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MIĘDZYNARODOWE STANDARDY POSTĘPOWANIA KARNEGO (NA PRZYKŁADZIE UKRAINY)

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Streszczenie. Jednym z kluczowych problemów zastosowania prawa w dziedzinie sądownictwa karnego Ukrainy jest zgodność reglamentacji prawnych i praktyki prowadzenia postępowania karnego ze standardami międzynarodowymi.

Podczas badań określonej problematyki oraz formułowania naukowo-uzasadnionych wniosków wykorzystywano szereg metod poznania naukowego: metody logiki formalnej (analiza, synteza, dedukcja, indukcja, antologia, abstrahowanie), specjalistyczne metody prawne: analiza porównawczo-prawna, historyczno-prawna, systemowa oraz inne.

Dziś regulacje prawne postępowania karnego mają charakter kompleksowy i są regulowane przez umowy międzynarodowe i ustawodawstwo krajowe. W Ukrainie zrobiono szereg istotnych kroków w celu doprowadzenia ustawodawstwa krajowego Ukrainy do wysokich standardów międzynarodowych, w 2012 roku uchwalono nowy Kodeks Postępowania Karnego Ukrainy, jednak te działania nie można uważać za zakończone.

Znaczenie priorytetowe w systemie regulacji prawnych mają międzynarodowe umowy Ukrainy. Zgodnie z art. 1 Kodeksu Postępowania Karnego Ukrainy, karne procesowe ustawodawstwo Ukrainy składa się z odpowiednich postanowień Konstytucji Ukrainy, umów międzynarodowych, zgoda na obowiązywanie których została nadana przez Radę Najwyższą Ukrainy, niniejszy kodeks oraz inne ustawy Ukrainy.

Międzynarodowe umowy Ukrainy, postanowienia których powinny być uwzględnianie podczas postępowania karnego umownie połączono w grupy: międzynarodowe umowy regulujące prawa i swobody człowieka; międzynarodowe umowy dotyczące walki z przestępczością zorganizowaną; międzynarodowe umowy z zakresu prawnej pomocy międzynarodowej oraz innych form współpracy międzynarodowej w postępowaniu karnym; umowy międzynarodowe Ukrainy, regulujące status prawny osób mających immunitet w zakresie jurysdykcji karnej Ukrainy. W celu zapienienia wysokich standardów międzynarodowych istotnym jest poznanie oraz wprowadzenie do ustawodawstwa krajowego oraz do działalności prawnej praktyki Europejskiego Trybunału Praw Człowieka.

Aktualnym zadaniem jest dalsze udoskonalenie postępowania karnego w Ukrainie, zabezpieczenie jego działalności standardami międzynarodowymi, harmonizacja przepisów umów międzynarodowych oraz Kodeksu Postępowania Karnego Ukrainy, zapożyczenie lepszego doświadczenia zagranicznego, podwyższenie efektywności współpracy międzynarodowej w zaznaczonej dziedzinie, opracowanie aktów prawno-normatywnych w celu uszczegółowienia przepisów prawnych i rekomendacji kryminalistycznych.

Słowa kluczowe: Kodeks Postępowania Karnego Ukrainy, umowy międzynarodowe Ukrainy, Europejski Trybunał Praw Człowieka, akty prawno-normatywne, prawa i swobody człowieka.

INTERNATIONAL STANDARDS OF CRIMINAL PROCEEDING (UKRAINIAN CASE)

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Abstract. One of the key problems of law enforcement in the area of criminal justice in Ukraine is compliance of legal regulation and criminal proceeding practice with international standards.

In the course of abovementioned problem examination and formulation of scientifically grounded conclusions a set of scientific methods was applied: methods of formal logic (analysis, synthesis, deduction, induction, analogy, abstraction), special legal methods: comparative, historical, systemic analysis etc.

Currently legal regulation of criminal proceeding is characterized as complex process, governed by international agreements and national legislation. Ukrainian government has already taken some important steps to ensure harmonization of Ukrainian legislation with the highest international standards, new Criminal Procedure Code of Ukraine was adopted in 2012 – but still this process cannot be considered as complete.

International agreements signed by Ukraine are of the priority importance in the system of legal regulation. According to Article 1 of Criminal Procedure Code of Ukraine, Ukrainian criminal legislation comprises relevant provisions of the Constitution of Ukraine, international agreements identified as binding with the consent of Verkhovna Rada of Ukraine, this Code and other national statutory acts.

