

Proper observance of the principle of reciprocity as a guarantee for the sustainable development of cooperation between the subjects of cross-border territories in the field of criminal justice: the moral and legal aspect

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Abstract. The article discusses regulatory legal acts, bilateral treaties, agreements governing international cooperation in the field of criminal justice. Based on their analysis and theoretical positions, the concept of “reciprocity” is formulated. And also, taking into account the needs of practice, proposals for the further improvement of legal acts on state cooperation in criminal justice based on the principle of reciprocity have been developed.

Keywords: principle of reciprocity, criminal justice, agreement, international cooperation, treaty

1. Introduction

In the context of the world integration of social relations, sustainable globalization tendencies, the need arises to unite the efforts of various states in the fight against such harmful social phenomena as crime. Criminal proceedings of Russia as the main means of such a struggle have in their arsenal the possibility of international cooperation. It can be provided both on the basis of an international treaty with a foreign state, and in the absence of one: on the basis of the so-called “principle of reciprocity,” the implementation of which in law enforcement practice is not so straightforward.

The legal basis for international cooperation in criminal proceedings based on the principle of reciprocity is part 3 of article 1 of the Code of Criminal Procedure of the Russian Federation. According to this part of the article, the generally recognized principles, norms of international law and international treaties of the Russian Federation are an integral part of the legislation of the Russian Federation governing criminal proceedings.

In accordance with part 1 and 2 of article 453 of the Code of Criminal Procedure of the Russian Federation, the interrogation, examination, seizure, search, forensic examination, or other procedural actions in a foreign state are allowed on the basis of the principle of reciprocity. This principle is confirmed by the specially authorized state bodies by a written undertaking to render legal assistance on behalf of the Russian Federation to a foreign state in the conduct of certain legal proceedings.

The Russian Federation is a supporter of the implementation of international cooperation in the fight against crime, as evidenced by the long experience of such cooperation (more than 100 years). Russia is a party to more than 20 multilateral treaties, as well as more than 60 bilateral treaties on the provision of legal assistance in civil and criminal matters concluded with countries of different

continents and different legal systems (Kazakhstan, Moldova, Japan, India, USA, Canada, Mongolia, Colombia, etc.) [1].

The purpose of this study is to analyze the institutional and legal framework of international cooperation of states in the field of criminal justice. Also, the task is to search for ways to improve it by finding and legislatively securing the uncompromising basis of this cooperation.

2. Materials and Methods

The study on the implementation of the principle of reciprocity in the framework of the arbitration and civil procedure has allowed a number of individual researchers to come to the conclusion that reciprocity is not a legal principle. Along with a set of arguments, the one is also stated, according to which neither the Civil Procedure Code of the Russian Federation, nor the Arbitration Procedure Code of the Russian Federation includes generally accepted principles of international law among the legal sources of procedural rules, limited only by international treaties (Part 2 of Article 1 of the Civil Procedure Code of the Russian Federation; part 3 of article 3 the Arbitration Procedure Code of the Russian Federation) [2]. However, in criminal proceedings, as we have already noted, a different situation exists, which allows us to speak about the possibility of implementing international cooperation in the field of criminal justice on the basis of the principle of reciprocity.

The undoubted argument in favor of the above can be the fact that there are a number of agreements on assistance in criminal matters, in the title of which the term “mutually” is directly fixed. Such contracts, for example, are:

- The European Convention on Mutual Legal Assistance in Criminal Matters (concluded in the city of Strasbourg on April 20, 1959) [3];
- The Treaty on Mutual Legal Assistance in Criminal Matters between the Russian Federation and the United States of America (signed in Moscow on June 17, 1999) [4].

And even in those treaties where the term “mutually” is absent in the title; however, there is an indication of the mutual nature of cooperation in the text of the treaties themselves. For example, such contracts are:

- The Treaty between the Russian Federation and the Republic of Poland on Legal Assistance and Legal Relations in Civil and Criminal Matters (signed in Warsaw on September 16, 1996) [5];
- The Treaty between the Russian Federation and the Republic of Latvia on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters (signed in Riga on February 03, 1993) [6].

In addition, there is a third group where the term “mutually” is not found in the text of the agreement. For example, the Treaty between the Russian Federation and the Kingdom of Spain on the provision of legal assistance in criminal matters (signed in Moscow on March 25, 1996) [7].

The results of research by scientists who have devoted their monographic works to these problems analyzed by us are evidence of the recognition of the principle of reciprocity in the field of international cooperation of states. Such works include: L. A. Lazutin's doctoral dissertation; candidate dissertations of V. V. Milinchuk, M. V. Davydova, B. M. Rakhimov, and K. E. Mikhaylenko.

During the study, general scientific methods were used, including analysis, synthesis, comparison. The dialectical materialist and spiritual-cultural approaches were also used by us. Among other scientific methods used by us, we would like to note the following: (a) the formal-legal method; (b) the method of interpretation of law, which allows to identify both the literal and systemic meaning of legal regulations and make an overall picture of the aspects and aspects of the legal regulation of international cooperation based on the principle of reciprocity; (c) the historical and legal method was used in determining the theoretical and methodological foundations of the legal framework for international cooperation, carried out on the basis of the principle of reciprocity; (d) the social and legal method allowed to determine the effectiveness of the rules governing the current issues of legal regulation of international cooperation in the field of criminal proceedings on the basis of the principle

of reciprocity; (e) the legal modeling method allowed to determine the functional aspects of the principle of reciprocity in the provision of assistance in criminal cases.

