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PROBLEMS OF REALIZATION OF PRINCIPLES OF MUTUAL LEGAL REDRESS IN CRIMINAL CASES

Interpretation of concept of mutual legal redress in criminal cases, selection of the last in an independent legal institute carries not only theoretical but also applied character, as specific of this concept determines those basic principles on which proper relation is carried out between the states, also relations are founded in the sphere of mutual legal redress in the criminal cases of competent organs of the state with each other and with foreign competent organs, and also with citizens.

Undifferentiated approach to the institutes of legal redress and extradition resulted in plugging in majority of the Ukrainian bilateral agreements about a mutual legal redress in criminal cases also questions of delivery and realization of criminal pursuit. As a result application to all of these different legal relationships of the unique standards in a relation to each of these forms of international cooperation from realization of criminal justice is utilized the maximal list of possible grounds of refuse in a grant, although sometimes assistance which is more frequent only in part of extradition.

Therefore the question of practical meaningfulness is consideration of aspects of legal

redress in criminal cases within the framework of integral legal institute which enables critically to estimate the formulated principles of international cooperation in this sphere. In particular, A. Malanyuk counts questions, related to principles of international cooperation, debatable in legal literature, as there is not the unique criterion which is fixed in basis of division of the system of principles of international cooperation in criminal cases [1, p. 7].

To fundamental principles of international cooperation at the concession of legal redress in criminal cases which follows from the international agreements of Ukraine, it deserves to take:

- reciprocity of collaboration;
- voluntarily of collaboration;
- observance of sovereignty and safety of contractual countries;
- application of foreign legislation;
- accordance of request of asking countries to the legislation of doing states;
- equality of plenary powers of judicial and investigation agencies of contractual countries which co-operate;
- providing of legal defense and equality of plena-

ry powers of participants of criminal process on territory of contractual countries;

- realization of conditions of the agreement due to application of national legislation;
- limitation of action and application of international agreement by territories of contractual countries;
- observance of rights and interests of the third countries of contractual relations;
- duty of implementation of agreement;
- co-operation on the basis of right which is foreseen an international agreement;
- principle of legality.

There are not strong objections at the detailed consideration of sphere of action and application of the transferred principles, except principle of reciprocity of collaboration and principle of observance of sovereignty and safety. These principles are contradictory enough and debatable, that is why requires careful analysis.

Necessary concession of part of sovereignty, namely application of foreign legislation on the request of asking sides are discretionary, but not imperative principle, as it marketability exceptionally depends on will and discretion of asked side. This principle, in addition, conflicts with principle of accordance of request of asking sides to the legislation of carrying out states. Obviously, that even at similarity not only legal systems but also national legislations it is impossible to talk about the identity of the last, that is why a solicitor about the concession of legal redress can not fully coincide with positions of financial and/or of judicial right for other country. It is legitimate to talk not only about contradiction of request of basic principles of legislation (first of all, fastened in Constitution of Ukraine). For determination of presence or absence of possible conflict of interests of two sides create by every state of procedure from consideration of query about the concession of legal redress to a foreign competent agency.

It is impossible not to talk and about equality of plenary powers of judicial and investigation agencies which exercise co-operation, as in this case (if investigation actions are conducted on territory of other state) there is passing to jurisdiction which most evidently shows up in determination of order and even possibility of concession of help by realization of search or coulisse. For example, by the countries of the Anglo-Saxon system won't be acknowledged right of authorities of foreign court for sanctioning search within the limits of their jurisdiction, but own procedure which the competence of search can be not confirmed.

Equality of other participants of process also does not exist - here defect in other side, and consequently, it is possible to talk about surplus rights. Yes, in case with witnesses can be given last additional privileges and immunities not peculiar to that, which peculiar to the applied by national competent agencies during own investigation and consideration of criminal case.

Position about limitation of action and application of international agreement territories of contractual sides also is not indisputable, as does not take into account such positions, as, for example, bringing into play the third countries in the case of transit conveyance of persons which are had in custody and temporally passed to other state as witnesses. And one of ordinary terms which pull a refuse in the concession of legal redress is a presence in the third state of verdict of not guilty or decision about a refuse in laying an action or about stopping of criminal case for a that crime in connection with which it is asked help. Position about the observance of rights and interests of the third countries in general is not foreseen by the Ukrainian international agreements about legal redress in criminal cases.

Combination of principles of voluntarily of collaboration and duty of implementation of conditions of the agreement is mutual exclude (at least, in the offered formulation).

And finally, principle of co-operation on the basis of right, foreseen by agreement, it is scarcely possible to consider, as correct, in relation to legal terminology. As known, there is a right for international agreements as one of industries of the system of international law. Actually an international agreement is the object of international law and its basic source. However there is not a separate right for a separate agreement, and there is an aggregate of the norms included in it. Therefore more correctly would talk about co-operation not on the basis of right, foreseen by agreement, but in form, limits and subject to the conditions, foreseen by agreement.

