

# YURIDIK FANLAR AXBOROTNOMASI

## ВЕСТНИК ЮРИДИЧЕСКИХ НАУК

### REVIEW OF LAW SCIENCES



huquqiy ilmiy-amaliy jurnal

правовой научно-практический журнал

legal scientific-practical journal

**2021/2**



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## PROSECUTOR'S SUPERVISION OF THE IMPLEMENTATION OF LAW ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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**Abstract.** This article focuses on the issues of international cooperation of prosecutors' offices on provision of legal assistance in criminal matters. Besides, the article is dedicated to the matters concerning the cooperation of prosecutor offices in terms of fighting against crime within the regional scope of international organizations. In particular, in this scientific research, proposals were made to improve the withdrawal system of international fugitive biometric passports. The author's comparative analysis on international conventions, declarations and legislation of foreign countries reflected the specifics of this article. Moreover, the relevance of the research topic lies in the fact that the commission of such crimes is characterized by the use of modern technical means and high-tech facilities of air and land transport, a high transcontinental level of organization and large financial support, including illegal financial sources. The negative outcome of such activities is due to a significant increase in the number of serious crimes of a transnational nature. The lack of adequate legal cooperation between states leads to the emergence and spread of negative situations when criminals, committing a crime in one state, illegally cross the borders of another in order to avoid the administration of justice and prosecution. The problem of detecting, investigating and preventing such crimes within the framework of international cooperation in criminal matters is the most pressing today.

**Keywords:** international cooperation, legal assistance, criminal prosecution, extradition, regional organizations, digital globalization, digital integration.

## ЖИНОЯТ ИШЛАРИ БЎЙИЧА ЎЗARO ҲУҚУҚИЙ ЁРДАМ ТЎҒРИСИДАГИ ҚОНУНЧИЛИК УСТИДАН ПРОКУРОР НАЗОРАТИ

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**Аннотация.** Мақолада прокуратура идорасининг жиноят ишлари бўйича ҳуқуқий ёрдам кўрсатиш бўйича халқаро ҳамкорлик масалаларига алоҳида эътибор қаратилган. Бундан ташқари, мақола халқаро ташкилотларнинг минтақавий доирадаги жиноятчиликка қарши кураш бўйича ҳамкорлик фаолиятига оид масалаларга бағишланган. Жумладан, ушбу илмий тадқиқот ишида халқаро қидирувдаги шахслар биометрик ҳужжатларини бекор қилиш тизимини такомиллаштириш бўйича таклифлар билдирилган. Муаллифнинг халқаро конвенциялар, декларациялар ва хорижий мамлакатлар қонунчилиги бўйича қиёсий таҳлилида ушбу илмий мақоланинг ўзига хос хусусиятлари акс этган. Тадқиқот мавзусининг долзарблиги шундаки, бундай жиноятлар содир

этилиши замонавий техник воситалар ҳамда ҳаво ва ер транспортининг юқори технологияли объектлари, юқори трансконтинентал даражадаги ташилот ва кўлаб молиявий кўлаб-қувватлаш, жумладан, ноқонуний, молиявий манбалардан фойдаланиш билан тавсифланади. Бундай жараёнларнинг салбий натижаси оқибатида трансмиллий характердаги оғир жиноятлар сонининг сезиларли даражада кўпайиши билан изоҳланади. Давлатлар ўртасида лозим даражадаги ҳуқуқий ҳамкорликнинг мавжуд эмаслиги жиноятчилар бир давлатда жиноят содир этиб, одил судлов ва прокуратура органларининг таъкибидан қочиш мақсадига ноқонуний равишда бошқа давлат чегараларини кесиб ўтиши салбий ҳолатларнинг пайдо бўлиши ва тарқалишига олиб келади. Жиноятчиликка қарши курашиш масалаларида халқаро ҳамкорлик доирасидаги бундай жиноятларни очиш, тергов қилиш ва олдини олиш муаммоси бугунги кунда энг долзарб масалалардан бири ҳисобланади.

**Калит сўзлар:** халқаро ҳамкорлик, ҳуқуқий ёрдам, жиноий жавобгарликка тортиш, экстрадиция, минтақавий ташилотлар, рақамли глобализация, рақамли интеграция.

