

Some of issues of time-limits of the of letters rogatory enforcement on criminal cases for mutual legal assistance between the states

Asgarova Matanat Pasha

Candidate of Juridical Sciences, Associate Professor

Counselor of Justice

Academy of Justice of the Ministry of Justice of the Republic of Azerbaijan

Abstract. The article examines the issue of timely execution of letters rogatory in criminal cases in the order of legal assistance in criminal cases based on the requirements of the reasonableness of the terms of the proceedings. The legislation of the Republic of Azerbaijan and international documents on the provision of legal assistance in criminal cases are analyzed. To improve the legislation on the provision of legal assistance in criminal cases, the author proposes the introduction of specific changes.

Keywords: mutual legal assistance, letter rogatory, reasinability, guarantee speedy, legal procedure, time-limits

Introduction

In the context of globalization and integration, the development of communication means, transparency of borders and other technical capabilities enhance the transnational nature of crime and, accordingly, determine the need for legal assistance between states.

The effectiveness of legal aid in criminal cases with foreign elements sometimes depends on the timely and quality execution of letters rogatory. According to paragraph 3 of art. 9 of the Covenant on Civil and Political Rights and art. 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, everyone who is arrested or detained has the right to trial within a reasonable time or to release pending trial.

Purpose of the study – to analyze international acts and national legislation of individual states and identify elements that affect the timing of letters rogatory and develop proposals to improve the speed of execution.

Materials and methods- the research analyzes the scientific works of leading scientists, international acts on human rights, the provision of legal assistance between states, the legislation of the Republic of Azerbaijan and the Russian Federation. Methods such as analysis, synthesis, historical, comparative jurisprudence were used.

Results and discussion. Despite the fact that the Criminal Procedure Code of the Republic of Azerbaijan (hereinafter referred to as the CPC RA) and other legal acts do not contain the concept of "reasonable time", but contains separate provisions related to ensuring the speed of court proceedings. Article 8.0.3 of the CPC also refers to the tasks of criminal proceedings as prompt disclosure of crimes, comprehensive, complete and objective clarification of all the circumstances associated with criminal prosecution.

Letter Orders in the RA are executed in accordance with the CPC and the Criminal Legal Assistance Act, and are executed in the manner prescribed by the RA legislation. Therefore, the CPC's requirement for prompt crime detection also applies to the execution of letters rogatory.

According to art. 62 of the Chisinau Convention, orders are executed within the time period provided for by the legislation of the requested party and, upon agreement of the competent institutions of justice of the parties, can be extended.

Bilateral agreements of the RA on legal assistance and legal relations in civil, family and criminal cases when regulating the procedure for the execution of letters rogatory, provide for the notification of the institution from which the order originates, about the time and place of execution of the order, by the institution of justice to which the order is addressed.

But in practice, time passes before the requested side receives the request and the requesting side receives a response. Some more problems associated with the procedural terms of legal proceedings also affect the timing of the execution of letters rogatory of foreign states.

The CPC provides for procedural deadlines for the execution of individual investigative and judicial actions. The CPC does not use the term "reasonable time", but art. 48 CPC is dedicated to ensuring the promptness of prosecution proceedings and, accordingly, prosecution proceedings must be started and completed within the time frames stipulated by the CPC in such a way that the timely receipt and examination of evidence is ensured; the persons did not wait for an excessively long time to be charged, to consider the case and to restore the violated rights.

Violation of procedural terms, according to art. 10.5 CPC, the execution of procedural actions and the adoption of decisions, entails their recognition as invalid, unenforceable.

One of the ways out of the situation of violation of procedural deadlines is to extend them, the scope of which is determined by law. For example, the term of the preliminary investigation may be extended according to the complexity of the criminal case by the corresponding higher prosecutor on the basis of a reasoned request from the investigator and the submission of the prosecutor in charge of the procedural direction of the preliminary investigation, etc.

When considering the issue of extending the period of preliminary investigation, a higher-ranking prosecutor must verify the legality and validity of the petitions and representations; evaluate the activities of the investigator and prosecutor.