Taking into account worded, basic principles of concession of legal redress in criminal cases it is possible to define by such method:

- reciprocity in the questions of obligatoriness for the sides of the agreement, and also respect and observance of sovereignty and safety of sides;
- conditionality by the norms of agreement of order, limits and forms of legal redress;
- confession of jurisdiction of the foreign state in criminal business, in a copula with which it is asked help;
- concession in part of sovereignty at realization of actions with participation of citizens of other state;
- admission of application of foreign legislation at implementation of judicial actions, and also investigation and search operations to on-request other state - in a that measure in which it does not conflict with basic principles of the asking state.

Realization of principle of concession in part of sovereignty at realization of actions with participation of citizens of other state, shows up as in the refuse of asking states from own jurisdiction in the case of guarantees, which give witnesses and other persons, to interrogated in the process of mutual legal redress, so in confession of possibility of bringing into play criminal responsibility of his citizens the asked state by the asking state - for crimes against foreign justice (in particular, for giving consciously false testimonies and expert conclusions). Although, O. Vinogradova offers [2, p. 90]

formulation of principle of concession in part of sovereignty (application of foreign legislation) as the "forced action" causes objection, as single state in the field of international cooperation at the concession of legal redress can not compel other to apply own judicial legislation. Going out from own sovereignty, the states make a decision about possibilities lead through of asked actions with application of foreign criminal procedural law [3, p. 70].

Principle of acceptance of jurisdiction of the foreign state and principle of admission of application of foreign legislation provide admission of the proofs got within the framework of mutual legal redress, as without this acceptance doubt can be put both in asked and at asking states legality of the use of judicial measures in criminal cases which is investigated by other state.

In this context it would be desirable to stop more detailed on some problems, which arise up in connection with the use of documents and proofs, got in order of legal redress.

Determination of admission of proofs, presented on demand of the Ukrainian side by foreign competent agencies, estimation of these proofs must be conducted in accordance with the requirements of the Criminal procedural code of Ukraine. For acceptance of acceptability of proofs, got in the order of mutual legal redress on the basis of international agreement of Ukraine, present materials must testify the observance of aggregate of obligatory procedures and conditions of the international agreement, national legislation of carrying out state, and also the set order of registration and direction of international investigation commission.

By the current criminal procedural legislation question about the criteria of admission of proofs, got in the foreign states, or absent, not well-regulated, acceptance of possible proofs, got within the framework of mutual legal redress in practice draws certain difficulties.

Usually in additional materials to the international consequence commissions are court decisions about the grant of legal redress, different bank

documents (depending on the type of the probed operations or accounts), other documents (for example, from public bodies which are engaged in registration), reports of interrogations of witnesses, reports of searches, documents, about imposition of arrests (judicial warrants, executive inscriptions, etc.), in a number of cases objects (seals, stamps, facsimiles) which was used for accomplished crimes. The ordinary translation of such documents and joining them to case means that they are the subject of the use exceptionally in that judicial form which is given them foreign judicial and consequence bodies. It draws, very often, the waiver of courts of acceptance of their considerable part by proofs. So acceptance of the got foreign report of interrogation of witness pre-trial investigation by the same type of proofs, assumes the duty of court to interrogate this witness by virtue of principle of spontaneity of research of proofs. Similar judicial consequences determine considerable organizational difficulties as an increase of term of judicial trial of case and increase of judicial charges, etc.

Sometimes nascent problems are insuperable (for example, when a person who is a witness on Ukrainian criminal business is laid to the foreign criminal process, she has right not to give any testimonies). As a result courts related to select pre-trial investigation by the form of attaching to case of foreign proofs do not acknowledge such of them, which is hard to probe in a criminal process directly (reports of interrogations of witnesses, testimony under an oath, etc).

To our opinion, in the conditions when in the Ukrainian criminal procedural legislation are absent legal orders about acceptance of fact, got abroad, like proofs got in Ukraine, basic method of it is consideration of documents and reports of foreign consequence actions, as possible proofs on condition of their adaptation to the requirements of Criminal procedural Code of Ukraine. However fixing in the Ukrainian legislation of basic principles of evidential right in relation to a direct international legal redress would be the removal of doubts, which arise up at the estimation of proofs, got within the framework of mutual aid in criminal

cases. In the number of the proper principles include the followings:

- at first, judicial actions, executable by foreign competent agencies in order of legal redress, on the basis of solicitor of the competent Ukrainian agency and in accordance with the requirements of criminal procedural legislation which operates in asked or to asking state, have the same legal force, as well as judicial actions, executed by the competent Ukrainian agencies which sent the proper solicitor;
- secondly, reports of investigational actions, executed by the competent agencies of asked side with the observance of requirements of internal legislation, are attached to materials of case as proofs and, out of dependence on the formal features of strengthening, estimated after the actual maintenance as reports of analogical investigational actions, made directly by Ukrainian competent agencies;
- thirdly, documents and proofs, got within the framework of mutual legal redress in criminal cases does not require other form of their giving a hope, except for marked in the proper agreement which help is needed on the basis of;
- fourthly, documents which on territory of the asked state are examined as official records, being given by competent foreign agencies, in the order of implementation of solicitor about the concession of legal redress in criminal case, use evidential force of official records on territory of Ukraine.

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