Human Rights vs. Extradition: case Belarus

Vadzim Samaryn

Abstract Deutsch

Der Artikel zeigt einige Eingriffspunkte des Völkerrechts in das moderne nationale Strafverfahren auf. Im Zuge der Internationalisierung des Strafprozessrechts hat sich ein völkerrechtliches Paradigma des modernen Strafverfahrens entwickelt, also ein Paradigma, das sich an den Normen des Völkerrechts orientiert. Es wird darauf hingewiesen, dass das völkerrechtliche Paradigma ein System von Vorstellungen des Gesetzgebers, der Strafverfolgungsbehörden und der Gesellschaft über das Recht und darauf basierende Aktivitäten sowie relevante Werte im Kontext allgemein anerkannter Prinzipien und Normen des Völkerrechts impliziert. In der gegenwärtigen Entwicklungsphase des Strafverfahrens in Belarus zeigt sich das völkerrechtliche Paradigma unter anderem in der aktiven Inanspruchnahme der internationalen Rechtshilfe in Strafverfahren. Der Autor analysiert die Grundsätze, deren Umsetzung zur Gewährleistung der Menschenrechte im Rahmen des Strafverfahrens in Belarus im Verlauf des Auslieferungsverfahrens erforderlich ist: die Grundsätze der körperlichen Unversehrtheit, des Rechts auf Verteidigung und *ne bis in idem*. Im Zuge der Verbesserung der Verfassung der Republik Belarus sollte die Zulässigkeit der Einschränkung und des Entzugs der persönlichen Freiheit einer Person (einschließlich der auszuliefernden Person) ausschließlich auf der Grundlage einer begründeten Gerichtsentscheidung festgelegt werden. Es wird betont, dass alle Voraussetzungen für den Aufbau einer vertrauensvollen Beziehung zwischen dem Mandanten und dem Verteidiger geschaffen werden sollen, einschließlich der Erlaubnis, eine dem kulturellen und sprachlichen Raum des Mandanten nahestehende Person hinzuzuziehen, um die auszuliefernde Person zu konsultieren. Es ist notwendig, die Anwendung des *ne bis in idem*-Prinzips in der transnationalen Dimension zu berücksichtigen. Als Grundlage sind die vom Gerichtshof der Europäischen Union in seinen Entscheidungen entwickelten Anforderungen heranzuziehen.

Abstract English

The article reveals some points of interference of international law into the modern national criminal procedure. As a result of the internationalisation of criminal procedural law, an international legal paradigm of the modern criminal procedure has been developed, that is, a paradigm based on the norms of international law. It is pointed out that the international legal paradigm implies a system of ideas of the legislator, law enforcer and society about law and activities based on it, as well as relevant values in the context of generally recognised principles and norms of international law. At the present stage of development of the criminal procedure in Belarus, the international legal paradigm is seen, among other things, in the active use of international legal assistance in criminal proceedings. The author analyses the principles, the implementation of which is required to ensure human rights in the framework of the criminal procedure of Belarus in the course of extradition proceedings: the principles of personal integrity, the right to defence and *ne bis in idem*. In the course of improving the Constitution of the Republic of Belarus, the admissibility of limiting and depriving a individual's personal freedom (incl. the person to-be-extradited) should be set solely on the

basis of a reasoned court decision. It is emphasised that all conditions must be created for the establishment of a trusting relationship between the client and the defence lawyer, including the permission of involvement of a subject close to the client's cultural and linguistic space in order to consult the person to-be-extradited. It is necessary to consider the operation of the *ne bis in idem* principle in the transnational dimension. As a basis, the requirements developed by the Court of Justice of the European Union in its decisions should be used.

1. Introduction

The development of technologies, economic integration, cultural ties lead to an increase in mobility, both of the people themselves and of the activities they carry out, and that leads to the eventual involvement of persons in criminal procedural relations outside the state of their citizenship. The positive fruits of globalisation are used not only by the law-abiding part of society, but also by individuals and organisations with socially dangerous goals. However, even when criminal proceedings go beyond the national state, the human rights enshrined in international instruments must be respected.

Professor Gilbert Gornig put human rights at the centre of the discussion in a number of his works[1], although without delving into the criminal procedural aspects. In this paper, we look in general at the penetration of international law into modern criminal procedure (2). We reveal the principles that have been developed in the provision of international legal assistance in criminal cases, and note their connection with human rights (3). The principles of personal integrity (4), the right to defence (5) and *ne bis in idem* (6) during an extradition, bringing us to certain conclusions (7).

2. International legal paradigm of contemporary criminal procedure

The legal systems of modern states are experiencing the penetration of principles, standards, norms from the outside. These can be contributions from international (including regional) law, which is being developed by many states, or supranational

1 See Gilbert Gornig, 'Menschenrechte und Naturrecht', in Gilbert Gornig, Burkhard Schöbener, Winfried Bausback, Tobias Irmscher (eds), *Iustitia et Pax. Gedächtnisschrift für Dieter Blumenwitz* (Duncker & Humblot 2008) 409 at 431; Gilbert Gornig, 'Allgemeine Erklärung der Menschenrechte (AEMR)', in Burkhard Schöbener (ed), *Völkerrecht. Lexikon zentraler Begriffe und Themen. Grundbegriffe des Völkerrechts* (C. F. Müller Verlag 2013) 16 at 21; Gilbert Gornig, 'Internationaler Pakt über bürgerliche und politische Rechte (IPbpR)', in Burkhard Schöbener (ed), *Völkerrecht. Lexikon zentraler Begriffe und Themen. Grundbegriffe des Völkerrechts* (C. F. Müller Verlag 2013) 211 at 217; Gilbert Gornig, 'Menschenrechtlicher Mindeststandard', in Burkhard Schöbener (ed), *Völkerrecht. Lexikon zentraler Begriffe und Themen. Grundbegriffe des Völkerrechts* (C. F. Müller Verlag 2013) 300 at 304.

law (in a narrow sense), created within the framework of integration. The corresponding processes are of the nature of *globalisation* (the spread of some common patterns of development to other states and peoples[2]) or *integration* (an objective and, to a certain extent, a spontaneous process of unification of states and peoples due to the expansion of international relations and the internationalisation of public life[3]).

