



REGULATORY FUNDAMENTALS OF THE ACTIVITY OF JOINT INVESTIGATION TEAMS

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Abstract

In the last quarter of the XX century, law enforcement agencies of most countries came across with problems reducing the effectiveness of mutual legal assistance in criminal cases. As a result, new forms of cooperation between countries in the sphere of legal assistance in criminal cases to combat crime emerged. A form of legal assistance is joint interrogation groups. Indubitably, this sphere also has its own set of principles. In this article, the author made a scientific and legal analysis of the regulatory principles of the formation of joint interrogation groups.

Keywords: principle, joint interrogation, cooperation, independence, Locus/forum regit actum, group, confidentiality.

INTRODUCTION

Any legal sphere and institutions are necessarily regulated on the basis of specific regulatory principles and rules. In particular, the activities of joint interrogation groups are one of them. The principles regulating the activities of joint interrogation groups are based on the generally recognized principles of international law, the principles of interstate cooperation in criminal cases, as well as specific guiding principles in international agreements and national legislation regulating this type of cooperation.

D.Umarkhanova stated that “the system of legal regulatory principles of international cooperation in the sphere of criminal cases can be seen as a complex of international law and the national law system” [1]. In legal science, a single system for the organization of joint interrogation groups has not been developed, the reason for this is, on the one hand, the complexity of the subject matter of the research, and on the other hand, the lack of a single regulatory act regulating this issue [2]. As mentioned above, the principles in this sphere are directly confirmed in international acts and national legal norms and in the scientific research of international lawyers.





MATERIALS AND METHODS

The article analyzes the fundamentals and special principles regulating the activities of joint interrogation groups. The analysis directly served as a research source for the principles reflected in international acts and scientific research of international lawyers. Based on the relevance of the current topic, the author has applied empirical, formal-logical, historical-legal, doctrinal legal research and comparative methods.

RESEARCH RESULTS

Several lawyer scholars list the principles of joint interrogation groups as follows. E.P.Grishina recognizes that the activities of joint interrogation groups in the relations between the members, procedural actions, interrogation and operational actions, other interactions are adherent to the following principles such as legality, mutual responsibility, organizational leadership of the group, competence, presumption of innocence, mutual respect, individual rights and interests protected by law and independence [3].

In turn, V.F.Sherbakov emphasizes the following principles as the main principles of legality, economic efficiency, clear definition of tasks and functions, comprehensive use of forces and means taking into account goals and opportunities [4].

It is appropriate to review the principles defined in the above mentioned international act and the principles directly applied in the activities of the joint interrogation groups after a comprehensive analysis of the opinions expressed by lawyer scholars. These principles, based on legal rules, should be strictly followed by the parties participating in the activities or the structure of interrogation groups, because they are a means of contributing to the achievement of a specific an practical goal.

ANALYSIS OF THE RESEARCH RESULTS

The principle of independence. The main importance of this principle is the independence of the interrogative body and the interrogator. In particular, interrogators should not have a personal or professional interest in the persons participating in the proceedings and the interrogative process.

According to lawyer scholars, this principle is the main principle of procedural law [5]. A.R.Vartanov tries to explain this principle in this way: “the independence of the interrogator is a set of organizational and legal rules that allow the interrogator to independently make and implement all the decisions and actions authorized by law” [6].

In general terms, to achieve an “effective interrogation” activity is required to be independent.





The principle of compliance with international acts and national legislation. There is any type of legal activity, which in turn is subject to international legal and normative legal acts that regulate the activity. These acts are important in determining the powers and functions of this activity. Once joint interrogation groups are formed, they are obliged to respect the sovereignty of the operating state (subsequent principle). From this point of view, if the main activity of the interrogation group is carried out in the territory of the partner country, the members of the team are first obliged to comply with international law and the laws of this country. In accordance with Part 3 of Article 13 of the European Convention on Mutual Assistance in Criminal Matters between Member States of the European Union, adopted in 2000, we can see that it is marked as “a) the head of the group must be a representative of the authorized body engaged in the interrogation of the member state where the group operates[7]. The head of the group acts in accordance with the national legislation within the scope of his powers; b) the group carries out its activities in accordance with the laws of the member state in which it operates”. This international act directly protects the interests of the members of the regional organization, but in a general sense, it stipulates that it follows national laws within the framework of state jurisdiction and sovereignty.