## ПРОКУРОРСКИЙ НАДЗОР ЗА ИСПОЛНЕНИЕМ ЗАКОНОДАТЕЛЬСТВА О ВЗАИМНОЙ ПРАВОВОЙ ПОМОЩИ ПО УГОЛОВНЫМ ДЕЛАМ

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**Аннотация.** В статье рассмотрены вопросы международного сотрудничества органов прокуратуры по оказанию правовой помощи в уголовной сфере. Кроме этого, данная статья посвящена вопросам взаимодействия органов прокуратуры по борьбе с преступностью в рамках региональных международных организаций. В рамках данного научного исследования были проанализированы предложения по улучшению системы разыскиваемых лиц, а также по приостановлению действия биометрических паспортов. Сравнительный анализ автора по международным конвенциям, декларациям и законодательству зарубежных стран послужил отражением специфики настоящей статьи. Актуальность темы исследования обуславливается тем, что совершение таких преступлений характеризуется использованием современных технических средств и высокотехнологичных объектов воздушного и наземного транспорта, высоким трансконтинентальным уровнем организации и реальной поддержкой множества финансовых источников, в том числе и нелегальных. Прогнозируемым результатом такой деятельности стало значительное увеличение числа тяжких преступлений, имеющих транснациональный характер. Отсутствие надлежащего правового сотрудничества между государствами, приводит к появлению и распространению опасной практики, когда преступники, совершая преступление в одном государстве, незаконно пересекают границы другого в целях избежать осуществления правосудия и привлечения к уголовной ответственности. Проблема раскрытия, расследования и предупреждения таких преступлений в рамках международного сотрудничества по уголовным делам сегодня является наиболее актуальной.

**Ключевые слова:** международное сотрудничество, правовая помощь, органы прокуратуры, региональные организации, цифровая глобализация, перспективы цифровой интеграции.

### Introduction

The Law of the Republic of Uzbekistan “On the Prosecutor’s Office” (new edition) for the first time endowed the Prosecutor’s Office,

represented by the General Prosecutor’s Office of the Republic of Uzbekistan, with significant powers to implement international legal cooperation.

The General Prosecutor's Office of the Republic of Uzbekistan, within its powers, carries out direct communications with the relevant competent authorities of foreign states and international organizations in the field of criminal proceedings, concludes agreements on legal assistance and the fight against crime, and participates in the development and approval of draft international treaties.

Along with the Law "On the Prosecutor's Office," the main forms of international cooperation of prosecutors are listed in international treaties on cooperation in criminal proceedings, agreements of the General Prosecutor's Office of the Republic of Uzbekistan with the competent authorities of foreign states, and requests for legal assistance or the initiation of a criminal case received from the competent bodies of foreign states.

It can be stated that the General Prosecutor's Office of the Republic of Uzbekistan actively participates in cooperation with foreign states in transferring criminal proceedings: annually the Office receives up to 100 foreign criminal cases with requests to prosecute citizens of the Republic of Uzbekistan for acts committed by them on the territory of these countries, and about 50 cases are sent abroad to bring to justice foreign citizens who have committed crimes on the territory of the Republic of Uzbekistan.

### Materials and Methods

International cooperation in combating crime is one of the priority areas of foreign policy of states. It should be noted that, in an effort to ensure the safety of a person and a citizen on the territory of their states from criminal encroachments and to protect state interests, most countries of the world interact in the field of criminal justice on the basis of international multilateral and bilateral treaties and agreements, as well as the principle of reciprocity.

According to scientific research, such interaction enables to provide various types

of legal assistance in criminal cases, transfer criminal proceedings, request extradition and extradite persons for criminal prosecution or execution of a sentence, as well as transfer persons suffering from mental disorders to conduct compulsory treatment [1, p. 56].

For the purpose of cooperation in criminal matters, states communicate with each other through their competent authorities, which they determine independently, based on their powers. The identification of these bodies is of great importance for the successful implementation of the provisions of international treaties and national legislation in the fight against crime, as well as the protection of the rights of both the victim and the accused (suspect) [2, pp. 253-262].

