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Legal regulation and ranges of international legal aid in criminal matters

Abstract: Legal basis of international cooperation on criminal cases is:

- international interstate treaties (bilateral and multilateral): covenants, conventions, treaties, agreements;

Intergovernmental agreements on separate matters concerning interacting in fight against crime;

- interdepartmental treaties (agreements);

- national legislation on issues of rendering of international of legal aid;

- unwritten norms (customs) of international law (international courtesy, reciprocity, etc.)

Keywords: international legal aid; legal regulation; international treaties; Minsk Convention; rights and freedoms of man; Universal Declaration of Rights and Freedoms of Man; European Convention on Mutual Assistance in Criminal Matters.

Providing legal aid in criminal matters is carried out on the basis of multilateral or bilateral international treaties of the Russian Federation and the norms of section XVIII of the Code of Criminal Procedure (hereinafter, the CCP), which establish the grounds and procedure for providing legal aid, its scope and types, subjects and content, procedure for processing, sending, receiving and executing the instructions about providing legal aid, etc.

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In accordance with the Federal Law ‘On International Treaties of the Russian Federation’ of 1995, an ‘international treaty’ is to be understood as an international agreement concluded by the Russian Federation with a foreign state or with an international organization in writing or regulated by international law, independence the fact whether this agreement is contained in one document or in several interrelated documents, and also irrespective of its specific name. Article 2 of the Law contains the list of the names of international treaties: conventions, agreements, covenants, protocols, exchange of letters or notes.

Depending on which body of the state contracts are concluded, they are divided into interstate, intergovernmental and interdepartmental.

According to the content, such acts can be devoted to a multifaceted subject of cooperation (for example, the Convention on Legal Assistance in Civil, Family and Criminal Cases, concluded by the CIS countries, the Agreement on the Interaction of the Ministries of Internal Affairs of Independent States in the field of combating crime) or a specific subject of cooperation for example, the Agreement on Cooperation of the Ministries of the Interior in the Sphere of Combating Organized Crime).

It is necessary to distinguish international treaties of Russian Federation on matters of combating to crime from interdepartmental agreements on these issues. The firsts are concluded behalf state and should be ratified by legislative power, and the second ones – by the central law enforcement bodies on instruction of their governments or without such instructions. Such acts are not subject to ratification by legislative power.

In other words, today the legal basis for international cooperation in criminal matters is:

- international interstate treaties (bilateral and multilateral): covenants, conventions, treaties, agreements;



Intergovernmental agreements on separate matters concerning interacting in fight against crime;

- interdepartmental treaties (agreements);
- national legislation on issues of rendering of international of legal aid;
- unwritten norms (customs) of international law (international courtesy, reciprocity, etc.)

International cooperation at detecting and disclosing of crimes affects human rights and freedoms. In this connection it is rightly noted that the legal basis in this field of activity will be the Universal Declaration of Human Rights and Freedoms, the International Covenant on Civil and Political Rights, the European Convention on Mutual Legal Assistance and others [1, p. 145-149].

The Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases (hereinafter referred to as the Minsk Convention), concluded between the countries of the Commonwealth of Independent States, refers to international legal acts that regulate the issues of legal aid at investigating of crimes.

The Convention contains the norms which regulate different sides of the legal aid on criminal cases. In particular, it stipulates certain order of communications (Article 5) and range of legal aid (Article 6). According to the provisions of these articles, the competent institutions of the parties communicate with each other through their central organs by way of carrying out procedural and other actions envisaged by law of other party. There set a list of these actions, which are not exhausted. Request about granting legal aid may be rejected as it provided by Article 19. It contains the grounds of refusal: granting such aid may inflict damage to the sovereignty or security or contradicts the legislation of the requested party.

An issue on extradition resolved in the details in part 4 on legal aid in criminal cases. Article 56 establishes mutual obligations of the parties, according



to which to extradite to each other by the request the persons, who are on their territories, for bringing to criminal responsibility or for executing a verdict.

Article 58 contains a content and form of the request on extradition, the mechanism and procedure of extradition regulated by Articles 60-71. Article 57 establishes the grounds for refusal in extradition.

The convention in question also enshrines the obligation to carrying out criminal prosecution. So, according to Article 72, each contracting party is obliged, by the commission of another contracting party, to carry out the criminal prosecution against its own citizens, suspected in committing a crime on the territory of the requesting contracting party. The request about carrying out a criminal prosecution should be formed in compliance with Article 73. The Convention says about obligation to pass each other the exhibits, which were used in committing the crime or which may be used as proof in criminal case (Article 78).

Due to the fact that Russia has joined the Council of Europe, it is necessary to dwell separately on international treaties of the Council of Europe. The reference books speak on development and adoption by the Council of Europe of more than 155 conventions [4, p. 9].