International agreements of Ukraine, provisions of which must be taken into consideration during the criminal proceeding, are separated into groups: international agreements regulating issues related to human rights and freedoms; international agreements on international crime combating; international agreements on foreign legal assistance provision and other formats of international cooperation in the course of criminal proceeding; international agreements of Ukraine regulating the legal status or persons with immunity to criminal jurisdiction of Ukraine. In order to implement the highest international standards it is especially important to examine and implement ECHR practices in national legislation and law enforcement.

Current tasks are defined as the following: further improvement of criminal proceeding in Ukraine, its compliance with international standards, harmonization of international agreements' provisions with Criminal Procedure Code of Ukraine, use of best foreign practices, increasing the efficiency of international cooperation in this area, statutory acts drafting in order to elaborate the legislative provisions, forensic recommendations.

Key words: Criminal Procedure Code of Ukraine, international agreements, European Court of Human Rights, statutory acts, human rights and freedoms.

МІЖНАРОДНІ СТАНДАРТИ КРИМІНАЛЬНОГО ПРОВАДЖЕННЯ (НА ПРИКЛАДІ УКРАЇНИ)

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Анотація. Однією із ключових проблем правозастосування у сфері кримінального судочинства України є відповідність правової регламентації та практики реалізації кримінального провадження міжнародним стандартам.

Під час дослідження окресленої проблематики та формування науково-обґрунтованих висновків використовувалася низка методів наукового пізнання: методи формальної логіки (аналіз, синтез, дедукція, індукція, аналогія, абстрагування), спеціально-правові методи: порівняльно-правовий, історико-правовий, системного аналізу та ін.

Сьогодні правове регулювання кримінального провадження має комплексний характер, регламентується міжнародними договорами і національним законодавством. В Україні зроблено ряд суттєвих кроків щодо приведення національного законодавства України до високих міжнародних стандартів, 2012 року прийнято новий Кримінальний процесуальний кодекс України, однак роботу не можна вважати завершеною.

Пріоритетне значення у системі правового регулювання мають міжнародні договори України. Згідно ст. 1 Кримінального процесуального кодексу України, кримінальне процесуальне законодавство України складається з відповідних положень Конституції України, міжнародних договорів, згода на обов'язковість яких надана Верховною Радою України, цього Кодексу та інших законів України.

Міжнародні договори України, положення яких повинні бути враховані під час кримінального провадження, умовно об'єднано у групи: міжнародні договори, що регламентують права і свободи людини; міжнародні договори з питань боротьби з міжнародною злочинністю; міжнародні договори з питань міжнародної правової допомоги та інших форм міжнародного співробітництва у кримінальному провадженні; міжнародні договори України, які регламентують правовий статус осіб з імунітетом від кримінальної юрисдикції України. Для забезпечення високих міжнародних стандартів важливе значення має вивчення та впровадження у національне законодавство і правозастосовну діяльність практики Європейського суду з прав людини.

Актуальними завданнями є подальше удосконалення кримінального провадження в Україні, забезпечення його відповідності міжнародним стандартам, гармонізація положень міжнародних договорів та Кримінального процесуального кодексу України, запозичення кращого зарубіжного досвіду, підвищення ефективності міжнародного співробітництва у вказаній сфері, розробка нормативно-правових актів з метою деталізації законодавчих положень, криміналістичних рекомендацій.

Ключові слова: Кримінальний процесуальний кодекс України, міжнародні договори України, Європейський суд з прав людини, нормативно-правові акти, права та свободи людини.

Introduction. Procedure of criminal proceeding established by the Criminal Procedure Code of Ukraine adopted on April 13, 2012 (Criminal Procedure Code of Ukraine, 2012, http://zakon2.rada.gov.ua/laws/show/4651-17) proves that progressive steps have been taken to implement the provisions of international agreements and harmonize the criminal proceeding in Ukraine with international standards, use the best foreign practices and increase efficiency of international cooperation measures. But still this process cannot be considered as completed due to set of problems requiring solutions.

Tasks of the study. To identify the level of international standards compliance with legal regulation and criminal proceeding practice in Ukraine.

In the course of abovementioned problem examination and formulation of scientifically grounded conclusions a set of scientific methods was applied: methods of formal logic (analysis, synthesis, deduction, induction, analogy, abstraction), special legal methods: comparative, historical, systemic analysis etc.