By the Decree of the President of the RA dated January 19, 2006, № 352, the Supreme and Appellate Courts were recommended to organize the study of the case law of the European Court of Human Rights (hereinafter the ECHR) and take them into account in judicial practice. Therefore, Azerbaijani law enforcement practice should take into account the requirement of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the European Convention) and precedents related to the right to a trial within a reasonable time.

Despite the absence in the legislation of a special indication on a reasonable time frame for a trial, there are separate departmental acts regulating the application of a reasonable time frame in court proceedings. The Plenum of the Supreme Court of the RA dated March 30, 2006, № 5, clarified that when administering justice, courts must take into account the right to a fair and public hearing of a case within a reasonable time by an independent and impartial court established by law. The purpose of determining a reasonable time limit is to protect the parties in the civil proceedings, as well as the accused in the criminal proceedings, from undue delay, and to achieve the effectiveness of justice. When calculating these time limits in relation to criminal cases, the "reasonable time" covers both the time frame for the preliminary investigation and the time frame for the trial before sentencing. The "reasonable time" in each case should be determined depending on the nature, complexity of the particular case, the applicant's behavior in connection with the process.

The nature of a particular case is its qualitative indicator and "as you know, the nature of the social danger of a crime is determined by the object, the content of the damage, the form of guilt and such methods of action (inaction) as violence, deception, group, use of official position" [9, p.107].

The practice of the ECHR has determined the criteria for assessing the "reasonable time" for the consideration of the case. These include the complexity of the case; the behavior of the court and the parties to the case - the authority, the behavior of the applicant himself, the significance of the case for the applicant. ECHR in the case of Fedorov and Fedorova v. Russia dated October 13, 2005 indicated that "28. The Court reiterates that the reasonableness of the time frame for the consideration of the case must be assessed in the light of the circumstances of the case on the basis of the criteria established in the jurisprudence of the European Court, in particular: the complexity of the case and the conduct of the applicant and the relevant state authorities [2].

In the judgment in Kormacheva v. Russia on 29 January 2004 "51. The Court reiterates that the unfoundedness of the lengthy proceedings must be assessed in the light of the circumstances of the case and the criteria established by the court's case-law, in particular, the complexity of the case, the conduct of the applicant and the relevant authorities, and what exactly was the subject of the applicant's dispute [8].

The ECtHR recalled that the "reasonableness" of the length of the proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of

the case, the actions of the applicant and the relevant authorities, and the relevance of the subject matter to the applicant. For example, the judgment of the Grand Chamber of the ECHR in the case "Comingersoll S.A. v. Portugal" states that "19. The reasonableness of the time limit for the consideration of the claim is determined in the light of the circumstances of the case with reference to the criteria set out in the case-law of the European Court, in particular the complexity of the case, the behavior of the applicant and the relevant state authorities, as well as the importance of the dispute for the applicant [4].

When assessing the reasonableness of the duration of the trial, the ECHR proceeds from the criterion of compliance and sufficiency of the motives of the judicial authorities. The existence of compelling reasons to suspect the arrested person of committing a crime is a sine qua non condition for the lawfulness of the detention, but after a while this is no longer enough; the Court must then determine whether the rest of the judicial authorities' motives justify the deprivation of liberty. If these reasons are found to be "appropriate" and "sufficient", the Court will also take into account whether the national authorities exercised "due diligence" during the procedure. Therefore, the decisive factor in assessing the reasonableness of the proceedings is the behavior of the judicial authorities in this case [10].

The legislation of the RA contains requirements for ensuring the speed of criminal prosecution and the relevant departmental acts governing the application of a reasonable time in criminal prosecution, and these provisions also apply to the execution of letters rogatory from foreign states. And in some cases, special departmental acts are adopted, detailing a reasonable time frame for the execution of letters rogatory. For example, the order of the Attorney General of the RA dated 14.02.2007 № 10/13 provides for the execution of letters rogatory within 10 (ten) days. In exceptional cases, in connection with the execution of the request, in cases of the need for numerous and complex actions, this period can be extended by the corresponding Deputy Prosecutor General, taking into account the conclusion of the Department, up to one month.

