

## Problems of realization of international legal assistance during the cooperation of Ukraine with foreign states

*Khatuntsev Vadym\**

Received: 2022-08-25

Accepted: 2022-09-17

DOI: <http://doi.org/10.46489/gpj.2022-2-4-2>

**Abstract.** The article is devoted to the study of the problems of the implementation of international legal aid during Ukraine's cooperation with foreign countries. It has been established that in the aspect of criminal proceedings, international legal assistance is understood as the conduct of procedural actions by the competent authorities of one state, the implementation of which is necessary for a pre-trial investigation, trial or for the execution of a sentence passed by a court of another state or an international judicial institution. It was found that during the cooperation of Ukraine with foreign countries, international legal assistance can be implemented by handing over documents, performing certain procedural actions, extradition of persons who have committed a criminal offense, temporary transfer of persons, taking over criminal prosecution, transfer of convicted persons and execution of sentences. At the same time, in the realities of wartime, the implementation of certain procedural actions as a form of international legal assistance is of the greatest importance, which is primarily due to the unprecedented scale of crimes committed by the Russian Federation in Ukraine and the need to identify a large number of war criminals and crimes, as well as bring the guilty parties to justice. Effective investigation of such crimes requires the use of considerable resources and the appropriate competence of investigators, experts, and prosecutors. Therefore, it is currently important to involve in this process international specialists and foreign experts who have experience in documenting and investigating war crimes, crimes against humanity, and the crime of genocide. At the same time, taking into account the scale of the destruction caused by the armed aggression of the Russian Federation, the economic, environmental, material, and moral damages, cooperation aimed at the search, arrest, and confiscation of assets of persons involved in war crimes committed on the territory of Ukraine is becoming more and more relevant. However, at the same time, other forms of international legal assistance do not lose their relevance. Taking into account the scale of the destruction caused by the armed aggression of the Russian Federation, economic, environmental, material, and moral damages, cooperation aimed at the search, arrest, and confiscation of assets of persons involved in war crimes committed on the territory of Ukraine is becoming more and more relevant. However, at the same time, other forms of international legal assistance do not lose their relevance.

**Keywords:** administrative law, state administration, object of increased danger, technical regulation, technical regulation, regime organization.

---

\* Khatuntsev Vadym, Master's degree, Graduate student Department of Criminal Procedure and Forensics of the Educational and Scientific Institute of Law State Customs Service, Department of Combating Contraband and Customs Violations, 60 Volodymyrska Street, Kyiv, 01033, <https://orcid.org/0000-0003-1989-3120>

## INTRODUCTION

In the conditions of the Russian-Ukrainian war, the issue of Ukraine's cooperation with foreign states in the context of international legal assistance acquires uncommon relevance. After all, new threats caused by military aggression of the Russian Federation, given the international awareness of the degree of danger of this social phenomenon and the need to take effective measures, require consolidation of efforts of different states. This mechanism will help Ukraine and the world to bring to concrete responsibility those who unleashed or in any way participated in this terrible war against the Ukrainian people and in crimes against our people.

*Analysis of recent studies and publications* shows that the issue of international legal assistance has repeatedly attracted the attention of domestic scientists. Among them, in particular: T. H. Badalova, S. Vlad, O. V. Kovalova, O. V. Martovytska, H. Yu. Nikitina-Dudikova, V. M. Fedchenko and others. However, most of the available studies and publications are mostly limited in nature and do not take into account the latest legislative innovations.

*The purpose of the article* is to analyze the implementation of international legal assistance in cooperation between Ukraine and foreign states.

## RESULTS

***Presentation of the basic material of the study.*** Analysis of the current criminal procedural legislation of Ukraine gives grounds to conclude that the domestic legislation of Ukraine regulates in sufficient detail both the issue of international cooperation in general and the issue of international legal assistance, in particular. We have in mind Section 9 of the Criminal Procedure Code of Ukraine (*Criminal Procedure Code of Ukraine: Law of Ukraine of 13.04.2012 №4651-VI, n.d.*). (hereinafter - CPC of Ukraine), which, among other things, provides a clear and understandable interpretation of the

definition of "international legal assistance", under which the legislator invites us to understand "the conduct of procedural actions by competent authorities of one state, execution of which is necessary for pre-trial investigation, trial or for the execution of a sentence issued by a court of another state or an international judicial institution" (*Criminal Procedure Code of Ukraine: Law of Ukraine of 13.04.2012 №4651-VI, n.d.*).

