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## SOME ASPECTS OF PROCEEDINGS I N THE CRIMINAL PROCEEDINGS THAT NEEDS INTERNATIONAL COOPERATION

*This article is dedicated to the features of suspicion in criminal proceedings during international cooperation. The question of the consistency and performance of procedural actions in the context of international cooperation had been considered, with drawing special attention to the specifics of the procedures needed for suspension of the pre-trial investigation, which requires international cooperation.*

**Keywords:** *international cooperation, extradition of an individual, criminal proceedings, suspension of the pre-trial investigation.*

International cooperation in the field of criminal proceedings is an integral part of the proper performance of its tasks. The value of such cooperation is difficult to overestimate, as only through joint actions of the various member states of the international community the inevitability of punishment the perpetrator of a criminal offense can be ensured [7].

The issue of extradition was explored by such scientists such as A. Abashidze, M. Bassiuni, S. Bedi, A. Boitsov, R. Valeyev, G. Vasilyev, S. Vyhryst, C. Wyngaert, L. Halenska, V. Grebenyuk, G. Gilbert, N. Zelinsky, A. Cassese, N. Kostenko, S. Kravchuk, S. Lyhova, I. Lukashuk, M. Pashkovskiy, M. Svystulenko, M. Smirnov, N. Safarov, M. Plachta, K. Poulet and others.

Institutes of extradition are governed by Chapter 44 of the CPC of Ukraine "Surrender of Persons Who Have Committed Criminal Offense." According to the CPC of Ukraine, during the process of extradition competent authorities of particular countries enter international relations, which factual basis can the extradition crime, committed by a citizen of one of these states, the international treaty. In other cases, the international relations can be based on reciprocity. The independence of this institution is caused by the peculiarities of subjects entering the international relations concerning the issues of extradition. In Ukraine, these subjects are the General Prosecutor's Office and the Ministry of Justice.

Considering the issues related to the procedure of surrender of persons who have committed criminal offense, which are topical due to the of international and national crime growth, it should be noted that that these issues are regulated by multilateral conventions, including the 1993 Minsk Convention on Legal Aid and legal relations in civil, family and criminal cases; 1957 European Convention on Extradition [1]; Model Treaty on Extradition, adopted by General Assembly

Resolution 45/116 on December 14th 1990; bilateral and also bilateral agreements on legal assistance from Ukraine. Similar issues relating to extradition are present in the conventions on combating certain forms of crime. For example, in the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances [2], the 1979 International Convention against the Taking of Hostages [8], the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[3], the 1994 Convention on the Safety of United Nations and Associated Personnel [4] and others. If there is no treaty on legal assistance or extradition between Ukraine and a foreign country, cooperation issues are resolved on the principles of international law through international comity and reciprocity. Multilateral conventions and bilateral agreements that have a broader subject of regulation and specific provisions which govern the issuing entity can serve as the legal basis for extradition. Bilateral conventions concluded under the protection of the United Nations (the 2000 UN International Convention against Transnational Organized Crime) may be taken as an example.

Based on the analysis of international law and national legislation, the national and federal relations specialist Vyacheslav Mikhailov identified the following characteristics of the extradition institute: first, in his opinion, this institution is complex because it is based on the interaction of the rules of two separate legal systems – international and domestic law; secondly, it applies only to private individuals who have committed a criminal offense; third, it is applied in the relations of cooperating states, or for prosecuting persons who have committed a criminal offense, or for applying court-appointed criminal penalties to them; Fourth, it includes not only the direct transfer of the offender from one state to another, but also check of grounds for extradition, detention and arrest of the offender (and, where appropriate, the previous investigation) prior to act of transferring in the procedural fashion; Fifthly, it is established and implemented when the specific states as the main subjects of international law and sovereign entities consider the use of this institution acceptable in the fight against international and national criminal offenses [9, p. 304].

Some aspects of Mikhailov's definition of extradition institute's traits should be taken into account, as the extradition institute provides certainty of punishment and allows implementing it on an international level, despite the territorial delimitation and jurisdictions of different states.

Is worth paying attention to the consistency and execution of proceedings within the international cooperation, particularly, relying on Chapter 22 "Suspension of pre-trial investigation", it should be noted that before forming and sending a request for extradition of the individual, notifying him/her officially about suspicion and conducting an appropriate pre-trial investigation is obligatory, because it is the driving factor that allows performing all official proceedings against the offender. By notifying a person about suspicion we automatically have the right to apply all the proceedings to him/her, but with regard to the question that we raise, the extradition request may be composed with violation of the law. We try to say that when we have a potential suspect, we do not have the right to form a request for extradition against him/her without sufficient evidence. Regarding the timing, there is also an important point missed.

Thus, according to article 278 of the CPC of Ukraine, the notification of suspicion is handed over to a suspect on the day of its drafting by an investigator or prosecutor, and in the case of failure of its delivery, it must be handed over in the manner prescribed in the CPC of Ukraine. Written notification about suspicion is handed over to a detainee within twenty-four hours since detention [5]. In other words, if the person has not received a notification about suspicion after twenty-four hours of detention, he/she has to be immediately released.

The date and time of notifying the suspect about suspicion and the legal qualification of the criminal offense, in the commission of which this person is suspected, are promptly added to the Unified Register of pre-trial investigations by the investigator or prosecutor, with the indication of a correspondent article from the CPC of Ukraine.