When extending the term, the criminal procedural legislation of the RA uses the terms "complexity" and "special complexity" of a criminal case. The legislator does not disclose the essence of these concepts. In practice, the ECHR developed criteria for the complexity of the case - the presence of public (public) interest, the presence of serious grounds to suspect the arrested person of committing an offense; an unexpected and unforeseen increase in the volume of the case materials, the number of investigated episodes, the conduct of complex examinations, the summoning and interrogation of a large number of witnesses, and some other circumstances.

The practice proceeds from the fact that it is not possible to give a closed list of criteria for determining the "complexity" and "special complexity" of the case. The criteria depend on the corpus delicti and the circumstances of the criminal case.

The criminal legislation defines the criteria for classifying crimes into crimes that do not pose a great public danger, less serious crimes, serious crimes and especially serious crimes. Sometimes one can

agree with the equating of complex criminal cases and serious crimes, for which an extended period of consideration is determined. But, proceeding from the practice and the number and volume of procedural actions in the case of grave crimes and in the case of less grave crimes, etc., we consider this equalization to be incorrect. But, we believe that it would be appropriate, at the level of the Supreme Court, in whose authority, according to Art. The Law "On Courts and Judges" of June 10, 1997 № 310-IG is included "in accordance with Article 131 of the Constitution of the RA, gives explanations to the courts on issues of judicial practice" giving explanations to the courts on the complexity and special complexity of the case.

One of the criteria for assessing the "reasonable time" for the consideration of the case is the behavior of the court and the parties to the case - the authority, the behavior of the applicant himself. We agree with K.V. Volynets is that "...it is necessary to take into account not only the behavior of the applicants (who in criminal proceedings are most often the accused), but also of other persons involved in criminal proceedings, since often the process of considering a case is delayed due to the dishonesty of other participants - victims, witnesses, defenders and even public prosecutors"[1, p.183].

V.M. Polukhin identifies subjective and objective criteria for assessing the reasonableness of the term. Objective criteria for assessing the reasonableness of the term of criminal proceedings include the legal and actual complexity of the criminal case, the sufficiency and effectiveness of the actions of the court; the total duration of the criminal proceedings. Further, he proposes to reveal the essential features of the "legal and factual complexity of a criminal case" [16].

According to Ryabtseva E.V. the principle of the reasonableness of the criminal process lies in the need for subjects to be within the boundaries excluding the possibility of abuse of subjective rights, and to correlate their actions with the goals of criminal law models of behavior of participants, the rights, freedoms and legitimate interests of others, as well as society and the state [12].

Urban V.V. argued by the fact that the content of the principle of a reasonable time frame for criminal proceedings is made up of two interrelated elements: the requirement to carry out criminal proceedings within a reasonable time, which is implemented both in the legislative setting of time limits in criminal proceedings, and by the law enforcement officer in the course of his procedural activities, and legal proceedings within a reasonable time, the guarantees for the implementation of which is a combination of preventive, compensatory and other remedies [21, p.23].

A reasonable time period includes the period from the moment the criminal prosecution starts until the moment it is terminated or a conviction is issued, taking into account such circumstances as the legal and actual complexity of the criminal case, the behavior of the participants in the criminal proceedings, the sufficiency and effectiveness of the actions of the court, the prosecutor, the head of the investigative body, investigator, head of the inquest unit, body of inquiry, inquirer, carried out for the purpose of timely implementation of criminal prosecution or consideration of a criminal case, and the total duration of criminal proceedings. In the Court's opinion, a "reasonable time" in criminal matters is calculated from

the moment when "charges are brought". This can happen before the case is referred to a court, for example, from the date of detention, from the date on which the person in question was officially notified that criminal prosecution would be carried out against him, or from the date of the commencement of the preliminary investigation and, finally, the total duration. trial in the case and non-execution of a judicial act.