The main body. The definition of «international standards» is currently been widely used in all areas of social life and is a generalized notion covering requirements

to certain area of activity with consideration of international legislation, requirements set by international community and best foreign practices.

According to scholars' statements, standards are the source of the most important data as these accumulate norms and rules formulated on the basis of numerous achievements related to technology, science and practical experience and acknowledged with method of consensus by all stakeholders (Марценюк, Гвоздецька, 2012, p. 156).

Regarding the criminal proceeding, crime investigation activity, different sources present such terms as «international human rights standards», «international pre-trial investigation standards», «investigation standards» etc. Taking into consideration the diversity of opinions, we would like to express our point of view.

One of the most important conditions is the compliance of national legislation regulating the criminal proceeding with international agreements identified as binding with the consent of Verkhovna Rada of Ukraine, other international commitments taken by our state.

According to the Constitution of Ukraine (1996) which regulates the basic issues of criminal justice, «valid international agreements identified as binding with the consent of Verkhovna Rada of Ukraine constitute an essential part of Ukrainian legislation» (p. 1. Art. 9) (Constitution of Ukraine, 1996).

According to Article 1 of Criminal Procedure Code of Ukraine, Ukrainian criminal legislation comprises relevant provisions of the Constitution of Ukraine, international agreements identified as binding with the consent of Verkhovna Rada of Ukraine, this Code and other national statutory acts.

According to par. «a» 4.1. of Article 2 of the Vienna Convention on the Law of Treaties (1969), international agreement is defined as agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation (Vienna Convention on the Law of Treaties, 1969).

Similar interpretation is presented in Article 2 of the Law of Ukraine «On international agreements» (2004). According to Article 19 of the Law of Ukraine «On international agreements» valid international agreements of Ukraine identified as binding with the consent of Verkhovna Rada of Ukraine constitute an essential part of national legislation and implemented according to procedure established for national legislation provisions. If international agreement of Ukraine which has come into effect according to established procedure, sets requirements other than stipulated by the relevant Ukrainian statutory act, international agreement is defined as prevalent (Закон України «Про міжнародні договори», 2004).

Provisions establishing the prevalent status of international agreements are also stipulated by legislation of foreign states. Thus, Article 98 of the Constitution of Japan states that all agreements concluded or subject to conclusion are suprema lex civitatis and national courts are obliged to abide by these agreements even if contradictory provisions are contained in the Constitution of legislative acts. Similar provisions are found in the Constitution of Argentina (Article 31), Bulgaria (Article 5), Egypt (Article 151), Kyrgyzstan (Article 12), Lithuania (Article 138), Netherlands (Article 93), Romania (Article 10), Switzerland (Article 113), Venezuela (Article 128), Yugoslavia (Article 124). It must be noted that legislation of the abovementioned states presents different versions of interpretation of international agreement status – there may also be established a provision that international agreements, if properly ratified, are prevalent

from the date of publishing but upon condition of being abided by another party. Such provisions are stipulated in the Constitution if France (Article 55), Mali (Article 116), Togo (Article 23), Tunisia (Article 23), Burkina-Faso (Article 151), Guinea (Article 79) (Нарбутаев, 2006, p. 192).

The conducted research allows to conclude that in the course of criminal proceeding provisions of the following international agreement groups must be taken into account:

1. *Multilateral international agreements regulating human rights and freedoms*: the Universal Declaration of Human Rights (1948), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and Protocols № 1, 2, 4, 7, 11, the International Covenant on Civil and Political Rights (1966), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).

The abovementioned sources define that in the course of criminal proceeding the following rights are protected: right to life, freedom and personal inviolability; right to freedom from torture and other cruel, inhuman or degrading treatment or punishment; right to efficient restoration of rights; freedom from unmotivated arrest, detention or exilement; right to fair and public hearing held by independent and impartial court; right to hold the status of innocent before the guilt is established; freedom from illegal intervention in private and family life; right to dwelling inviolability and correspondence secrecy.