As rightly noted in the scientific literature, international legal assistance in criminal proceedings, as a direction of modern international cooperation of Ukraine, has significantly expanded in recent years, has become of paramount importance in criminal procedural activity (*Kovalova, 2022, p. 120*). So, only for one year Ukraine with requests for international legal assistance in criminal proceedings has addressed to the competent institutions of 47 countries of the world, the most - to the Federal Republic of Germany (20), the Italian Republic (19), the Latvian Republic (17), the USA (12) and others (Israel, French Republic, Azerbaijan Republic, Georgia, etc.) (*Kovalova, 2022, p. 38*).

First of all, the legislator divided international legal assistance into procedural actions, which can be carried out in the order of international legal assistance, and actions requiring special authorization (*Vlad, 2020, p. 320*).

At that, the procedure for sending a request to another state, the procedure for consideration by the authorized (central) body of Ukraine of the request of another state or an international judicial institution for such assistance, and the procedure for execution of such a request are determined by the CPC of Ukraine and the current international treaties of Ukraine. At the same time, international legal assistance may also be provided in the absence of an international treaty, in such cases, it is provided on the so-called principles of reciprocity. This is directly stated in the provisions of art. 543 and part 1 of article 544 of the CPC of the RF (*Criminal*

*Procedure Code of Ukraine: Law of Ukraine of 13.04.2012 №4651-VI, n.d.*)

In the case of granting and receiving international legal assistance or other international cooperation without a treaty, the authorized (central) body of Ukraine considers the request of a foreign state only in the presence of a written guarantee of the requesting party to accept and consider in the future the request of Ukraine based on reciprocity. In such cases, the authorized (central) authority of Ukraine shall send the request for international legal assistance to the Ministry of Foreign Affairs of Ukraine for its subsequent transfer to the competent authority of the requested party by diplomatic way (*Criminal Procedure Code of Ukraine: Law of Ukraine of 13.04.2012 №4651-VI, n.d.*).

As for the specific forms of international legal assistance as a form of international cooperation, in accordance with the provisions of criminal procedure law, international cooperation during criminal proceedings consists of taking necessary measures to provide international legal assistance through the delivery of documents, performance of certain procedural actions, extradition of persons who have committed a criminal offense, temporary transfer of persons, transfer of criminal prosecution, transfer of convicted persons, etc.

Thus, one of the most common forms of international legal assistance is the performance of certain procedural actions. For example, the participation of foreign states in the formation of evidence. The unprecedented scale of Russia's crimes against the Ukrainian people has put the entire law enforcement system of our state in a rather difficult situation due to the complex task of collecting a huge amount of evidence and investigating numerous international crimes. Obviously, the effective investigation of such crimes requires the involvement of large resources and the appropriate competence of investigators, experts, prosecutors. That is why it is important to involve

international specialists and foreign experts who have experience in documenting and investigating war crimes, crimes against humanity, and the crime of genocide. In particular, it is likely, in our opinion, that the Ukrainian investigative team will not be able to cope with the collection of user-generated evidence without the support of external partners from the technology sector and civil society.

In general, the cooperation of EU, NATO, and Ukrainian law enforcement agencies in capturing proper evidence is necessary to prepare a convincing position of our state in future trials by international criminal justice authorities. Today, the EU actively promotes quality investigations. The Ministers of Justice of the EU member states ensure the requests of the Prosecutor General of Ukraine to provide expert support, equipment for the safe storage of evidence, forensic examination, the establishment of secure lines of communication, and training for investigators. Related assistance is planned to continue. The EU plans to send other investigative teams to work with the Prosecutor General's Office of Ukraine at the scenes of likely Russian crimes. U.S. assistance is also valuable. In particular, the U.S. has provided expert advice (war crimes experts, military analysts) (*Mechanisms for international cooperation in the investigation of crimes and ensuring the prosecution of perpetrators, n.d.*).