Thus, we are also talking about a reasonable period of criminal prosecution, including the stages of initiating a criminal case, carrying out a preliminary investigation, considering a criminal case on appeal, when the court can make a completely new decision against a person, including completely exempting from criminal prosecution.

The function of a prosecutor arises from the need to protect the constitutional rights of a person and citizen, to carry out criminal prosecution and to supervise the legality of decisions taken by the preliminary investigation bodies.

We agree with V.A. Sementsov, A.P. Sheremetyev. in the fact that "The calculation of a reasonable period of criminal proceedings should begin with the detection of signs of a crime and end with the termination of criminal prosecution or entry into force" [18, p. 174].

Art. 48. The CPC ensures the promptness of the criminal prosecution in such a way that the criminal prosecution must be initiated and completed by an inquiry officer, investigator, prosecutor or court within the time limits provided for by this Code. The law requires that any criminal case from the moment of initiation must be sent to the court along with the indictment within the time frame, or the criminal prosecution must be terminated. Ensuring the speed of proceedings under the Azerbaijani legislation covers the pre-trial process and the trial of the case. The stipulated CPC provision encourages the investigator, investigator and judge to complete the process within the stipulated time frame and guarantees the right of the accused, the victim, to a reasonable time for the proceedings. But, on account of the violation of ensuring the speed of criminal proceedings, article 48.4 of the CPC directly defines only cases of keeping a person under arrest during pre-trial proceedings over a period of time, for which he has the right to receive monetary compensation for moral damage suffered. The issue of compensation is resolved regardless of the decision adopted in the case, in the manner of civil proceedings. From the analysis of article 48 CPC it appears that the law leaves other cases of violation of ensuring the speed of proceedings in the criminal prosecution out of the spotlight.

One of the criteria for non-violation of the CPC's provision on ensuring the speed of criminal proceedings is the indication of article 146.3 of the CPC that the collection of evidence in its entirety should not lead to an extension (delay) of the preliminary investigation or trial.

Ensuring the promptness of criminal proceedings does not apply to the principles or conditions of criminal proceedings provided for in Chapter II of the CPC, and therefore the requirement of article 9.2 of the CPC that violation of the principles or conditions of criminal proceedings in the cases established by

this Code may lead to the invalidity of the completed Proceedings on criminal prosecution, to the cancellation of decisions taken in its course, or to the conclusion about the lack of probative value of the collected materials, does not apply to it. There is another requirement of the CPC in article 125.2, according to which it is unacceptable to accept as evidence in a criminal case information, documents and things obtained with the deprivation or restriction of participants in criminal proceedings of their legally guaranteed rights in violation of constitutional human and civil rights and freedoms or other requirements of this Code that should or may affect the validity of this evidence. The law, in connection with the violation of speed, connects the inadmissibility of accepting in the form of evidence in a criminal case information, documents and things obtained in violation of ensuring the speed of production, with the influence and the possibility of influence of these violations on the validity of evidence. If violations related to the speed of criminal proceedings cannot affect the reality, they are allowed. Another problem is the validity of the evidence. The CPC does not define criteria for the validity of evidence. According to art. 145 CPC each piece of evidence should be assessed according to its belonging, feasibility, reliability. And all the evidence collected in the criminal prosecution, in their totality, must be assessed to resolve the prosecution on the basis of their sufficiency. Here, the law also does not require an assessment of reality.

The new philosophical encyclopedia defines reality as an objective reality, as an actually existing being that realizes certain historical possibilities; the concept is also used in the sense of true being, in contrast to appearance. In philosophy of the 16-18 centuries reality is interpreted as a set of material bodies that exist objectively in space and time and are clearly given in perception [13].

Based on the above concept, the validity of evidence can be defined as existing objectively in space and time and visually data in perception. According to art. 125.1 CPC validity acts as a criterion for the admissibility of evidence. Here we are talking about no doubt about the validity of the evidence. According to this article, other criteria for the admissibility of evidence are the absence of doubt about the source of education and the circumstances of obtaining evidence.