This principle is called legality in the national legislation of the Republic of Uzbekistan, and in turn, it defines obedience to the rules of the law in the implementation of procedural actions. In accordance with Article 11 of the Code of Criminal Procedure [8], “judges, prosecutors, interrogators, investigators, defenders, as well as all individuals participating in the criminal proceedings shall strictly comply with the Constitution of the Republic of Uzbekistan, this Code and other normative legal acts of the Republic of Uzbekistan. In addition, we can see that in Article 6 of the Law of the Republic of Uzbekistan “On Operative Search Activities” [9], “bodies performing operative search activities and their employees shall strictly comply with and fulfill the requirements of the Constitution of the Republic of Uzbekistan, this Law and other normative legal acts”.

The principle of confidentiality. It is important to preserve the confidentiality of the applications and complainants, as well as the identity of their witnesses, interrogative data during the group’s activities.

The principle of international cooperation of countries. The combat crime, in particular, the cooperation of states in the fight against transnational crimes is an important procedural process. The role of cooperation in regulating the activities of joint interrogation groups is also incomparable[10]. Because the implementation of the activities of the joint interrogation groups by the countries through mutual



agreement (in this case, the implementation of several actions such as the application of national legal rules, the determination of the composition of the group, the implementation of interrogative actions) is characterized by compliance with the recognized principles and rules of international law.

In explaining this principle in broader sense, some lawyer scholars emphasize that the principle itself covers several principles and rules. For instance, O.I.Bastrikana [11] stated that the international cooperation of countries in turn includes special principles. That is, principles such as non-extradition of political migrants, inevitability of punishment, humanitarianism and protection of citizens.

The principle of reciprocity. This principle is widely applied in bilateral and multilateral international agreements, as well as in the regulation of mutual relations between countries, along with the national legal rules of the contracting states. The provisions of this principle are among the first principles of international law that have survived to this day without any changes[12].

It derives from due to the basis of many ancient philosophical and religious doctrines related to the “golden rule of morality” such as “the way you want people to treat you, so you do to them” or “you do for me – I do for you” [13]. In the modern world, the principle of reciprocity is becoming not only the basis of relations between states, but also the basis of non-diplomatic cooperation mechanisms emerging at the level of international organizations, state governments, state organizations, and legal entities. According to S.P.Sherba, the principle of reciprocity is the most important legal, political and diplomatic principle of international cooperation, and includes a set of general and special rules and procedures for mutual cooperation of competent bodies of states in the sphere of legal assistance in criminal cases [14]. Trying to clarify the essence of the principle of reciprocity, the author paid particular attention to the fact that it is both principle and the rule of custom. It states that it has legal force for the participating countries and defines the obligations of the parties.

The principle of reciprocity is applied in the criminal procedural legislation of the Republic of Uzbekistan as well. That is, in accordance with Article 592 of the Criminal Procedure Code, “...when it is necessary to perform the procedural actions provided for in this Code on the territory of a foreign country, the court, prosecutor, interrogator, investigator shall make a request to perform these actions by the competent body of the foreign country in accordance with the international treaties of the Republic of Uzbekistan or on the basis of the principle of reciprocity” [15]. The application of the principle of reciprocity in the regulation of the activities of the joint interrogation groups is worthy of attention as it will further develop the cooperation between the countries in the sphere of legal assistance.





The principle of mutual respect for jurisdiction and state sovereignty.