3. Results

The implementation of the principle of reciprocity is not free and depends on a number of conditions. For example, in the absence of an international treaty, a party refuses to execute the request if:

1. Executing the request may harm sovereignty, security, public order or other interests;
2. The request concerns an act that is not a crime under the law of the requested country;
3. There are reasonable grounds to believe that the request is aimed at the prosecution, condemnation or punishment of a person on grounds of political, religious, or other beliefs, ethnic or social origin, race, sex, or other grounds.

In accordance with Part 2 of Article 460 of the Code of Criminal Procedure of the Russian Federation, a request for the extradition of a person on the basis of the principle of reciprocity is sent in the following way. In accordance with the legislation of both states, the act in connection with which the request for extradition was sent is criminal and it is punishable for its commission or imprisonment for at least one year or more severe punishment – in the case of extradition for criminal prosecution; or a person has been sentenced to imprisonment for a period of not less than six months – in the case of extradition for execution of the sentence.

According to the Resolution of the Plenum of the Supreme Court of the Russian Federation of October 10, 2003 No. 5 (revised March 5, 2013) on Application by Courts of General Jurisdiction of Generally Recognized Principles and Norms of International Law and International Treaties of the Russian Federation, the generally recognized principles of international law should be understood as the fundamental imperative norms of international law accepted and recognized by the international community of states as a whole, deviation from which is unacceptable.

We believe A. Kh. Ajiev rightly defines the legal nature of the principle of reciprocity as the interrelation of the principles of cooperation of states, their sovereign equality, non-intervention and the principles of international treaty law. At the same time, he points out that the mutual realization of the interests of the states-parties to an international treaty expresses the moral and political aspect of the principle of reciprocity in the treaty relations between states [8].

In our opinion, reciprocity acts as a moral category. So, reciprocity as a social factor was known in antiquity. When coming out of the talion, it took shape in the “golden rule”, which: “(Do not) do to others as you (do not) wish them to do to you” [9]. Starting from the 6th-5th centuries BC, the “golden rule” has been comprehended within the framework of various cultures and trends to the present day.

Human life is a series of opportunities for mutually beneficial cooperation. So, the hunters hunted together with the aim of obtaining a larger prey, which cannot be obtained alone. For millions of years, our ancestors have adapted to achieve positive results for their benefit, and at the same time, to provide conditions that exclude parasitism. Those people whose moral emotions called to play by the rules of reward for a service reached and received more than those who used other strategies, for example, “helping anyone who needs”. This strategy led to exploitation, and the “take it, but don't let it” strategy could work against a specific person only once.

Evolutionary theorists talk about the gene of egoism, which implies that every animal has as its goal nothing more than to distribute a copy of its gene. However, one of the most important meanings of the origin of morality is that this gene gave impetus to the development of a grateful being. Provided that other such creatures also show their generosity towards him. Altruism towards relatives does not constitute any mystery. However, altruism in relation to strangers is a very mysterious phenomenon, from the point of view of the theory of evolution.

In 1971, a big step was made in resolving this issue. The work of Robert Trivers on the theory of reciprocal altruism was published. Trivers noted that the evolution could create altruism among those who can remember their previous interactions. People are definitely such a kind. Usually, we are

gracious with people when we meet them for the first time, but afterwards we are very selective: we unite with those who are gracious with us and avoid those who try only to benefit from us [10].

People feel sympathy towards those who show them signs of trusting reciprocity. And on the contrary, people feel a sense of anger, contempt, or even disgust for those who are trying to deceive them or get their own benefit at their expense [11].

Thus, if all the conditions within the framework of the implementation of the international principle of reciprocity are met by one party, but the request is not fulfilled by the other, a sense of injustice arises, which is a trigger for such a moral basis as “reciprocity”. If reciprocity is violated, then people view it as a *fait accompli*.

4. Discussion

When discussing the issues related to the development of international cooperation of states in the field of criminal justice, the most important are the following: the multipolarity of the world; its multi-confessionalism; differences of legal systems; differences in the level of economic, cultural and political development of states, etc. Their existence does not lead to an agreement between states on the unity of views on the regulation of mutual cooperation in the joint fight against crime. Of course, we cannot disagree with this provision. However, based on an analysis of the legal framework, existing agreements and the ongoing law enforcement practice between countries in the field of criminal justice, we propose the following. In order to increase the effectiveness of the analyzed cooperation, we suggest using a neutral approach as its basis (we believe it is acceptable for a completely different audience), which is based on “reciprocity”. In order to implement the proposed concept of state cooperation, we should define its elements at the theoretical, legislative, and law enforcement levels. In our opinion, the following is necessary:

- Recommending that “reciprocity” is introduced as the main guiding principle into the national legislation (normative legal acts) of states governing relations in the field of international cooperation;
- Offering to consider “reciprocity” as a moral category;
- Formulating and proposing to consolidate the concept of the “principle of reciprocity” in the content of existing conventions on human rights and freedoms;
- Supplementing the content of existing treaties on international cooperation of Russia with other states with the principle of reciprocity;
- Developing in the legal framework governing the implementation of the principle of reciprocity the organizational and legal conditions that would ensure a proper compliance with this guideline;
- If there is no agreement on international cooperation between states in the field of criminal justice, then it is necessary to invite them to give a written promise that when applying for legal assistance, the requesting state undertakes to reciprocate;
- To propose to fix in the national legislation (legal acts) of the states regulating the issues of international cooperation the requirement of legality to the request for legal assistance in the field of criminal proceedings. Moreover, its content (request) should not encroach on the sovereignty of another state.

5. Conclusion

In the modern world, there are terrorist and extremist threats, transparency of borders between most countries and insufficient legal support in matters of international cooperation in criminal justice due to opposition of political views at the state level. This disagreement should be leveled, based on the principle of reciprocity.

The formula of the principle of reciprocity is pretty simple: the legitimate realization of the will of two or more states is interdependent while respecting their legal equality and freedom of expression [12].

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