Speaking about statistics in this direction, it should be emphasized that as a result of the consolidated measures taken to prevent offenses, in 2017 the number of registered crimes decreased by 16% (87412-73692) compared to 2016, and in 11 months of 2019 compared to the same period of 2018 – by 37 percent (67345-44 885).

At the same time, one of the problems in ensuring the inevitability of responsibility is the evasion of the accused or the defendant person from inquiry, investigation and trial [3, p. 45].

Statistics show that in 2015 10.8 thousand people were detained out of 22.9 thousand wanted persons (47.2%), in 2016 – 11.2 thousand out of 23.6 thousand (47.5%), in 2017 – 6.7 thousand out of 18.6 thousand (36%), for 11 months of 2018 – 3.7 thousand out of 13.3 thousand (27.7%). As of November 1, 2018, 8322 persons were on the wanted list, of which 2451 persons (29.5%) were wanted for committing a less serious crime that does not pose a great public danger, and 5871 persons (70.5%) – for committing misdemeanors and especially severe crimes as felonies.

Of those fugitives, 265 have been on the wanted list for more than 20 years, 813 for 15 to 20 years, 1,023 for 10 to 15 years, 1,935 for 5 to 10 years and 4,286 for up to 5 years; in respect of 7,716 people, a preventive measure was applied in the form of detention and 606 are under a signature on good behavior.

Based on available information, 5335 (64%) of the wanted fugitives are currently outside the Republic of Uzbekistan (4 persons – in Belarus, 11 – in Ukraine, 90 – in EU countries, 1,358 – in Arab countries, 1,444 – in the states of Central Asia, 2,236 – in Russia and 192 – in other countries). Thus, during 2015-2017 and for 11 months of 2018, for the extradition of 1,453 (361 - 364 - 382 - 346) persons to the Republic of Uzbekistan more than 27 billion sums were spent from the state budget.

In addition, due to restrictions in the legislation of foreign countries, there is no possibility of extradition of fugitives if the committed act is not a criminal offense in the country of residence, the adoption of another citizenship and the absence of a preventive measure in the form of detention [4, p. 223].

### Results of Research

Therefore, as of 11/01/2018, there are problems with the extradition of 40 wanted persons because the committed act is not a criminal offense in the country of stay, 64 – there is no preventive measure in the form of detention and 246 – received the citizenship of the host country.

In accordance with the provisions of the Criminal Procedure Code of the Republic of Uzbekistan on the procedure for interaction of courts, prosecutors, investigators and bodies of inquiry with the relevant competent authorities and officials of foreign states and international organizations, the functions of the prosecutor's office in matters of providing legal assistance have significantly increased.

For example, under Article 458 of the Criminal Procedure Code of the Republic of

Uzbekistan, the direction of criminal case materials for the implementation of criminal prosecution in the event of a crime committed on the territory of the Republic of Uzbekistan by a foreign citizen who later found himself outside its borders is carried out only through the General Prosecutor's Office of the Republic of Uzbekistan.

Accordingly, the request from the competent authority of a foreign state for the implementation of criminal prosecution against a citizen of the Republic of Uzbekistan who has committed a crime on the territory of this state is handled through the General Prosecutor's Office of the Republic of Uzbekistan.

In some cases, in order to implement international legal document, domestic legal acts may be adopted, prescribing its implementation to law enforcement agencies [5, pp. 157-159].

In a number of CIS countries (Republic of Kazakhstan, Russian Federation, Kyrgyz Republic, Republic of Tajikistan, Turkmenistan, Republic of Uzbekistan, Republic of Azerbaijan) the powers to make a decision on extradition and Prosecutor General's Offices of States are endowed with requests for extradition.

In some CIS countries, two or more authorities are designated as competent authorities for extradition matters.

In the course of international cooperation in this area, other problems arise. Therefore, for example, when criminal cases come from foreign states, difficulties arise in calculating the period for the investigation [6, p. 11].

Since there are differences (sometimes significant) in the national legislation of the parties, when sending a criminal case, it is required to focus on the procedural decision, which served as an analogue of the decision to initiate a criminal case.

This allows one to determine the stage of criminal proceedings in accordance with the legislation of the Republic of Uzbekistan.

