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Actual Problems of International Cooperation of Law Enforcement Agencies at Rendering of Legal Aid on Criminal Cases Connected with Organized Crime in the CIS Countries

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Abstract: This study considers the results of complex research of the Transnational Organized Crime (TOC) which were carried out taking into account the last changes not only on the basis of the proceeding development of techniques of investigation of the TOC but also in line with the carried-out reform of the criminal and procedural legislation in the certain CIS countries. An study was opened actual problems of international cooperation at rendering legal aid on criminal cases connected with the TOC in the CIS countries, taking into account cardinal reforming of the criminal procedure legislation in the Republic of Kazakhstan and the Kyrgyz Republic. On the basis of the carried-out analysis, there were formulated ways of solution of separately taken tasks.

Key words: International cooperation, law enforcement agencies, organized crime, legal aid, international treaty, reforming of the legislation, inquiry, execution of inquiry

INTRODUCTION

Today, International Cooperation of Law Enforcement Agencies (further, ICLEA) on counteraction of a transnational organized crime (further, the TOC) is carried out in several directions.

So, if it is about the level of the general organization ICLEA in the CIS countries, traditionally it is subdivided into cooperation in the sphere of criminal justice in operational search activity (further, OSA) and in the sphere of technical cooperation. But as analysis shows the volume of legal aid including the list of legal proceedings which can be carried out within cooperation in criminal cases according to international treaties, it is ambiguous.

For example, in Article 18 of Convention of the United Nations Organization (UNO) against the TOC there are defined types of mutual legal assistance (UNO, 2000) which the participating countries of the given convention undertake to carry out. Also, one of the main treaty concerning rendering legal aid within the CIS is the convention on legal aid and legal relations on civil, family and criminal cases (Anonymous, 2002). The volume of legal aid is determined in article 6 of the specified convention.

If to compare the volume of legal aid on criminal cases according to the mentioned two conventions, there is possible to note that any normative act doesn't contain an exhaustive list of all possible types of legal cooperation.

For example, proceeding from the textual analysis of Article 6, 2002 Convention about legal aid within the CIS, it is also followed that it can be determined all volume of legal aid. So, it is specified in the given norm the types of legal proceedings which can be carried out by the required country, thus, in norm makes a reservation that this meaning has the sense "in particular" and it conducts to that there is possible carrying out other actions which did not receive the concept of this normative act. On the outside of the stipulated list of legal aid, specified in international treaties (for example, Russia and Ukraine).

MATERIALS AND METHODS

As an example there can be acted relationship between two states namely Russia and Ukraine, because of the developed political situation in Ukraine. At a present situation, the provision of conventions and norms of treaties between the specified states will remain outside of "egal framework" and to the solution of the conflict of

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interaction between law enforcement agencies will "be frozen" or to be carried out only within listed in the Convention-or in the treaty of legal proceedings.

It should be noted that there is also a bit different circumstances influencing on execution of inquiry between the states. In this case, it is about problems of interstate cooperation between Republic of Belarus and Kyrgyzstan on criminal cases concerning separate former public officials of Kyrgyzstan. Stumbling block on execution of the convention and the signed treaties between the states of the CIS is different approach to a legal assessment of the occurred political events in Kyrgyzstan 2010. If the current authorities of the Kyrgyz Republic call the occurred events in the country as "national revolution", in Republic of Belarus, it sounds as "coup". And therefore, they consider quite lawful failure to comply with the requirements at the request of the Kyrgyz party about extradition of the Ex-President K. Bakiyev and his supporters. Such situation created the "hidden" conflict situation which is effected on other spheres of legal aid. It should be noted that the similar situation occurred between Kyrgyzstan and Great Britain where also British side doesn't carry out request about extradition for M. Bakiyev (it is son of Ex-President K. Bakiyev).

It is known that according to the provision of the new Criminal Procedure Code of the Republic of Kazakhstan, the rendering of legal aid is based on the principle of reciprocity. And, it is provided in the Article 558 of the code that in the absence of the international treaty of the Republic of Kazakhstan, the legal or other aid can be given on the basis of inquiry of a foreign state or it can be requested by the central body of the Republic of Kazakhstan on the principle of reciprocity, i.e., without special agreements between the parties.