Let's return to the violations related to the speed of criminal proceedings, which cannot affect the reality. Based on the above concepts of reality, we mean violations that exist objectively in space and time and visually data in perception.

Azerbaijani legislation does not provide for the right of the accused, the victim and other participants in the criminal process to apply to the prosecutor in charge of the procedural investigation and the chairman of the court and other instances in case of violation of the promptness of the criminal prosecution.

International acts and national laws of some states allow the use of a hearing in the mode of videoconferencing only for receiving interrogations and mainly for obtaining testimony. We believe that for the speed of execution of letters rogatory, the use of videoconference in a face-to-face confrontation between a witness, a victim, a suspect and an accused, both among themselves and in any combination of

them, is a promising area of legal assistance between states between all possible and requires its legislative decision at the level national legislations.

Conclusion

Summarizing the results of the research, we come to the conclusion that in order to accelerate the execution of letters rogatory in the order of legal assistance between states in criminal cases, which are mainly regulated by the domestic legislation of the requesting country, a legislative solution is required for the issue of execution of letters rogatory in a short time. Legal aid between the member states of the Council of Europe requires both the application of the criterion of reasonableness in criminal proceedings and to letters rogatory in criminal matters. We believe that in order to apply common concepts, to simplify mutual understanding in the provision of legal assistance between states in the context of the integration of legal systems and legal systems of states, including, it would be advisable to rename article 48 of the CPC to "Reasonable time frame for criminal proceedings", which will provide for criteria for a reasonable period of proceedings, based on the precedent law of the European Court of Human Rights, and the right of participants in criminal proceedings to appeal in case of violation of the provision of speed at the pre-trial stage and at the stage of the trial. A reasonable time frame for criminal proceedings is one of the guarantees of the effectiveness of legal proceedings, the violation of which also entails a violation of such a fundamental right as the right to a fair trial. We believe that in order to further improve legal assistance between states in criminal matters, it is necessary to provide in bilateral treaties on legal assistance between states and special provisions related to specific deadlines for the execution of letters rogatory or direct appeal to domestic authorities carrying out letters rogatory from foreign judicial authorities, with the obligatory preservation of the supervision of the domestic central authority or the use of video conferencing during admission and confrontation.

References

1. Volynets K.V. Some problems in the legal regulation of the principle of "reasonable term of criminal proceedings" // Bulletin of the Udmurt University. Economics and Law. 2013. Iss. 1, P.181-187.
2. Law of the Republic of Azerbaijan "On Legal Assistance in Criminal Cases" dated June 29, 2001, № 163-IIQ // <http://www.zewo.ru/laws/163-iiq.html> (access date 19.07.2014).
3. Law of the Republic of Azerbaijan "On Courts and Judges" dated June 10, 1997 №310-IQ// <http://www.zewo.ru/laws/0310-iq.html> (access date 19.07.2014).
4. "Comingersoll S.A." against Portugal" (Comingersoll S.A. v. Portugal), complaint N 35382/97, § 19, ECHR 2000-IV) // <http://www.lawmix.ru/abrolaw/8311> (access date 19.07.2014).
5. Constitution of the Republic of Azerbaijan / Official site of the President of the Republic of Azerbaijan // <http://ru.president.az/azerbaijan/constitution> (access date 19.07.2014).
6. Convention for the Protection of Human Rights and Fundamental Freedoms // Official website of the Council of Europe // conventions.coe.int/treaty/rus/treaties/html/005.htm (access date 19.07.2014).
7. Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters. Chisinau, October 7, 2002 // Official site of the CIS Executive Committee // <http://www.cis.minsk.by/page.php?id=614> (access date 19.07.2014).
8. Kormacheva v. Russia (Application № 53084/99) // europeancourt.ru/.../ECHR_Kormacheva_v_Russia_29_01_2004.doc (access date 19.07.2014).