Often the suspect (accused) has dual citizenship. However, according to the legislation of the Republic of Uzbekistan, a petition for criminal prosecution against a citizen of the Republic of Uzbekistan cannot be sent to another state.

After a final decision on a criminal case, the General Prosecutor's Office of the Republic of Uzbekistan checks the legality of this decision (including the verdict of the court). After which, based on the provisions of an international treaty, the competent authority of the requesting party is informed, at the same time a copy of the procedural decision is sent.

In case of disagreement with the decision taken, the criminal case is sent for additional investigation or for a new trial [7, p. 18].

The current state of cooperation between the competent authorities of foreign states in the implementation of criminal prosecution indicates mutual trust and the desire to increase its effectiveness [8, pp. 124-126].

Issues related to the implementation of criminal prosecution are relevant and are constantly discussed in the course of international events with the competent authorities of foreign states [9, p. 30].

At present, the problem of international cooperation in the fight against crime is of particular relevance. This is due to the fact that crime is increasingly becoming interstate in nature. In other words, globalization has been realized to the greatest extent in the criminal sphere of life of states [10, p. 108].

This applies, first, to such dangerous phenomena such as terrorism, human trafficking, drug trafficking, but also to more "daily" crimes, the so-called general criminal orientation: murder, rape, bodily harm, etc.

In this regard, international cooperation of law enforcement agencies of various states among themselves is becoming more and more important.

The goals of establishing such cooperation may be several, as well as the tasks that law

enforcement agencies solve in the process of their implementation.

The main goal of all states trying to fight crime is to identify and punish criminals, wherever they are, in their own country or abroad [11, p. 67].

In this regard, treaties concluded between states in the field of combating crime are of paramount importance.

Such treaties can be considered international treaties in the form of conventions signed by most states, in particular European ones, as well as bilateral agreements on the provision of legal assistance between law enforcement agencies of specific states [12, p. 90].

Considering the advantages and disadvantages of both, some research shows that the extradition of persons to a foreign state for criminal prosecution or execution of a sentence is one of the most common examples of international legal cooperation in the fight against crime and one of the most controversial issues.

The problem of applying a preventive measure to ensure the possibility of such extradition is directly related to it. There are many contradictions and inconsistencies in the application of preventive measures and the extradition of criminals. There is no single scheme in this matter [13, pp. 12-17].

Thus, the legal assistance provided in accordance with international treaties in practice sometimes raises many questions. In this regard, it becomes possible to solve them with the help of intergovernmental agreements on cooperation between law enforcement agencies of various states in the fight against crime and agreements on cooperation and legal assistance of an interdepartmental nature [14, p. 77].

Such agreements have been concluded by law enforcement agencies of the Republic of Uzbekistan with many law enforcement agencies of other states. However, not all of them work clearly and quickly, and many of them cease to be effective without prior notice.

The latter is directly related to the agreement between the law enforcement agencies of the Republic of Uzbekistan and the Ukrainian law enforcement agencies; a similar agreement between the Republic of Uzbekistan and Latvia does not work effectively enough. Once again, we have to state that the political interests of one or another state prevail over the realization of the rights and legitimate interests of ordinary citizens, even if they have committed crimes. By not returning such persons because of political sympathies or antipathies to their country, the leadership of these states violates not only the rights of these persons, even if they have committed a crime, but also the rights of their relatives and friends, who are deprived of the opportunity to find a relative or loved one [15, pp. 215-223].

There are two solutions to this situation. The first suggests itself in connection with the analysis of the practical application of multilateral agreements in the field of combating crime [16, p. 104]. These agreements contain a large number of discrepancies and contradictions, references to national legislation, which has its own characteristics in each country [17, pp. 375-414].

### Analyzing Research Results

It is impossible to bring the procedures for extradition and restraint of criminals in different countries to uniformity. There remains a second way – to work on bilateral agreements. Nevertheless, as practice has shown, it does not always give a positive result. In this regard, it is necessary to bring our legislation in the field of international cooperation in combating crime to a more perfect form and specificity in order to extradite both our and foreign criminals with minimal loss of time and effort [18, pp. 108-111].