Observance of confidentiality at rendering legal aid also can be one of the conditions provided in agreements. This condition is carried out on the basis of coherence of the parties. Observance of confidentiality can be concerned not only data, reflected information in inquiry but also the fact of the issue an appeal of the parties with inquiry.

In the legislative draft of Article 541 of the Criminal Procedure Code of Kyrgyzstan, possibility of execution of inquiry of the given country without the corresponding international treaty with a foreign state on the basis of the principle of reciprocity is provided.

Proceeding from the content of the given norms, it is followed that the state on its discretion makes the decision on rendering or not rendering legal aid. In this case, the subjective component at refusal in execution of inquiry of other party is not excluded.

Besides, unlike the legislation of other CIS countries, in the new Criminal Procedure Code of Kazakhstan, it is provided the separate norm (Article, 569 of the Criminal Procedure Code of RK), providing cases of refusal of execution of inquiry (the mission, the petition) about rendering legal aid.

Besides the cases, provided by the international treaty for example, in Kazakhstan in the Criminal Procedure Code of RK in Part 2, Article 2, Page 569 there are specified a number of a conditions where can be followed a refusal in execution of the inquiry (the mission, the petition) about rendering legal aid.

On the one hand, according to the Criminal Procedure Code of RK Part 2, Point 4, Article 596 gives rather expanded interpretation of cases of possible refusal of rendering legal aid on the investigated criminal cases according to inquiry of other state. Especially, it is necessary to consider that the Kazakh legislator specifies on the concept about possibility of any other circumstances, besides the available concrete bases. Such statement of norm will create the basis for evasion from execution of inquiry by law enforcement agencies for the subjective reasons (as well as it was specified earlier).

On the other hand, offered by the legislator of Kazakhstan interpretation of norm provides observance of the basic principle of international cooperation and it is observance of human rights and protection of personal freedoms taking into account vulnerability (for today) of political interests and cultural traditions of the person regardless of belonging to this or that state.

So-called "white-collar" corruption of echelons of the government can affect such situation. In such cases, the separate parties of international cooperation "are not interested" in effective counteraction about the TOC and therefore, they in every possible way will interfere with such activity on various pretexts.

For example, in a number of contracts there are provisions which define an order of rendering legal aid and consolidate the norm according to which on the agreed parties to confer obligations to render the help. But thus, sometimes, a reference is made that it concerns actions according to provisions of the correspond Convention (Article 4 the Conventions CIS from 2002). It also leads to a exclusive circle as the volume of legal aid, in this case, is not beyond the provisions, stated in the convention.

Other example, as it is known bilateral international treaties and agreements on rendering legal aid with Foreign countries are concluded between the states. But in this case, the same principle will be used, namely to carry out only those actions which are stated in these treaties. It can be connected with specifics of legal

systems of the CIS countries and other foreign states. For example, in connection with distinctive features as according to the name of legal proceedings of the national legal system, non identity of their semantic load according to criminal procedure position of other foreign states, it is rather difficult to expand the list of the held events which were outside of the coordinated in the contract types of legal aid.

But at such situation such contracts cannot achieve a main goal and the essence as they turn into fiction because of the limited volume of legal aid fixed in them.

It should be noted that in the new Criminal Procedure Code of the Republic of Kazakhstan of July 4, 2014, Chapter 12 is devoted to international cooperation in the sphere of criminal trial.

RESULTS AND DISCUSSION

Proceeding from the content of standard of Article 557 of the Criminal Procedure Code of RK, it is followed that at rendering legal aid, a number of actions can be not executed as there is no enumeration of their types. Not incidentally for this question, two main positions are observed among scientists. First, from their points of view, the term"separate legal proceedings" or "other legal proceedings", specified in the criminal procedure legislation are incorrect as in the territory of Foreign states can be executed the inquiries about carrying out only those legal proceedings which are provided by international treaties and the national legal system (Kalugin and Shinkevich, 2008). Other point of view of scientists is based that it is unacceptable to consider provisions of treaties on legal aid as dogma. Their volume specified in these regulations should be considered as the international standard and therefore "depending on the developed relations between the states and their competent authorities and also from an international situation can be", "already" or "more widely" (Lazutin, 2009).

