the prohibition of the slave trade); fourth period originates from 1919 to 1945 (distribution extradition treaties); fifth period begins with 1945roku to 1990, where there is fierce fighting criminal offenses against the peace and security of mankind; to include the sixth period 1990 to the present.

Coordination of States in combating certain types of criminal offenses and was known states of Ancient World and Middle Ages. Even then, one of the main types of cooperation was the signing of international agreements on extradition. During the period of slavery and feudalism were widespread bilateral agreements on extradition.

In this context it is worth mentioning Kievan Rus, which was an integral part of Ukraine. In the X century Kievan Rus concluded extradition agreements. For example, the agreement of the Grand Prince Oleg with Byzantium 911 provided that a person who committed a criminal offense in the Byzantine Empire, should be given punishment for home and Greeks - were published in Byzantium.

The spread of Christianity in Russia has led to various legislative and procedural criminal canonical norms. In addressing criminal proceedings for offenses Byzantine religious clergy that came to Kiev power to control the Church, took Gradskej law, which was published in the VIII century. It was imperative because at that time there was no law that would regulate religious criminal offense, and n Truth, like other secular laws were gaps of these issues.

The peculiarity of the ancient law was "unity" - the adoption of laws on princely congresses - cathedrals. Kievan Rus at that time consisted of many separate, geographically separated principalities both independently and those who did not have full independence. This forced to seek ways of cooperation and acceptance of the legal provisions acceptable to all stakeholders. Elements of international law are closely intertwined with national legislation and found in them a basis for creating conditions for further application [19, p. 18].

Before principalities were many problems that contributed to the adoption of legislation to address major challenges such as ensuring the solution of internal problems of each individual principalities; problems between them and achieve common political, economic and military interests. Adoption laws resulted in the agreed unified nature of the fundamental provisions of the law of Kievan Rus. Legislation adopted at the councils of sovereign principalities by agreement on the basis of already existing principalities in domestic law. These regulations can be viewed as a kind of international agreements principalities that contained the norms of international and domestic law, applied as domestic law in the territory of each principality [5, 230 pp.].

An important role in the institutions of international cooperation played n Truth, the text of which survives today as short truth in 1136 and 1209 Great truths. Article 11 Short truths install high procedural rules take measures to redress the crime. It should be noted that until now remained the summary and the Great Truth, which combined several different codes and regulate relations and activities of princes in Kiev and Novgorod. Mostly, they contain procedural rules and other elements of international law, as the principality were the subjects of the sovereign territory [11, 480 pp.].

Note that the Ukraine at all stages of its history, tried to combine the common interests between the Slavic nations, kingdoms, church and other communities. It was necessary to quickly navigate the situation, develop coordinated action plans and improve forms of cooperation and provided legal assistance [12, p. 154].

The era of bourgeois revolution XVII-XVIII centuries for the first time in history pushed the state to the agreements, which were the subject of inter-state relations on the definition of illegal acts as an international criminal offense contrary to morality and threatens the development of international relations. The States Parties to such agreements commit themselves to not only recognize certain wrongful acts as international criminal offenses but also to cooperate in preventing, stopping and punishing such offenses for their commission. The first such agreements were international instruments to combat the slave trade and slavery. At the Congress of Vienna in 1815 adopted a Declaration on the abolition of trade Negro slaves, and then in 1841 at the initiative of England signed the so-called "five" Convention on the Prohibition of the slave trade. In 1890, the state had colonial possessions in Africa, signed the Brussels agreement on the prohibition of the slave trade. Later in the framework of the League of Nations and later the United Nations, adopted several international conventions against slavery and the slave trade [5, p. 230].

In 1845, the Russian Empire was enacted Penal Code, which for the first time in Russian legislation provided for the possibility of arrest of foreign assets, which served for committing criminal offenses. A separate article skipper responsibility envisaged that made the ship offender. In this case, the arrest of the vessel subject [8, p. 352].

At the end of the twentieth century, the problems of fighting international crime and the protection of property rights and compensation for damage criminal offenses attention is paid to the United Nations congresses. Article 13 of the Model extradition treaty, adopted December 14, 1990 by resolution 45/116 of the General Assembly, was called "transfer of ownership" [9, p. 217]. For the first time in the world it formulated a rule that "all found in the requested State property that was acquired as a result of the offense or may be required as evidence transmitted if requested by the requesting State if extradition is allowed" [17].

As a full member of the international community and Ukraine actively cooperate unconditionally with states and international organizations, not only on the fight against crime, but also preventing and eliminating all manifestations of transnational crime.