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and Protocols № 1, 2, 4, 7, 11 (Європейська конвенція про захист прав людини і основних свобод, 1950) are of the utmost importance for criminal proceeding because the content of this Convention reflects two key aspects of its impact – material-legal and procedural. Due attention is paid to regulation of key human rights and freedoms, guarantee of right to life, freedom and personal inviolability, respect to personal and family life, prohibition of torture, guarantee of right to fair trial, efficient means of protection, impermissibility of illegal punishment etc (Articles 2-15). These rights are the standards obligatory for all states which are signatories to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The list of guaranteed rights and freedoms is expanded with Protocols to this Convention but according to its content special attention is paid to establishment and functioning of European Court of Human Rights – the most reputable judiciary body which decisions are binding for the states which are signatories to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Chapter II) (Європейська конвенція про захист прав людини і основних свобод, 1950).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) was adopted with aim to expand the provisions of European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), in particular Article 3 «no one shall be subjected to torture or to inhuman or degrading treatment or punishment» (Конвенція проти катувань та інших жорстоких нелюдських або ображаючих гідність видів поводження і покарання, 1984).

With this aim Convention interprets «torture» as «any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing

him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions» (Article 1). Article 15 of the Convention states that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made (Конвенція проти катувань та інших жорстоких нелюдських або ображаючих гідність видів поводження і покарання, 1984).

Separate acts of European Court of Human Rights interpret acts of cruel inhuman and degrading treatment and qualify as inhuman and degrading hours of standing splayed at the wall; lifted hoods; detention in premises with regular loud noise or in basement where person may face constant threat of being attacked by the rats; deprivation of sleep, nutrition and water; separation of mother and her baby; keeping mentally healthy persons in specialized facilities etc (Весельський, Кузьмічов, Мацишин, Старушкевич, 2004, p. 8).

Having ratified the listed international treaties, Ukraine took a commitment to take all required efficient measures – legislative, administrative, judicial etc – to prevent tortures and any type of treatment or punishment defined as inhuman or degrading, and in case if any of these are detected – ensure its fast and impartial investigation in compliance with law, providing the full extent of assistance in relevant matters to other signatories of the Convention.

2. *Multilateral international agreements on international crime combating*

The term «international crime» must be taken as generalized notion covering the most dangerous crimes which may potentially affect the interests of separate states or all international community, basic human rights and freedoms. In particular, this interpretation is also used in content of international agreements of Ukraine stressing on readiness of our state to cooperate with foreign countries in the area of international crime combating (terrorism, illegal drugs and psychotropic substances turnover, illegal migration, illegal weapon (firearms, ammunition, explosive and radioactive substances) turnover, human trafficking etc).

Sources present traditional opinion that international criminality is presented in two forms: international crimes and crimes of international significance (Зелінська, 2007, p. 14).

Thus, the highest level is typical for international crimes – violation of principles and norms of international law which is especially dangerous for human civilization in terms of ensuring peace, protection of person and vital interests of international community (Панов, 1997, p. 53). In order to counteract the international crimes efficiently in 1998 a decision was made to establish the International Criminal Court (ICC) during the United Nations Diplomatic Conference of Plenipotentiaries held in Rome (Сироїд, 2010, p. 469). The Statute of International Criminal Court Статут establishes criminal responsibility for: a) genocide; b) crimes against humanity; c) war crimes; d) crimes of aggression (Статут ООН, 1945, http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995_010). Its aim is to hold persons liable for commission of

international crimes subject to concern of the international community and prevent such crimes in future.

Crimes of international significance constitute a significant percent of international crimes, defined by relevant international treaties (conventions, agreements) and national legislation.

Issues related to tackling the crimes of international significance are reflected in United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949), Convention for the Suppression of Unlawful Seizure of Aircraft (1970), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990), United Nations Convention against Transnational Organized Crime (2000), Convention on Cybercrime (2001), United Nations Convention against Corruption (2003) etc. Altogether, in the scope of research conducted (Чорноус, 2013, p. 380-399), a list with over 200 agreements was formed subject to current expension.

International agreements of this group focus mostly on definition of crime international component and key measures to combat these crimes, basic principles of its investigation which allows to join the efforts of states and its competent bodies.

We must note that numerous states have become the signatories of the abovementioned treaties as these are mostly concluded within the scope of UN and CoU activity including the states which acceded to the Conventions – it creates new opportunities for cooperation enhancement.