9. Kuznetsova N.F. Problems of qualification of crimes: Lectures on the special course "Fundamentals of qualification of crimes" / Sci. ed. and foreword. Academician V.N. Kudryavtsev. - M.: Publishing House "Gorodets", 2007. - 336 P.
10. Letellier v. France Judgment of June 26, 1991 <http://www.echr.ru/documents/doc/2461412/2461412.htm> (access date 19.07.2014).
11. International Covenant on Civil and Political Rights // Official site of the United Nations// www.un.org/ru/documents/decl_conv/conventions/pactpol.shtm (access date 19.07.2014).
12. Ryabtseva E.V. Implementation of the principle of rationality in the criminal process of Russia. International Association for the Promotion of Justice Criminal Justice: Link of Times "Reports and messages at the conference" Criminal Justice: Link of Times " // <http://www.iuaj.net/node/463> (access date 19.07.2014).
13. New philosophical encyclopedia Internet version of the publication: in 4 volumes > / Institute of Philosophy RAS; Nat. soc.-sci. fund; Repr. sci.-ed. council of V.S. Stepin. -M.: Thought, 2000. - V. 1-4. - 2659 P.; 2nd ed., rev. and add. - M.: Thought, 2010.- V. 1-4. - 2816 P.// <http://iph.ras.ru/elib/3641.html> (access date 19.07.2014).
14. Plenum of the Supreme Court of the Republic of Azerbaijan dated March 30, 2006, № 5 "On the application of the provisions of the European Convention" On the Protection of Human Rights and Fundamental Freedoms "and the case law of the European Court of Human Rights in the administration of justice" (in Azerbaijani) / Official website of the Supreme Court The Republic of Azerbaijan // <http://www.supremecourt.gov.az/?mod=2&cat=3016&c=7&lang=az> (access date 19.07.2014).
15. Order of the Prosecutor General of the Republic of Azerbaijan dated February 14, 2007 № 10/13 "On the tasks of prosecutorial bodies in connection with the implementation of issues specified in international treaties signed by the Republic of Azerbaijan and strengthening the effectiveness of international cooperation" / Official website of the General Prosecutor's Office of the Republic of Azerbaijan// <http://www.genprosecutor.gov.az/?/az/content/79/> (access date 19.07.2014).
16. Polukhin V.M. Realization of a reasonable time in criminal proceedings as a failed problem of strengthening the Russian state property // Journal of Science and Education: Economy and Economy; entrepreneurship; law and administration, 2012, April. http://www.journal-nio.com/index.php?option=com_content&view=article&id=1194&Itemid=105 (access date 19.07.2014).
17. Collection of bilateral international treaties of the Republic of Azerbaijan in the field of legal assistance, 2014 (in Azerbaijani) (Electronic resource)/Official website of the Ministry of Justice of the Republic of Azerbaijan// www.justice.gov.az/images/toplu-2014.pdf (access date 19.07.2014).
18. Sementsov V.A., Sheremetyev A.P. The beginning and end of a reasonable time in criminal proceedings // Society and Law, 2010 № 5 (32), P.172-17.4
19. Criminal Procedural Code of the Republic of Azerbaijan // Official site UNODC//https://www.unodc.org/tldb/pdf/Azerbaijan_Code_of_Criminal_Procedure_in_Russia_n_Full_text.pdf (access date 19.07.2014).
20. Criminal Procedural Code of the Russian Federation // http://www.consultant.ru/popular/upkrf/11_2.html#p240 (access date 19.07.2014).
21. Urban V.V. Implementation of the principle of a reasonable time frame for criminal proceedings. Abstract of dissertation for the degree of candidate of legal sciences. M., Academy of Management of the Ministry of Internal Affairs of Russia, 2013. 23 P.
22. Fedorov and Fedorova v. Russia (Complaint N 31008/02) [Electronic resource]:// europeancourt.ru/.../ECHR_Fedorov_and_Fedorova_v_Russia_13_10_2... (access date 19.07.2014)