The relevance of this form of cooperation is also increasing due to the relocation of our affected citizens abroad. Since during the investigation and trial of criminal cases there is often a need to collect evidence abroad by questioning the accused, victims, witnesses, experts, conducting searches, examinations, judicial examination, seizure and transfer of items, delivery, and transmission of documents, etc. At the same time, the issue of conducting procedural actions via videoconference with children who are witnesses or victims deserves special attention. In particular, this applies to the

conduct of procedural actions with minors in criminal proceedings for criminal offenses, including against sexual freedom and sexual inviolability. Conducting procedural actions in the order of international legal assistance with the participation of children, and in particular victims of sexual violence or witnesses to such actions, is an organizationally difficult and psychologically stressful measure. That is why it is appropriate to conduct such investigative (search) operations as interrogations and identification parades with the participation of minors through the use of videoconferencing technology. It is noteworthy that to solve such tasks a number of law enforcement agencies in foreign countries have their own equipped premises for videoconferencing during the investigation (*Nikitina-Dudikova, 2022, p. 199-200*).

Other procedural actions should also include cooperation in the search, arrest, and confiscation of assets of persons involved in war crimes committed on the territory of Ukraine. In particular, as we know, given what is happening in Ukraine, the EU has established cooperation for a common policy of search, seizure, and confiscation of assets of persons involved in war crimes, and has already held the first meeting between the Ukrainian Task Force on the search, seizure, and confiscation of assets of persons involved in war crimes.

The Task force of the European Commission consists of three subgroups:

- asset search subgroup;
- asset forfeiture subgroup
- asset disposition subgroup (*On Approval of the Procedure of Interaction between ARMA and the Office of the Prosecutor General for Identification and Search of Assets in the Framework of International Legal Assistance in Proceedings: Order of the National Agency of Ukraine for Identification, Search and Management of Assets Derived from Corruption and Other Crimes of 24.05.2022 p. №75/81., n.d.*).

It should be noted that in order to ensure the execution of requests of the Attorney General's Office regarding the detection and search of assets within the framework of international legal assistance in conducting procedural actions, in accordance with paragraph one of article 568 of the Criminal Procedure Code of Ukraine, article 9 of the Law of Ukraine "On Prosecution", paragraph 6 of paragraph one of article 10, articles 15-17 of the Law of Ukraine "On National Agency of Ukraine on detection, search and management of assets obtained from corruption and other crimes" the Procedure of cooperation between ARMA and the Office of the Prosecutor General was approved.

Extradition as a form of international legal assistance is also important in terms of cooperation with foreign countries in today's realities. First of all, it should be noted that extradition in the legislation of Ukraine is understood as "extradition of a person to the state, the competent authorities of which this person is wanted for criminal prosecution or execution of a sentence" (*Criminal Procedure Code of Ukraine: Law of Ukraine of 13.04.2012 №4651-VI, n.d.*).

At that, extradition includes: an official request to establish the place of residence in the territory of the requested State of the person to be extradited and the extradition of such person; verification of circumstances that may prevent extradition; taking a decision on the request; the actual transfer of such a person under the jurisdiction of the requesting State (*Criminal Procedure Code of Ukraine: Law of Ukraine of 13.04.2012 №4651-VI, n.d.*); *On Ukraine's Accession to the Convention on Extradition: Law of Ukraine of 18.10.2022 p. №2674-IX. (n.d.)*. As rightly noted in the scientific literature (*Badalova, Fedchenko, 2022, p. 328*), the extradition process in the aspect of implementation by Ukraine of the relevant norms is significantly complicated due to the occupation of Ukrainian territories. However, despite certain difficulties, our State is steadily moving towards

strengthening this form of international legal assistance. Thus, on October 18, 2022, the Law of Ukraine "On Ukraine's Accession to the Convention on Extradition" was adopted (*Nykyforenko, 2021*). The ratification of the Convention will undoubtedly create legal grounds for cooperation with the competent authorities of the member states on extradition in order to prosecute or execute the sentence of persons who, trying to evade responsibility for the crimes committed, are hiding in the territory of one of them.

In the context of the issue under study, we cannot ignore the transfer of criminal proceedings – "the conduct by the competent authorities of one State of an investigation with a view to bringing a person to criminal responsibility for crimes committed in the territory of another State, at its request" (*Criminal Procedure Code of Ukraine: Law of Ukraine of 13.04.2012 №4651-VI, n.d.*).