The above-mentioned confirms about irresolution of the given question which influences not only the factors of objective but also subjective character which were specified by us. In addition, to the objective factor complicating carrying out of the legal proceedings is also that: the first, separate investigative actions can be not provided in principle in the territory of the required state, secondly, the way and a form of reception of evidence and used informative methods are important for one countries and therefore are put in provisions of the criminal procedure legislation for other party (including countries), so, it is not so in the main for them, they have to correspond only to the general criteria of a Foreign State and therefore, they are free from a procedural form established by the legislation of the required party. And as a result, there is a reasonable question: how is it necessary to solve such cases with proofs which were received from Foreign sources with so-called violation of the existing criminal procedure legislation of the country?

Thus, certainly, it is possible to appeal that at execution of inquiry according to the request of the given state, it can be applied the legislation of the required party. And, on conditions that it does not contradict the international obligations and the basic principles of the legislation.

But, available proviso of conditions under which it is possible can interfere with execution of inquiry according to the requirements of requesting party. Together with it, there were collisions at commission of crimes in the territory of several states where various standards of the Criminal Procedure Code including the TOC in the CIS countries work.

It is necessary to focus attention that one of the reasons of such situation is reforming of the criminal procedure legislation including in the CIS countries between which ICLEA is more actual. For example, according to the existing Criminal Procedure Code of Tajikistan, Russia, Belarus, etc., it is provided procedure of mainly same investigative actions and also the order of procedural regulation of fixing the proofs practically coincides. The certain countries as Kazakhstan, Ukraine where it is recently accepted the new Criminal Procedure Code together with other happened essential changes of provisions, adopted a new institute of special (secret) investigative actions. Owing to such reformatory approaches there was an integration of criminal procedure and OSA. The same innovations are provided and in the law in draft of Criminal Procedure Code of Kyrgyzstan, presented by developers to Parliament of the country.

As a result of such "modernizations" in Kazakhstan, Ukraine (it is possible in the future and in Kyrgyzstan) there were new types of investigative actions radically differing in a form, contents, means, methods and technologies of their carrying out from the traditional, gained distribution in the territory of the majority CIS countries for today.

Certainly, it concerns not only Kazakhstan or Ukraine for example, secret investigative actions became the component of the Criminal Procedure Code and some other post-Soviet states such as: Estonia, Lithuania, Latvia, Moldova, etc. It concerns to those countries where the legislator considered necessary to abandon a stage of initiation of legal proceedings. In present conditions such approach, when law enforcement agencies faced with rather well kept dark criminal activity of the TOC is timely and actual.

It is difficult to deny that without real use of results of OSA in proof, it is very difficult to counteract of organized transnational criminal formations. We agree that prior provisions of Criminal Procedure Code of Kazakhstan, Ukraine, Kyrgyzstan, changed a situation only from a formality. But, at the same time, such position of Legislators of Kazakhstan and Kyrgyzstan means that their implementation will be problematic in the territory of other CIS countries. And from our point of view, it is connected with the following positions.

First, it involves intervention in private human life from law enforcement agencies of other state and where it will be rather difficult to draw a distinction between human rights violations and its observance within the carried-out such secret investigative actions at the request of other party. Besides, it is necessary to consider that in this case human rights violation can be concerned not only the most suspected person but also to infringe on interests of the strangers. Owing to what the executing party can refuse from the execution of inquiry.

Secondly, secret investigative actions are carried out with use of means, methods and technical components of the state secret and therefore, they are regulated by departmental (state) standard acts that it will also complicate the process of its realization not only in the CIS countries but also in other countries of the foreign states.

Thirdly, nobody can exclude cases when under the pretext of execution of such inquiry by the law enforcement agencies of this state there will be committed the "abuses" where as motive can be the corruption component (for example, provocation of a crime, collection of information of "contracted character" for interested persons, including "competitors" etc.). So, having received on carrying out such investigative actions the sanction of other state, it can be followed with the secret entry to a dwelling, secret wire-tapping of negotiations, etc. Though, there is an opinion that " provocation is more probable in the countries where in the legislation there are no accurate and clear procedures for authorization of Investigation and Search Operations (ISO) and also there is no independent control of law enforcement agencies" (Radachinsky, 2011).

But, it is difficult to make it in the territory of other state if execution of such secret investigative actions will be entrusted to law enforcement agencies of the required country.

For example, Kovaliyov (2014) suggests making changes and additions to Criminal Code of Kyrgyzstan, namely criminal article for provocation of crimes from law enforcement officers. The offer is reasonable but how it will be possible to apply the given norm in the territory of other state if it isn't provided by the provisions; neither material, nor procedural law of the required country.