If the law enforcement authorities have only twenty-four hours for the objective investigation of criminal offenses and notifying a person about suspicion, what gives us the ability to continue operating within our laws? Can we form the extradition request against this person? An important element of our question is a notification about suspicion itself. If we are talking about a criminal offense which does not require international cooperation and fits into the framework of our laws, then the question of a criminal offense that took place in our country, with an offender fleeing abroad, creates a certain discomfort in the conducting of procedural actions. Namely, the timing of notification about suspicion becomes an issue. When forming a written request for extradition to Ukraine, there has to be a certificate pointing at a criminal offense that was committed by this person, or a certificate of proof, which confirms the guilt of this person. But the fact remains that until a person is not officially notified about suspicion, such actions are considered unacceptable because this leads to a violation of our national legislation and international principles.

In this case, it is necessary to determine if there is a legal aid treaty (agreement) with this country, whether this country collaborates with Interpol, how to contact this country (or should we address the General Prosecutor's Office to establish contacts for the purpose of investigation in another country, or such issue must be solved with the help of both General Prosecutor's Office and the Ministry of Justice in case of reciprocity, within the framework of so-called international politeness). According to the CPC of Ukraine, the contacts are established via both General Prosecutor's Office and Interpol Bureau to duplicate and accelerate the execution of the request [8, p. 20].

In the same way, the questions of sending of international requests (orders) for extradition are solved. However, it should be noted that the right of extradition is the sovereign right of each state and the amount of soluble organizational and legal issues (obligation of extradition, the boundaries of prosecution, procedural order of extradition, transit of individuals, etc.) is much broader than in the case of sending of international requests (letters) and orders [10, p. 304].

When considering our question it is appropriate to draw attention to the suspension of the pre-trial investigation, which requires international cooperation.

According to part 1, article 280 "Reasons for and procedure of suspension of pre-trial investigation" of the CPC of Ukraine, the pre-trial investigation may be suspended after a person has been notified about suspicion in the following cases:

- 1) If the suspect falls seriously ill, which precludes him from participating in criminal proceedings, provided his illness is confirmed by the corresponding medical report;
- 2) If the suspect absconds (hides from the investigation and judicial bodies) with the view of avoiding criminal liability, and his whereabouts are unknown;
- 3) If there is a necessity to carry out procedural actions within the framework of international cooperation [5].

Paragraph 3 of part 1, article 280 of the CPC of Ukraine introduces a new reason for suspension of the pre-trial investigation, which has not been used in the national criminal procedural law before, the suspension of the pre-trial investigation in the case of an execution of proceedings within the framework of the international cooperation.

Suspension of investigation on this basis is possible under the following conditions:

- a) The person must be notified about suspicion;
- b) If the execution of proceedings within the international cooperation is necessary.

According to the article 542 of the CPC of Ukraine, International cooperation in criminal proceedings shall be the taking of measures necessary in order to provide international legal assistance through serving documents, conducting certain procedural actions, extradition of individuals who have committed criminal offences, provisional transfer of persons, taking over of criminal prosecution, transfer of sentenced persons, and enforcement of sentences. An international treaty of Ukraine may provide for other forms of cooperation in criminal proceedings than are specified in this Code.

The position of the General Prosecutor's Office concerning this article is quite laconic: "The conduction of proceedings within the international cooperation provides addressing the foreign competent authority with a request for legal assistance and has no relation to the process of extradition of individuals".

The position of the Ministry of Justice of Ukraine on this issue is broader and more justified. In particular, in a letter to the Ministry of Justice it is stated that the issue of international cooperation in criminal proceedings are governed by Section IX of the CPC of Ukraine, the article 542 of which stipulates that international cooperation in criminal proceedings lies in taking the necessary measures to provide international legal assistance through handing over of documents, performance of certain procedural actions, extradition of individuals who have committed criminal offenses, temporary extradition of persons taking over the criminal prosecution, transfer of sentenced persons and execution of sentences.

Thus, according to paragraph 2 part 1 of article 541 of the CPC of Ukraine, extradition – 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: 1) sending official request for establishing whereabouts of the person sought in the territory of the requested state and for surrender of such person; 2) verification of circumstances which are likely to hinder the surrender; 3) taking decision on the request; actual transfer of such person into jurisdiction of the requesting State.

The position of the General Prosecutor's Office adheres to many scientists, according to which the decision to suspend the investigation can be taken only when the foreign competent authority in accordance with Article 552 CCP Ukraine sent a request for legal proceedings. This opinion is shared by the authors of the scientific comments of the CPC of Ukraine. In their view, in accordance with paragraph 3 of part 1 of Article 280 CPC of Ukraine, the pre-trial investigation may be suspended if there is a necessity to carry out procedural actions within the framework of international cooperation. We are speaking about execution proceedings within the framework of international legal assistance. Under Article 541 CCP Ukraine, international legal assistance is conducting procedural actions by competent authorities of one State, execution of which is required for pre-trial investigation, trial or enforcement of sentence delivered by a court of another State or an international judicial institution.

However, the suspension of the pre-trial investigation on this point is not possible in case of extradition of an individual. The decision to suspend the investigation can be taken only when the foreign competent authority sent a request to conduct proceedings according to article 552 of the CPC of Ukraine.

It can be noted that the question of extradition is decided via the combination of territorial principle (the place of the criminal offense and the location of the offender) and nationality of the person, but the decisive factor for extradition is a nationality principle, when not territorial, but personal responsibility principle is implemented.

So, in conclusion, we propose to supplement the list of documents required for forming a request to extradite the requested person that will have a positive effect on the process of extradition. We also consider it appropriate to extend the term of notification about suspicion, the pre-trial investigation of which requires international cooperation, from twenty-four hours to seventy-two hours, which will allow law enforcement to make a proper assessment of the evidence and form a request for sending to competent authorities.

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