It should be noted that the transfer (transfer) of criminal prosecution in domestic law enforcement takes second place among all forms of international cooperation (*Kovalenko, 2013, p. 199*).

After all, the non-extradition of own citizens does not mean that they remain unpunished. Each State at the request of another State is obliged to initiate or transfer in accordance with its legislation criminal prosecution against its nationals suspected of committing a crime in the territory of another State. And this is the second way of bringing a person to justice – the transfer of criminal proceedings.

As on this issue is noted in the literature (*Tatsii et.al., 2013, p. 517*), the transfer of criminal proceedings can be carried out in two forms: first, in the form of imitation of criminal proceedings from the competent authorities of a foreign state (article 595 of the CPC of the RF), second, in the form of transfer to a competent authority of another state criminal proceedings by way of transfer (article 599 of the CPC of the RF).

In turn, scientists divide the transfer of criminal proceedings into such types:

- transfer of only the materials of criminal proceedings;

- transfer of materials of criminal proceedings involving the transfer of a person suspected (accused) of committing a crime (*On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Cooperation with the International Criminal Court: Law of Ukraine of 03.05.2022p. №2236-IX, n.d., p. 760*).

It should be noted that in the case of transfer of criminal proceedings, the Office of the Prosecutor General assigns the pre-trial investigation to the relevant prosecutor, which is reported by the state that sent the request. In this case, the prosecutor is authorized to instruct the body of pre-trial investigation to execute the request of the competent authority of a foreign state to adopt criminal proceedings, to verify the completeness and legality of procedural actions, as well as the completeness, completeness, and objectivity of the investigation in the penetrated criminal proceedings (para. 17. part 2).36 OF THE CRIMINAL PROCEDURE CODE OF THE RF) (*Criminal Procedure Code of Ukraine: Law of Ukraine of 13.04.2012 №4651-VI, n.d.*).

In the context of the issue under study cannot be overlooked also legislative innovations on cooperation with the International Criminal Court (hereinafter - ICC). Thus, on May 20, 2022, the law amending Articles 183 and 208 of the Criminal Procedure Code of Ukraine, as well as supplementing it with the new section defining the peculiarities of cooperation with the ICC, entered into force [15]. From now on, a preventive measure in the form of detention, without determining the amount of bail, may also be applied to a person regarding whom a request for provisional arrest or arrest and transfer has been made by the ICS, according to the procedure and on the grounds stipulated by the current CPC of

Ukraine. A person detained in connection with the ICS wanted, upon his consent to transfer to the ICS, may be extradited under a simplified procedure. The right to consent to surrender to the ISS under the simplified procedure is explained to such person by the authorized official who carried out his detention. Interestingly, until the day of entry into force of the Rome Statute for Ukraine, the legislative changes will be applied taking into account the statements of Ukraine on recognition of the jurisdiction of the ICS, and the issue of implementation of the ICS decision on fine and/or confiscation will be resolved in the order provided for the execution of the foreign state court sentence.

As can be seen, the current legislation of Ukraine contains a fairly wide range of forms of implementation of international legal assistance in cooperation with foreign states. However, this list is not exhaustive, because in accordance with article 542 of the Criminal Procedure Code of Ukraine, an international treaty of Ukraine may provide for other forms of cooperation in criminal proceedings (*Criminal Procedure Code of Ukraine: Law of Ukraine of 13.04.2012 №4651-VI, n.d.*). In addition, a number of problematic issues still remain unresolved in this area (*Kovalova, 2022;*

### References

Criminal Procedure Code of Ukraine: Law of Ukraine of 13.04.2012 №4651-VI. (n.d.).

<https://zakon.rada.gov.ua/laws/main/4651-17>

Kovalova, O. V. (2022). Peculiarities of information support for pre-trial investigation within international legal assistance. *Legal position*, 2(35), 36-40.

Vlad, S. (2020). Peculiarities of the organization of the work of bodies in the field of international cooperation. *Entrepreneurship, Economy, and Law*, 5. P. 319-324.

Activities of International Human Rights Organizations and Foreign Governments in Documenting and Reporting War Crimes and Crimes Against

*Vlad, 2020; Nikitina-Dudikova, 2022; Martovytska, 2018*), which, given the limited volume of this article, should be the subject of separate research.