In my opinion, all the activities of law enforcement agencies to conclude both bilateral and multilateral international treaties in the field of combating crime

should be accumulated in the prosecutor's office.

Summing up the above, it should be noted that in the conditions of widespread international criminal activity in order to increase the effectiveness of the fight against it, it is necessary to adopt a law supplementing the current Law of the Republic of Uzbekistan "On the Prosecutor's Office" with a new section devoted to the international interaction of prosecutors to ensure protection of human and civil rights and freedoms, and combating crime and other offenses.

The adoption of this law would increase the legal status of the prosecutor's office of the Republic of Uzbekistan in countering international crime and strengthen measures to combat it by our state.

In addition, in the field of international crime prevention, an essential part of which is the issue of extradition criminals and the suppression of crime, considerable attention should be paid to bilateral government agreements between states.

Analysis of the above legislative acts allows us to conclude that the main forms of international cooperation of the prosecutor's office of the Republic of Uzbekistan in the field of criminal proceedings are:

1. Protection of civil rights and legitimate interests in the course of international cooperation in the field of criminal proceedings.

2. Organization and ensuring the appropriate execution of requests for legal assistance in criminal cases received from abroad and sent to foreign states.

3. Criminal prosecution of citizens of the Republic of Uzbekistan who have committed crimes on the territory of foreign states.

4. Extradition of foreign citizens staying on the territory of the Republic of Uzbekistan who have committed crimes on the territory of foreign states.

5. Participation in the development of international multilateral and bilateral treaties

and agreements on the problems of combating crime and providing legal assistance.

6. Conclusion and immediate realization of international treaties on mutual legal assistance in civil, family, criminal matters.

7. Consultations on legal issues.

8. Exchange of specialist delegations for the transfer of experience.

9. Conducting scientific and practical conferences, seminars, meetings of the heads of the prosecutor's offices on the fight against crime.

International cooperation of law enforcement agencies of the Republic of Uzbekistan with foreign states is one of the priority directions in the activities of the General Prosecutor's Office of the Republic of Uzbekistan. Modern crime has taken on qualitatively new forms, its self-serving orientation has increased, the number of crimes with international connections has significantly increased, and an increasingly common are international criminal groups whose members are citizens of the Republic of Uzbekistan.

Thus, the tendencies of its development predetermine the need to create new effective mechanisms of international cooperation in the field of criminal justice.

According to the research work, it is advisable to note that increasing the coordination of law enforcement agencies in this area requires, and the implementation in practice of the principle ensuring the inevitability of punishment for a committed crime [19, p. 145]. In this regard, it is currently topical to improve practical interaction in one of the most important types of international cooperation in criminal proceedings – the implementation of criminal prosecution, contributing to the implementation of the principle of inevitability of punishment for a committed crime.

Interaction on it with foreign partners is the exclusive competence of the General Prosecutor's Office of the Republic of Uzbekistan.

Integration processes that are actively developing in the modern world are gradually bringing states closer together, making them more open for international communication. In these processes, along with obvious advantages, there is also a downside – the intensive growth of transnational crime. In this regard, cooperation between law enforcement agencies of various states in the field of combating crime is becoming more and more important every year.

As already noted, one of the most important types of international cooperation in this area is criminal prosecution, which certainly contributes to the implementing the principle of the inevitability of punishment for a committed crime.

Under the legislation of the Republic of Uzbekistan, for a crime committed outside the borders of the Republic of Uzbekistan, citizens of the Republic of Uzbekistan and stateless persons permanently residing in the Republic of Uzbekistan are subject to criminal liability if there is no foreign court decision against them. As we know, the Republic of Uzbekistan, in accordance with its legislation and, first, with the Constitution of the Republic of Uzbekistan, does not extradite its own citizens upon extradition requests of foreign states.

At the same time, it undertakes to perform criminal prosecution on its territory against citizens of the Republic of Uzbekistan for crimes committed on the territory of other states. This approach is fully consistent with the international principle of "extradite or try."