3. *Multilateral international agreements on international legal assistance and other forms of international cooperation in criminal proceeding*: European Convention on Extradition (1957) with Additional Protocol (1975) and Second Additional Protocol (1978); European Convention on Mutual Assistance in Criminal Matters (1959) with Additional Protocol (1978) and Second Additional Protocol (2001); European Convention on the supervision of conditionally sentenced or conditionally released offenders (1964); European Convention on the International Validity of Criminal Judgments (1970); European Convention on the Transfer of Proceedings in Criminal Matters (1972); Convention on the Transfer of Sentenced Persons (1983) with Additional Protocol (1997); Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993) with Protocol (1997).

The abovementioned Conventions and Protocols were concluded by the states-members of CoU (47 states) and other states, which acknowledged their validity, thus acceding to the Conventions (Israel, South Africa).

Listed multilateral international agreements regulate the issues of legal assistance and other forms of international cooperation in any criminal proceeding related to international interactions.

4. *Bilateral international agreements on international legal assistance and other forms of international cooperation in criminal proceeding*. Practical data prove that issues related to international legal assistance constitute the substantial part of international cooperation measures. Special attention is paid to international legal assistance along with other forms of international cooperation in special international agreements of Ukraine (current amount has reached 30).

5. *Consular conventions and treaties regulating separate issues of criminal proceeding*. Speaking of this group we should mention Convention on the Privileges and Immunities of the United Nation (1946), General Agreement on Privileges and Immunities of the Council of Europe (1949) with Protocols, Vienna Convention on Diplomatic Relations (1961), Vienna Convention on Consular Relations (1963), Vienna Convention on The Representation of States in Their Relations with International Organizations of a Universal Character (1975).

Listed international agreements regulate peculiarities of procedural relations with persons granted with diplomatic immunity or, according to national legislation and international agreements of Ukraine, may not be the Ukrainian courts defendants (criminal cases) (p. 4 Article 6 of the Criminal Code of Ukraine). For example, Vienna Convention on Consular Relations (1963) establishes privileges and immunities of consular agencies and its officials. Thus, official of consular agency is hot held liable in the course of relevant duties performance and if this person is an owner of diplomatic passport, he/she has right to refuse to testify as witness. Officials and service personnel of consular agencies may be summoned to the court to provide witness testimony but in case of their refusal no enforcement measures shall be taken. But official of consular agency is entitled (upon one's own initiative or upon request of receiving state competent bodies) to give relevant statements (Articles 40-44) (Віденська Конвенція про консульські зносини, 1963, http://zakon2.rada.gov.ua/laws/show/995_047).

Analysis of investigative and judiciary practice proves that in the course of international crimes investigation there is often an emerging demand for well-tuned interaction between representatives of Ukrainian pre-trial investigation agencies, Ministry of Foreign Affairs of Ukraine and diplomatic missions/consular agencies of other states. Fast accomplishment of these tasks (provision of consultations, ensuring legal protection of state citizens) is of the utmost importance for criminal proceeding.

Along with international agreements ratified by Ukraine which are defined as prevalent being opposed to the norms of national legislation we should also take into account those international agreements which still have not been ratified – interagency agreements concluded between ministries and central executive power bodies responsible for issues regulated by the agreements.

It is necessary to comply with provisions contained in the following statutory acts: «On National Police of Ukraine» (2014), «On operative and search activity» (1992), «On forensic examination» (1994).

Statutory acts which provisions directly or indirectly regulate the issues related to criminal proceeding include decrees of Verkhovna Rada of Ukraine, decrees of the President of Ukraine, decrees and orders of the Cabinet of Ministers of Ukraine, interagency and departmental statutory acts.

Under the abovementioned conditions of the utmost importance for legal regulation is the practice of European Court of Human Rights which is defined by Ukraine's international commitments and mentioned in Criminal Procedure Code of Ukraine (p. 2 Article 8; p. 5 Article 9).

Every person is entitled to apply to European Court of Human Rights according to Article 55 of the Constitution of Ukraine and Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

Having analyzed the practice of European Court of Human Rights we may state that such applications are typical for the areas related to the law enforcement activity. In

case if European Court of Human Rights adjudicates the violation of human rights in its decision, the signatory to Convention will be obliged not only to ensure the payment of specified sum to the person (identified in decision as fair satisfaction for violated right) but to take a set of measures separated in two groups: individual measures aimed at restoration of violated right and general measures aimed to prevent any similar applications to European Court of Human Rights from other persons in future by presenting certain amendments to national legislation or law enforcement practice (Заборона катування, 2001, p. 5-7).