### CONCLUSIONS AND PROSPECTS FOR FURTHER RESEARCH

Thus, when Ukraine cooperates with foreign states, international legal assistance may be implemented by handing over documents, performing certain procedural actions (formation of evidence: collection of evidence by questioning the accused, victims, witnesses, experts, conducting searches, examinations, judicial examination, seizure and transfer of items, delivery and transmission of documents; and transfer of convicted persons and execution of sentences.

Finally, we should note that the issue of implementation of international legal assistance in cooperation between Ukraine and foreign states requires further scientific research. In particular, in the direction of identifying drawbacks of legal regulation and development of ways to improve legislation in this area, as well as the study of problems of implementation of international legal assistance in cooperation of Ukraine with foreign states under martial law.

Humanity Committed by the Russian Federation in Ukraine. (n.d.). <https://niss.gov.ua/news/komentariekspertiv/diyalnizmizhnarodnykhpravozakhysnykh-orhanizatsiy-ta-inozemnykh-uryadiv>

Mechanisms for international cooperation in the investigation of crimes and ensuring the prosecution of perpetrators. (n.d.). [https://minjust.gov.ua/m/str\\_8523](https://minjust.gov.ua/m/str_8523)

Nikitina-Dudikova, H. Yu. (2022). Peculiarities of the proceedings with children by videoconference in the order of international legal assistance in criminal proceedings. *Modern aspects of science modernization: state, problems, development trends*: Proceedings of the XIX International Scientific-Practical Conference (March 7, 2022, Vilnius (Lithuania)), remotely, 197-201.

International activities of the ARMA in the context of war (n.d.). <https://arma.gov.ua/news/typical/mijnar-odna-diyalnist-arma-v-umovah-viyni>

On Approval of the Procedure of Interaction between ARMA and the Office of the Prosecutor General for Identification and Search of Assets in the Framework of International Legal Assistance in Proceedings: Order of the National Agency of Ukraine for Identification, Search and Management of Assets Derived from Corruption and Other Crimes of 24.05.2022 p. №75/81. (n.d.). <https://zakon.rada.gov.ua/laws/show/z0582-22#Text>

Badalova, T. H., Fedchenko, V. M. (2022). Certain Problematic Issues and Circumstances Affecting the Extradition Procedure. *The 3rd International scientific and practical conference «Eurasian scientific discussions»* (April 10-12, 2022) Barca Academy Publishing, Barcelona, Spain, 325-329.

On Ukraine's Accession to the Convention on Extradition: Law of Ukraine of 18.10.2022 p. №2674-IX. (n.d.). <https://zakon.rada.gov.ua/laws/show/2674-20#Text>

Nykyforenko, Yu. L. (2021). Criminal proceedings by way of takeover as a form of international cooperation. *Scientific Bulletin of Public and Private Law*, 4, 194-199.

Kovalenko, V.V. Udalova, L.D. Pysmennyi, D.P. Kovalenko, L.D. Udalova, D.P. ed. (2013). *Pysmennyi.Criminal Procedure*: textbook. Kyiv: Center for

Educational Literature.

Tatsii, V. Ya. Hroshovyi, Yu. M., Kaplina, O. V. Shylo, O. H. ed. (2013). *Criminal Procedure*: textbook. Kharkiv : Pravo.

On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Cooperation with the International Criminal Court: Law of Ukraine of 03.05.2022p. №2236-IX. (n.d.). <https://zakon.rada.gov.ua/laws/show/2236-20#Text>

Badalova, T. H., Fedchenko, V. M. (2022). The essence of extradition as a type of international legal assistance in criminal proceedings (on the example of Dnepropetrovsk region). *Dnieper Scientific Journal of Public Administration, Psychology, Law*, 3, 144-151.

Martovytska, O. V. (2018). International legal aid in criminal proceedings. *Topical issues of pre-trial investigation and trends in the development of criminalistics methodology*: theses of the All-Ukrainian scientific and practical conference (Kharkiv, November 21, 2018) / Ministry of Internal Affairs of Ukraine, Kharkiv National University of Internal Affairs. Kharkiv, 120-122.

Badalova, T. H., Fedchenko, V. M. (2022). Interpol as a subject of extradition legal relations in criminal proceedings. *Difficulties of modern transformations. Series: Law, Public Administration, and Management*, 4. <https://doi.org/10.54929/2786-5746-2022-4-01-06>