According to it, the joint interrogation groups are obliged to respect the jurisdiction and sovereignty of the directly partner countries in the course of their activities. This obligation is not directly reflected in the national legislation of the countries, but it is clearly defined in international acts. For instance, we can see that according to Article 19 of the UN Convention against Transnational Organized Crime, adopted by the UN General Assembly Resolution No. 55/25, November 15, 2000, [16] “the Contracting Party in which such an interrogation is conducted on the territory of the host State shall ensure full respect for its sovereignty”. In addition, according to Article 49 of the UN Convention “Against Corruption” adopted by the UN General Assembly Resolution No. 58/4, October 31, 2003, [17] “...the Contracting Parties concerned shall ensure full respect for the sovereignty of the Contracting Parties in whose territory such interrogation is conducted”. Additionally, the rule of respecting the jurisdiction in the process of cooperation between the states with the above international acts was determined with separate articles.

The dual principle of locus/forum regit actum – It describes the rules that should be applied in the process of providing legal assistance. If the rules are governed by the locus regit actum, the procedural rules (lex loci) of the requested (executive) state apply; and the rule of forum regit actum directly requires the application of procedural rules (lex fori) of the requesting state.

The principle of locus regit actum is based on the concept of sovereignty. As mentioned above, in criminal proceedings, foreign countries do not accept the foreign laws. This principle requires that the collection of evidence shall be conducted in accordance with the law of the place where the crime was committed, and if it is considered in the context of legal assistance, it is the requested state, that is, the state from which legal assistance is requested.

The assistance requested as legal assistance is defined by the procedural rules of the requested country and the evidence obtained as a result of these national procedural rules is sent to the requesting country. However, sometimes this is not so acceptable, because any procedural actions or rules may be legal and fair in one’s legal framework (jurisdiction), while at the same time it may not be found as an acceptable rule in another jurisdiction.

The principle of forum regit actum requires the application of the law of the requesting state in the provision of legal assistance, that is, the requesting state determines the rules and procedures to be applied by the executing state. The application of procedural rules of a foreign country in the provision of legal assistance aimed at ensuring the successful acceptance of the collected evidence and its use in the criminal



proceedings of the requested country are important. The collection of the international acceptable evidence is becoming increasingly important, especially in the fight against organized crime. Nevertheless Krisztina Karsai listed several main shortcomings of the principle of forum regit actum [18].

- a) there is no mandatory recognition of the admissibility of the evidence collected in accordance with the principle of forum regit actum;
- b) the degree of acceptance of this principle by partners is limited and it can be applied only in one-on-one relationships;
- c) clear rules have not been formulated regarding the legality of methods of evidence collection;
- d) the principle of forum regit actum applies only to evidence collected, that is, it does not apply to evidence that is already established and available.

It is extremely difficult to correctly apply the rules of a foreign country in the realization of legal assistance in criminal cases. Theoretically, such difficulties can be overcome by using special instructions, explanations, organization of bilateral trainings and other such innovative means of integration. However, the development of integration processes in legal assistance at various levels, the origin of the principles of mutual trust, mutual recognition and reciprocity, indicate that the states considered it acceptable to apply the rules of the principle of locus regit actum in the implementation of cooperation. In general, the application of the rules of forum regit actum in the activities of joint interrogation groups shows disrespect for state sovereignty and jurisdiction.

The principle of nullum crimen, nulla poena sine lege. The principle is known as the principle of legality, it is stipulated in the Article 15 of the International Covenant on Civil and Political Rights [19]. According to it, no one shall be found guilty of a crime unless at the time of its commission the act or omission constituted a criminal offense under national law and international law. Therefore, the existence of any crime depends on the existence of legal document defining a particular act as a crime. Determining the punishment for such crimes means that it is necessary to take into account the possible punishment measures for the crime committed in the legislation in force at the time of its commission. The purpose of this principle is to ensure the clarity and predictability of legislation. The application of this principle within the framework of joint interrogation groups is noteworthy as the type of crime is indicated in the cooperation agreement between the states. Because the interrogation groups formed between the countries carries out its activity on the acts provided by the criminal legislation of the two countries.



The principle of “golden time”. The experienced interrogators often use the term “golden time”. It reveals the essence of the principle that it is necessary to carry out operative and efficient actions in the interrogation, otherwise there is risk of losing materials and evidence important to the interrogation. It is necessary to operatively start the cooperation in the activities of joint interrogation groups and the group’s effective implementation of its activities. A number of important procedural actions can be carried out, such as obtaining full statements about the crime from witnesses, collecting the recordings from surveillance cameras before they are deleted, and even obtaining various information for the implementation of forensic activities if necessary.