V. Maliarenko and Y. Alenin note that under the abovementioned conditions such interpretations given by European Court of Human Rights may become the precedent-setting (Маляренко, Аленін, p. 10). According to Chapter 2 of Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its Protocol (1994), during the fulfillment of commitments under the international agreement interpretations provided by European Court of Human Rights must be taken into account. It is also stipulated in Article 32 of the Convention – the Court jurisdiction covers all cases related to interpretation and implementation of Convention and its Protocols.

According to Article 17 of the Law of Ukraine «On abiding by the decisions of European Court of Human Rights and implementation of its practice» (2006) during the case consideration courts refer to Convention and practice of European Court of Human Rights as the source of law. Also this Law stipulates a set of measures to be taken to inform judges, prosecutors, lawyers, notaries, law enforcement staff of the relevant provisions (Chapter 5 of the Law of Ukraine «On abiding by the decisions of European Court of Human Rights and implementation of its practice»).

If Ukraine recognizes the validity of Convention within its territory, the primary task is to ensure the compliance with its provisions and precedent base elaborated by European Court of Human Rights. This circumstance justifies the requirement to translate decisions of European Court of Human Rights into official state languages, in particular to ensure its implementation in law enforcement practice. Currently this requirement has to be fulfilled regarding the pre-trial investigation agencies.

As we already mentioned, one of the key problems is the compliance of legal regulation and criminal proceeding practice with provisions of international agreements, identified as binding with the consent of Verkhovna Rada of Ukraine.

This aspect of problem is related to general issues of international law impact on national legislation. According to results of research carries out by O. Yushchyk in the course of establishment of unified global system of justice three relatively independent groups of legal regulation sources are formed: international law, law of international organizations and national law. International legal norms present the result of general consensus of international law sovereign entities and constitute the content of international law acts which are implemented directly by states in the course of their relations without establishing certain legal relations within the states or require its transformation into norms of national law. In the latter case state is required to take special measures to implement international statutory acts in national legislation which may include adoption of laws and other statutory acts modifying the applicable law. Therefore, the legislative process is subordinated in some way to legislation harmonization processes typical for international legal system. So the existing international legal system strengthens its impact on development of national legal systems through reorientation to universal values, recognition of international law prevalence over the national,

identification of implementation procedures, incorporation of ratified international agreements into the national legal system (Ющик, 2004, p. 197-198).

Second important task is to harmonize the legislation and practical activity in criminal proceedings in Ukraine and other states (mostly EU states as Ukraine has chosen the European model of development).

Third task is to set comprehensive legal foundation and elaborate practical recommendations to implement the measures of international cooperation. We must take into account the interaction of national legal systems, extraterritorial operation of criminal procedure law, requirement to ensure efficient cooperation in the area of international crime combating.

Let us return to the first aspect. Ukraine's membership in leading international organizations (UN, Council of Europe), recognition of ECHR decisions as legally valid, recognition of international law prevalence over the national legislation laid the foundation for further progressive changes. The abovementioned steps considerably strengthen the scope of Ukraine's responsibility by the international community.

Adoption of new Criminal Procedure Code positively affected the abovementioned activities which complies with provisions of international agreements of Ukraine; still, another aspect – ensuring the appropriate practical implementation of legislative provisions – is a task requiring urgent solutions due subjective and objective matters.

Objective matters are related to elaboration of Criminal Procedure Code provisions and development of statutory acts aimed to detalize the legislative provisions. It is important to implement forensic recommendations into practical investigative activity.

Subjective matters resulting in obstructions for accomplishment of defined tasks are related to «human factor», law enforcement staff attitude to these tasks and relevant solutions.

It is necessary to carry out the comparative analysis of Ukrainian and foreign criminal proceeding basic principles in order to implement the best practices. Harmonization in this area will facilitate the implementation of international cooperation measures.

One of the urgent tasks is the development of new efficient mechanisms of international cooperation. Having analyzed the empirical sources, we state that European Convention on Mutual Assistance in Criminal Matters (1959) with Additional Protocol (1978) and Second Additional Protocol (2001) is defined as prevalent in the course of international legal assistance provision or receipt according to national practice (Європейська конвенція про взаємну правову допомогу у кримінальних справах, 1959).

It is important to enhance the cooperation with EU states as activation of certain processes including the visa-free regime launched in 2017 sets new tasks in the law enforcement area as well.