As you can see, international cooperation has always been a pressing issue for the international community, which in turn contributed to the improvement of international cooperation and its approval in almost all national legislations of the world. However, there are a number of issues that greatly affect our national legislation.

International cooperation is essential to maintain a balance in the world and positively influences the development of international society. But at the positive aspects are negative. One of the most negative effects of internationalization is a crime that is spreading its typical signs and displays in countries and regions for which they were not typical. In this connection, the competent authorities of one country are increasingly turning for help to the competent authorities of another country during the investigation of criminal offenses. [4]

According to Art. 542 Code of Ukraine, international cooperation - an activity authorized bodies during the criminal proceedings is to apply the necessary measures to provide international legal assistance through service of documents, execution of certain proceedings, extradition of persons who have committed criminal offenses, temporary transfer of persons takeover prosecution, transfer of sentenced persons and execution of sentences. [14]

The general definition of “international cooperation in criminal proceedings” is ambiguous, leading in turn to conflicts of law. This concept requires a clear definition and coverage of it in legal acts of Ukraine.

When making the handheld Ukraine legislator gave the definition of international cooperation as such, but only discussed its shape and general principles of international cooperation.

Please note that many scientists working on topics of international cooperation, its directions aspects of research, legal regulations, legal support, but the concept of “international cooperation” is not fully explored.

Such scholars as J.P. Alenin, P.D. Bilenchuk, O.I. Vinogradova, V.M. Volzhenkina, O.H. Volevodz, L.N. Halenska, V.M. Grebenyuk, Y. Groshev, K.F. Hutsenko, I.V. Lyeshukova, O.N. Lyashuk, N.I. Klimenko, V.S. Kuzmichev, V.T. Malyarenko, H. Marysheva, V. Milinchuk, V.T. Nor, V.P. Panov, M.I. Pashkovskiy, M.I. Smirnov, V. Tertyshnyk, V.P. Shybiko, V.P. Shupylov and others devoted their study various aspects of international cooperation in criminal proceedings.

During the reign of the Russian Empire, which included Ukraine, issues of international cooperation in criminal proceedings involved such prominent scholars as P.I. Lublin, F.F. Martens, D.P. Nicholas, E. Simson, I.I. Foynytsky. Under the rule of ideas benefits socialist bourgeois law over issues of international cooperation were dependent on the social system of foreign countries. But then such scientists as A.I. Bastrykin, N.T. Blatova, I.P. Blischenko, R.M. Valeyev, L.N. Halenska, V.K. Zvirbul, I.I. Karpets able to develop basic provisions emergence and development of the legal institution of international cooperation in criminal proceedings form the theoretical basis of this institution [15, p. 217].

Beginning the study of international cooperation should be said about the general concept as “cooperation” - is common with any activity, working together to achieve the goal [6, p. 148].

In the dictionary of the Ukrainian language the term “cooperation” is defined in joint activities, joint action [3, p. 1170]. Dictionary, edited by S. Ozhegova interprets the term “co-operate” as “work and act together to take part in the common cause.” The Law of Ukraine “On transborder cooperation” defines such a thing as “cross-border cooperation”, which in itself understands the joint action aimed at establishing and deepening economic, social, scientific, technical, environmental, cultural and other relations between local communities and their representative bodies and local authorities of Ukraine and local communities, relevant authorities of other countries within the competence defined by their national legislation. [10]

For interpretation O.I. Bastrykin international cooperation means “purposeful and consistent, common and coherent, broad in scope and diverse in form and directions competent law enforcement activities that affect the general interest of states cooperating” [1, p. 135].

In science generally accepted that international cooperation in criminal proceedings - a form of international cooperation among States in combating crime, the content of which is the implementation by the competent authorities of one country for the authorized body of another state criminal procedural and other actions, the legal basis of which are international agreements and provisions of national law, in the absence of international agreements – the reciprocity principles [14].

After analysis of the views of scientists on the definition of international cooperation we can not listen to these definitions, because each of them deals with his own vision of the subject. Regarding our definition of international cooperation in criminal proceedings, then believe it is specifically due to active cooperation of states to effectively investigate criminal offenses, which is implemented in various forms.

Today, international cooperation in criminal proceedings has been prominent in the world of work, but it is not possible without some guiding principles, according to which there is cooperation and acting basis for all the other principles of international cooperation in that area. These include the rule of law, democracy, and respect for fundamental rights and freedoms, the presumption of innocence, the right to defense.

Under generally accepted principles of international cooperation should understand the fundamental peremptory norms of international law, adopted by the international community of States as a whole and deviation from which is unacceptable.