The principle of planning interrogative actions and coordination of operational search activities. This principle includes rules that cover all stages of the interrogation process and is implemented by the group leader. This principle indicates that the work of the joint interrogation group should be carried out in a certain orderly and sequential manner, rather than in a chaotic manner.

A timely and carefully developed plan provides the following opportunities: development of the main lines of interrogation; to determine the mechanisms and sequence of interrogative actions and rapid search activities; provision of planned interrogative actions and operational search activities with relevant acts; efficient use of forces, means and time necessary to perform a certain amount of operative search affairs.

Another peculiarity of planning is that the interrogator does not have accurate information about the scope or content of the work even at the beginning of the criminal investigation or at the end of the preliminary stage. Based on this situation, the quality and duration of the interrogation directly depends on how the interrogator plans and organizes the work. [20]. In a general sense, planning, which is one of the elements of the organization of interrogative activities, ensures the effectiveness of interrogation and other actions.

The principle of the leading role of the head of the interrogation in the joint interrogation group. This principle means that the head of the joint interrogation group should have a large amount of procedural and management powers, as well as rational management of the group, proper use of powers. The granting of such powers and authority is considered to be fully responsible for the fair interrogation of the committed crime by the group, first of all, accepting the criminal case. Secondly, the leader independently makes all decisions on the implementation of interrogative actions and inquiry actions in the criminal case under the interrogation.





The principle of personal responsibility of group members for the assigned tasks. This principle embodies the rules of full and conscientious performance of the assigned duties of the members of the interrogation groups. Compliance of group members with this principle prevents them from avoiding the performance of assigned tasks and assigning their tasks to other members of the group.

The principle of timely formation of a joint interrogation group. The activity of the joint interrogation groups is fully dependent on its planned time. If the group's activities are organized later than necessary, this in turn makes it more difficult to investigate the crime in the future, to prove the guilt of the individuals who committed it and to impose a fair punishment [21]. As a result of the timely organization of the group's activities makes it possible to create the necessary conditions for the protection of the legal interests of the countries that have reached an agreement.

CONCLUSION

It is known from the above analysis that the work of joint interrogation groups is carried out in a collective manner within the framework of cooperation of two or more countries, in the territory of the country that concluded the agreement. The interrogation group is formed only after a legal request is sent. The agreement concluded between the states reflects information about the purpose, term and composition of the group members working in the interrogation group. Procedural requests are limited once the terms of the contract have been agreed upon and the contract has entered into force. This provides a great advantage for the activity of the interrogation group.

On the other hand, it allows the competent authorities to be directly informed about the progress of the interrogation and the judicial process, which at the same time serves to avoid problems related to jurisdiction and *ne bis in idem*.

In addition, the principles governing the activity of joint interrogation groups are formed based on specific characteristics. Including:

- 1) It has complex characteristics, that is, we can observe the functioning of international and national legal rules in the system in the implementation of cooperation;
- 2) It is necessary to respect and value human rights in the fight against crime and in imposing a just punishment on the perpetrators.
- 3) The activities of joint interrogation groups are regulated with both international and national legislation.





Based on the above characteristics, the principles regulating the activity can be classified in the following order:

1. General theoretical principles: the principle of independence, the principle of confidentiality, the principle of compliance with international and national legislation, the principle of reciprocity.
2. Principles related to generally recognized principles of international law: the principle of international cooperation of states, the principle of mutual respect for jurisdiction and state sovereignty.
3. Special principles: the principle of locus/forum regit actum, the principle of nullum crimen, the principle of nulla poena sine lege, the principle of "golden time", the principle of planning investigative actions and coordination of operative search activities, the principle of the leading role of the head of the interrogation in the joint interrogation group, the principle of personal responsibility of group members for the assigned tasks, the principle of timely formation of a joint interrogation group.

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