Currently implementation of measures of international cooperation with other foreign states is obstructed with certain factors. As we know, every legal system is characterized with its own type of criminal process, its basic principles define the content of criminal proceeding, shape the peculiarities of competent bodies' functioning, procedural activities performance. Differences in foreign states' legislation and enforcement practice are huge and quite often competent bodies find it hard to coordinate their actions. Provisions of international law which regulates interstate

relations in global or regional scope partially refer to regulation of the abovementioned issues but, despite the importance of such regulation, another sources of law must be taken into account including national legislation. It is appropriate to develop relevant algorithms related to organization of cooperation in the course of specific crimes investigation.

We would like to mention the as examples of efficient international cooperation during the criminal proceeding with aim to investigate crime. Establishment and activity of international joint investigative teams is a progressive step of international community in the course of criminality tackling.

Activity of international joint investigative teams is performed in coordinated manner through interaction of state competent bodies, its separate structural units and employees: investigators, operatives, experts, prosecutors performing certain tasks. This format of international cooperation is mentioned in Criminal Procedure Code of Ukraine (Article 571) and international agreements.

Taking into account the progressive transformation of legislative standards, we must note that Ukrainian practical experience in this area requires further development.

Tragic air crash of MH-17 "Malaysian Airlines" which took place in Eastern Ukraine on July 17, 2014 with 298 persons deceased joined many countries around the world in its efforts to reveal the truth and resulted in establishment of joint investigative team (JIT) – the first case in Ukrainian history. This team joined representatives of Australia, Belgium, Malaysia, Netherlands and Ukraine and international organizations (International Civil Aviation Organization (ICAO), European Organisation for the Safety of Air Navigation (Eurocontrol), International Criminal Police Organization (Interpol), Europol, European Aviation Safety Agency *(*EASA) etc). Ukraine was presented by experts from Prosecutor-General's Office of Ukraine, Kyiv Research Institute of Forensic Examination, other competent bodies (Чорноус, 2017, p. 36-47).

Official report of Joint investigative team on MH17 case indicates that during an extended period of time 100-200 investigators and experts took part in JIT activities as its members. It took two years to complete the detailed examination of content of thousands of containers with thousands of fragments and pieces. 1448 of these fragments were registered in database as material evidence. 60 requests on legal assistance were sent to over 20 states. 20 different armament systems were studied. Five billion Internet pages were fixed which content had been identified as case-related. Half a million video- and photounits were thoroughly investigated, more than 200 witnesses were interrogated. 150 000 of recorded telephone conversations were examined with brief presentation of its content in reports. In relation to this more than 3500 of these conversations were fully recorded and translated. All these materials are properly recorded in more than 6000 protocols. Today JIT has identified 100 persons who may be in some way related to illegal activity resulting in MH17 crash (Звіт Міжнародної слідчої групи щодо рейсу MH17, http://ukr.lb.ua/news/2016/09/28/346430_ zvit_mizhnarodnoi_slidchoi_grupi_shchodo.html).

But, according to empirical sources, Ukrainian party faced with certain obstacles related to organization of investigation, procedural activities tactics, specialists' involvement and examination commission.

Currently the number of crimes requiring establishment of JITs is increasing (international crimes, crimes of international significance, other crimes with «international» component). But successful performance of the abovementioned

activity, JIT functioning depends on coordinated legal, forensic, organizational, methodological support and awareness of law enforcement staff. One of the key conditions for this activity to be performed is compliance of national legislation and criminal proceeding practice in Ukraine with international standards which will facilitate international integration in law enforcement area.

It means that considerable work must be done including analysis of international agreements provisions, national legislation and its enforcement practice. This problem also relates to practical staff as lack of systematized materials obstructs the use of international cooperation mechanisms and tools in the course of crime investigation.

Conclusions. We recognize the impact of current problems related to legal regulation and crime investigation practice in Ukraine, its compliance with international standards and note that ratification of international agreements and implementation of its provisions in national legislation, adoption of new Criminal Procedure Code of Ukraine, recognition of ECHR decisions as legally valid are the progressive steps leading to core transformation of criminal proceeding structure and further positive modifications in relevant activity. One of the urgent tasks set to ensure further improvement of criminal proceeding practice in Ukraine is harmonization of Criminal Procedure Code of Ukraine to provisions of international statutory acts, development of acts aimed to elaborate the legislative provisions, use of efficient forensic recommendations to implement the international cooperation measures.

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