The Republic of Uzbekistan participates in several dozen international treaties that provide for the possibility of criminal prosecution. They can be conditionally divided into three large groups: multilateral treaties on legal assistance in criminal cases, multilateral treaties to combat certain types of crimes, and bilateral treaties on extradition and legal assistance in criminal cases. Employees of the General Prosecutor's Office of the Republic of Uzbekistan and its local authorities should

regularly analyze and generalize the practice and effectiveness of international cooperation and submit proposals to the leadership of the General Prosecutor's Office of the Republic of Uzbekistan on measures to improve this activity.

Prosecutors of the territorial level of the Republic of Uzbekistan in solving practical issues of cooperation and interaction with law enforcement agencies of other states and international organizations should proceed from the fact that all relations with law enforcement agencies of foreign states must be conducted through the General Prosecutor's Office of the Republic of Uzbekistan, unless another procedure is directly established by international treaties of the Republic of Uzbekistan.

The participation of prosecutors and investigators in international events should be coordinated with the leadership of the General Prosecutor's Office of the Republic of Uzbekistan and informed about the results of their implementation. The positive experience of international cooperation of the prosecutor's office and its concrete results, the effectiveness of interaction between law enforcement agencies in this matter should be covered in the press and other mass media.

In addition, the objective processes of globalization and international integration determine not only the rapid development of innovative technologies, the expansion of economic, scientific, cultural and other ties in the world community, but are also accompanied by an increase in organized international crime in the sphere of illegal circulation of weapons, narcotic and psychotropic substances, corruption, legalization proceeds from crime and human trafficking [20, pp. 238-248].

Therefore, the interaction of the prosecutor's office of the Republic of Uzbekistan and the competent authorities of foreign countries in the field of combating crime and criminal justice is becoming the

most demanded and significant area of their activities.

### Conclusions

It should be noted that the normative and legal basis for international cooperation of prosecutors of the Republic of Uzbekistan with the relevant competent authorities and officials of foreign states, as well as with international and interstate organizations in combating crime, strengthening the rule of law and law and order are:

1. Multilateral and bilateral treaties of the Republic of Uzbekistan with foreign states.
2. Constitution and national legislation.
3. Organizational and administrative acts of the Prosecutor General of the Republic of Uzbekistan (orders, instructions).

The Republic of Uzbekistan is currently a party to more than 70 multilateral and bilateral treaties on international cooperation, which define the general conditions and obligations of the parties in the fight against crime, the procedure and forms of providing legal assistance in all criminal cases or in cases of terrorism, drug trafficking, human trafficking and corruption, as well as the grounds and procedure for the extradition of persons for criminal prosecution and execution of punishment.

If the Republic of Uzbekistan is simultaneously a party to multilateral and bilateral treaties, then in the event of discrepancy between the rules established in them, the provisions of the multilateral treaty take precedence over procedures of a bilateral agreement. The main areas of international legal cooperation of the prosecutor's office of the Republic of Uzbekistan include interaction with the competent authorities of foreign states on issues of extradition, direction (execution) of instructions on criminal prosecution.

Constructive interaction with the National Central Bureau (NCB) of Interpol under the Ministry of Internal Affairs of the Republic of Uzbekistan is of great importance for

the search for criminals and the creation of conditions for their extradition.

The effectiveness of international cooperation in the fight against crime largely depends on the degree of legal regulation and organizational elaboration of the procedures for its implementation in each of the states. Within the structure of the General Prosecutor's Office of the Republic of Uzbekistan, issues of legal assistance in criminal cases fall within the competence of the International Legal Department. The regional prosecutor's offices have the positions of senior assistant prosecutors for international legal affairs. However, the degree of legal regulation of this area of prosecutorial activity at the legislative level, in our opinion, needs more detail.

It is also the responsibility of the prosecutor to maintain or refuse to maintain a motion

for the court to authorize extradition arrest. Organizational and procedural relations in the system of prosecutorial bodies in the provision of legal assistance are currently regulated at the level of departmental orders and instructions.

Summing up, we believe that under the Law of the Republic of Uzbekistan "On the Prosecutor's Office" (new edition) it is necessary to regulate in more detail organizational and procedural aspects of the participation of the prosecutor's office and its officials in the provision of international legal assistance in criminal matters.

For this purpose, a special section could be singled out in the structure of the law. The legislative level of regulation of such relations will be more consistent with the essence of the rule of law.

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