It should be noted that the basic principles of international cooperation in criminal proceedings include such principles as reciprocity and voluntary cooperation, and respect for the sovereignty of the contracting parties, the obligation to fulfill the contract, the rights and interests of third countries or persons of participants of contractual relations, the mutual application of foreign the contracting parties in their territories while performing the requested action, mutual recognition of reality (void) official documents between cooperating states promptly to the appropriate care. Under certain principles of international cooperation in criminal proceedings should understand these principles, the scope of which extends to special forms of said cooperation (extradition, international legal assistance in criminal proceedings, transfer of sentenced persons, the procedure for taking over the criminal proceedings) [18, p. 42].

According to A.I. Bastrykin, Ukrainian legislation fulfillment of international obligations in this area inevitably involves the emergence of criminal legal proceedings, which are currently applicable criminal procedural law governed not, or not regulated. He said even in 1986 [2, p. 100].

These general principles of international law take certain specific and sectoral coloration in the regulation of international cooperation in criminal proceedings.

According to A.I. Vinogradova, to the principles of international cooperation arising from international treaties of Ukraine in the provision of mutual legal assistance among others should include: reciprocity and voluntary cooperation; concession of sovereignty (the application of foreign law); compliance with the request of the requesting Party performing state law; equality authority law enforcement authorities of interacting with each other; legal protection and equal participants in the criminal process in the states - participants of the agreement; restrictions on the use of international treaty territories of states - participants of the agreement; the rights and interests of third countries or persons of participants of contractual relations; binding performance of the contract; interaction of states on the basis of law, an international treaty [4, p. 89].

A similar opinion on this issue should V.M. Volzhenkina. But, besides the already mentioned principles, provides as follows: 1) respect for the sovereignty and security of the contracting parties; 2) implementation of the contract through the application of national law; 3) the principle of legality [7, p. 111].

A.G. Malanyuk identifies key, in his view, the principles of international cooperation in criminal proceedings: 1) respect for the sovereignty of States security, cooperating in criminal proceedings; 2) the consistency of the request for international legal assistance to the principles of the law of performing it; 3) the certainty of the rules of the international treaty limits appeals procedure and forms of international cooperation; 4) mutual recognition of reality (void) investigative, judicial and other official documents states - participants of the international agreement; 5) principle of dual criminality [13, p. 20].

The foregoing suggests the inconsistency of certain principles of international cooperation in criminal proceedings and requires critical analysis not only of the system but also individual basis.

Formulation V.M. Volzhenkinoyu and A.I. Vinogradov principles of sovereignty concessions as part of a “forced actions” contrary to the stated principles of reciprocity and voluntariness. No state in international cooperation in mutual legal assistance in criminal proceedings can not force another to apply foreign procedural law. In addition, some researchers, such as A.G. Volevodz, V.M. Volzhenkina indicate that the mutual application of the law of the contracting parties on their territory is the essence of legal assistance in the investigation of criminal offenses.

Note that historically evolved so that each state develops according to its, only inherent national, cultural, mental and other features. The development of the legal system and law depends on these factors is special. Therefore we can not speak of uniformity legislation, but only on request consistency of the basic principles of the law of the requested State. It is noted that international agreements provide additional guarantees to persons involved in criminal proceedings in order to provide mutual legal assistance. These guarantees are not peculiar to traditional criminal proceedings. Certain participants in criminal proceedings (witness) that appear when summoned in the requesting State may be given additional privileges and immunities.

According to M.I. Pashkovsky, in this case we can speak of empowerment of these partial immunity from criminal and / or administrative jurisdiction [16, p. 13]. Other authors include principles of implementation of investigative (detective) actions and operational-search measures only in accordance with the law of the State to cooperative countries in the fight against crime.

We agree with the position of scientists who have to formulate the principles of reciprocity and voluntary cooperation point to the fact that the implementation of the investigative (detective) actions fall within the scope of legal aid in criminal proceedings, and conducting search operations - to the cooperation of the police. Also keep in mind the fact that most international agreements provides for the application of criminal procedural law of the requesting state to some extent not inconsistent with the law of the requested State.

Principles of international cooperation play a role as a means for national and for international law. There is a problem that the adoption of the CPC of Ukraine in 2012, not all principles of international law were taken over, justified or accepted by national law, and there’s the difference in some respects international and interstate cooperation.

Given the scientists thought it should be noted that international cooperation of countries - not only perform certain obligations to the international community or the implementation of international agreements, but the implementation of the principles of international law into national law and observance of the first demand of the country.

It should be noted that international cooperation is a crucial aspect of our lives, because acutely the question of international cooperation in a difficult period for our country.

Taking into account international experience, international cooperation needs to determine and specify a clear consolidation of the regulations of national legislation, since coming on the world stage, a number of issues that need urgent attention.

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