Fourthly, complexity of execution of such investigative actions for the required party will be consisted in introduction of new institute for the states (for example, Kazakhstan, Kyrgyzstan, Ukraine), where there will be the huge number of unresolved problems, which certainly will be reflected in opportunities of execution of inquiry by other states (for example, measures of saving of the physical evidences, obtained during their carrying out; ensuring immediate destruction of those data, physical evidences which don't belong to required criminal case; criterion for recognition of the reasons sufficient to their carrying out; in what standard act will be stated the means, methods and technology of obtaining such proofs, etc.).

Fifthly, it is necessary to consider the circumstance that according to Article 563 of the Criminal Procedure Code of RK, one of the important circumstances for recognition of the proof, received in the territory of other state, it is reasonable that they were really received without violation of the principles of fair legal proceedings, human rights and fundamental bases. Under the specified conditions for legislators of Kazakhstan will be rather difficult to estimate observance of these principles, when secret investigative actions will be carried out without the corresponding control from law enforcement agencies of the required party. It should be noted that such conditions are made a reservation only by the legislator of Kazakhstan and it testifies about undertaken measures in order to the provisions of Criminal Procedure Code can be protected interests of the rights of citizens much more.

The carrying out of other investigative actions are actual for today (for example, a search, seizure). Other important problem is use of varieties of legal proceedings, provided by conventions or treaties which were extended in the territory of only the certain states.

For example, it is about carrying out legal proceedings by means of video conference which basic provisions are fixed in p. 18, Article 18 of the Convention of the UNO against of the TOC 2000 (Kovaliyov, 2014).

It is rather in detail consecrated about these problems by Biryukov (2000) and Lazutin (2009).

In our opinion, many discussions will arise and with other varieties of investigative actions which are provided only according to the new Criminal Procedure Code which were accepted, for example, in Kazakhstan and in the law in draft of Kyrgyzstan.

In this case, it is about deposition of eyewitness testimony and the victim. So, according to provisions of Criminal Procedure Code of Kazakhstan, it is entered the

new procedural figure as "investigating" magistrate to whom are confered powers of carrying out such type of interrogation. Complexity of carrying out this type of investigative action in the CIS countries from our point of view, will arise with the following circumstances: first, lack of such procedural figure in criminal process; secondly, in security of participants of the process; thirdly, it is the terms of consideration by the investigative judge of the petition, provided in the Criminal Procedure Code; fourthly, there are not resolved the questions connected with the legislation applied concerning to the witness and the victim where the evidences are deposited into territories of a Foreign State.

All above testifies that so far the questions of an assessment of proofs remain the most disputable in the theory of criminal procedure, despite the measures undertaken by legislators. There is still not developed united algorithm on decision-making in this aspect and therefore in each case the law enforcement official quite often resolves this problem proceeding from requirements which are provided in the territory of the national legal system.

CONCLUSION

Standards of the criminal procedure code have the gaps, demanding of the solution including: First, standards of the national legal criminal procedure system have to be supplemented and concretized proceeding from the available provisions and rules provided in international treaties and Conventions connected with counteraction of the TOC.

Secondly, proceeding from worldwide tendencies and content of the signed and ratified international treaties, the criminal procedure legislation of the certain countries (including the CIS) has to be revised regardless of the operating specifics of national criminal procedure. Thus, the subject of its regulation due to inclusion in the section "International Cooperation in the Sphere of Criminal Trial" has to be expanded; carrying out the certain investigative (procedural) actions provided by world practice and the majority of the states with which the cooperation, based on the principle of reciprocity or the available agreements, has to be carried out. At the same time, it is necessary to consider also a great influence of the objective and subjective factors interfering their implementation.

Thirdly, we consider that it is necessary to fix accurately and legislatively the provision in standards of the criminal procedure code, providing a procedural order and conditions of procedure of the separate investigative actions, which are carried out in the territory of a Foreign State which will directly mention area of human rights on protection and a guarantee by the constitution of the country.

The problems, arisen as a result of the carried-out reforms of the criminal procedure legislation in the CIS countries which were opened by us, demands separate scientific researches. Without doubts, this dependence will be interfered with joint effective activities of law enforcement agencies of the states for counteraction of the TOC.

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