Russian Federation signed on 07.11.1996 the European Convention on Extradition with two Protocols and European Convention on Mutual Assistance in Criminal Matters with additional Protocol, which were ratified on 25.10.1999 and entered into force on 09.03.2000 [3, art. 5129].

According the MIA of Russia, the European Convention on Mutual Assistance in Criminal Matters were ratified by Austria, Belgium, Bulgaria, Hungary, Germany, Greece, Denmark, Ireland, Island, Israel, Spain, Italy, Cyprus, Latvia, Lithuania, Liechtenstein, Luxembourg, Macedonia, Malta, Moldova, Netherlands, Norway, Portugal, Romania, Slovakia, United Kingdom of Great



Britain and Northern Ireland, Turkey, Ukraine, Finland, France, Estonia. This Convention has been signed by Albania, Georgia, and Slovenia.

In compliance with Article 1 of the European Convention on Mutual Assistance in Criminal Matters (hereinafter, the European Convention) the Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

A number of other authoritative international documents are also relevant to the cooperation of criminal justice bodies: the UN Declaration on the Elimination of All Forms of Racial Discrimination (1963), International Convention on the Elimination of All Forms of Racial Discrimination (25 December 1965), Convention on the Suppression and Punishment of the Crime of Apartheid (1973), Convention of the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984, adopted on 26 June 1987), which says that each state-party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (26 November 1987), UN Convention on the Rights of the Child (1989) [2].

There are a number of international documents, which regulate comprehensively the fight to certain kinds of criminal acts. These are: Single Convention on Narcotic Drugs (1961), Convention of the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomats (1973), the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971 (Montreal Convention), and Hague



Convention of 1970 for the Suppression of Unlawful Seizure of Aircraft and Protocol Supplementary 'On the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation' (1988), Convention of the Physical Protection of Nuclear Material (1978), International Convention Against the Taking of Hostages (1979), Convention on Psychotropic Substances (1979), Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1950), UN Convention on Sea Law (1997).

In some cases at investigation of the crimes it should be based on the provisions of the Consular Conventions: Vienna Convention on Diplomatic Relations of 18 April 1961, Vienna Convention on Consular Relations of 24 April 1963, Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 14 March 1975 and a number of others.

International treaties, which regulate merchant shipping, contain a number of norms, knowledge of which is necessary at carrying out cooperation by law enforcement bodies. These Agreements typically provide for exclusion from jurisdiction of the host state of foreign crews.

For successful cooperation in the fight against crime, agreements are concluded between the governments of states (intergovernmental) [6, p. 13].

Along with international treaties, bilateral treaties on the provision of legal assistance with foreign countries have been concluded and are in force: Algeria (23.02.1982), Vietnam (10.12.1981), Iraq (22.06.1973), Iran (05.03.1996), Yemen (06.12.1985), Canada (20.10.1997), China (19.06.1992), CPDR (16.12.1957), Cuba (25.11.1984), Mongolia (23.09.1988), Tunis (26.06.1984), Yugoslavia (24.02.1962) and Agreement between Government of RF and Government of USA on cooperation on criminal legal matters (30.06.1995), as the Treaty between Russian Federation and USA on mutual legal aid on criminal cases of 17.06.1999 entries into force after its ratification by American party and exchange of



instruments of ratification. They determine a range and kinds of legal assistance at investigation of the crimes; an opportunity of application of procedural legislation of the requested party at performing the request; right of each of contracting parties to carry out the interrogations of own citizens at territory of other party through their diplomatic representations; conditions and order of extradition the persons for criminal prosecution and others.

Interdepartmental agreements. After 1992 the departments, including of the MIA of Russia began spontaneously to formalize in form of agreements their mutual acts with relevant bodies of the countries of CIS and later of other states.

For example, Agreement on cooperation between the MIA of Russian Federation and MIA Republic of Moldova of 8 July 1993, Agreement on cooperation between the MIA of Russian Federation and MIA of Republic of Tajikistan of 23 September 1993, Agreement between the MIA of Russian Federation and MIA Lithuanian Republic of 18 November 1993, Agreement between the MIA of Russian Federation and MIA Slovak Republic of 29 May 1994, Agreement between the MIA of Russian Federation and MIA of Republic of Macedonia of 6 December 1994 and others.

At the same time the MIA of Russia was concluded a number of multilateral agreements on interaction.

The MIA of Russia were also concluded the agreements on separate matters of fight against crime, for instance, ‘Agreement on cooperation between the ministries of internal affairs in combating to illicit traffic in narcotic drugs and psychotropic substances’ [5, p. 55]. This agreement, apart from typical forms of cooperation, with Article 1 stipulated such as carrying out the concerted operations to block the channels of illicit drug trafficking, including conducting ‘controlled delivers’ and rendering an assistance in an area of combat to ‘washing’ money received in result of criminal activity associated with illegal traffic.



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