The process of mutual influence of legal systems within the framework of cultural dialogue is sometimes called the internationalisation of law in literature[4]. The internationalisation of criminal procedure law with the growth of the transboundary value of criminal procedural activity requires deepening comparative knowledge of the criminal procedure. In the same context, A. Trefilov uses the term internationalisation of the criminal procedure[5]. These tendencies are typical for the legal systems of many states. In the field of criminal justice, such penetration affects the most tangible foundations of the state sovereignty: the state, in whose jurisdiction, under whose authority a person is, has the right to decide how to restrict or punish him or her. And this "pressure" from the outside is often opposed. It is enough to recall the decision of the German Constitutional Court *Solange I*. Or more recent: the norm set forth in par. b) of part 5.1 of Art. 125 of the Constitution of the Russian Federation (as revised in 2020). The Constitutional Court of the Russian Federation may decide on the possibility of executing a decision of a foreign or international court... which imposes obligations on the Russian Federation in the event if this decision is contrary to the principles of public law of this state.

The chronology of changes in approaches to international legal norms in criminal proceedings can be traced in various editions of the Commentary to the German Code of Criminal Procedure. Initially (in the 1970s) German scientists with reference only to the ECHR pointed out that the peculiarity of the latest improvement of legislation is the appearance, along with the usual federal laws regulating the criminal procedure, provisions of interstate law, which in a generalised form define individual principles[6]. In the next edition, the International Covenant on Civil and Political Rights, the European conventions on extradition and on mutual legal assistance, the Vienna Convention on Diplomatic Relations are also named as sources of criminal procedure law[7]. In 1999, the commentary already contains the term "internationalisation of the criminal procedure", which, according to the

2 Вениамин Чиркин, 'Наднациональное право: основные особенности' [2017] 2 Журнал российского права 132.

3 Сергей Кашкин (ed), *Интеграционное право* (Проспект 2017) 30.

4 Николай Стойко, *Уголовный процесс западных государств и России: сравнительное теоретикоправовое исследование англо-американской и романо-германской правовых систем* (Издательский Дом С.-Петерб. гос. ун-та 2006) 230.

5 Александр Трефилов, *Организация досудебного производства по УПК Швейцарии 2007 года* (Моск. гос. ун-т. 2014) 3.

6 Ewald Löwe [et al.] (Hrsg.), *Die Strafprozeßordnung und das Gerichtsverfassungsgesetz: Großkommentar*, Band 1 (de Gruyter 1976) 6.

7 Peter Rieß [et al.] (Hrsg.), *Die Strafprozeßordnung und das Gerichtsverfassungsgesetz: Großkommentar*, Band 1 (de Gruyter 1988) 4.

author, appears in the regulation of issues significant for the criminal proceedings (for example, extraterritoriality) by international law, as well as in the establishment of minimum standards in this area[8]. And the latest edition tells about "the penetration of criminal procedure law with international and European influence"[9].

In recent decades, a number of authors have operated with the concept of "international legal paradigm" in relation to the regulation of various social relations[10], without going into the definition of the content of this term. In philosophy, there are various approaches to the definition of the concept of "paradigm", which show its ambiguity, allowing for different interpretations. Paradigms are lenses through which you can see the world, broad frames that organise our overall understanding of some set of phenomena we are trying to fathom[11]. If we consider the paradigm as a model of any kind of human activity[12] or, more precisely, a model, an attitude that determines the views, behaviour, direction, goals of the activities of people, their communities[13], then in this context it is possible to analyse the change in the system of ideas and values of the legislator, law enforcement officer and society as a whole in a certain area of social relations regulated by law.

You can find various aspects of the change in the paradigm of the criminal procedure in modern literature. Some authors associate the change of paradigm with a change in the typology of this activity, with the increasing number of elements of "purely adversarial criminal procedural ideology" into it[14], revision of the purpose and principles of the proceedings, which allow us to talk about the beginning of the formation of a completely different type of it[15]. Ludmila Karnozova writes about the need to transform the legal punitive paradigm of criminal justice in the direction of restorative justice[16]. A similar position can be seen in German works[17].

It is impossible not to notice the active penetration of international legal regulations through criminal procedure law into the activity on initiating, investigat-

8 Peter Rieß [et al.] (Hrsg.), *Die Strafprozeßordnung und das Gerichtsverfassungsgesetz: Großkommentar*, Band 1 (de Gruyter 1999) 23 at 24.

9 Jörg-Peter Becker [et al.] (Hrsg.), *Die Strafprozeßordnung und das Gerichtsverfassungsgesetz*, Band 1 (de Gruyter 2016) 7.

10 Юлия Ерохина, 'Синергетическая парадигма исследования международно-правовой сферы' [2014] 4 Право. Журнал Высшей школы экономики 23; Виктор Поздняков, 'Международно-правовая парадигма конституционализма: история и методология' [2015] 5 Advances in Law Studies 226 at 237.

11 J. Martin Rochester, *Fundamental Principles of International Relations* (Westview Press 2010) 19.

12 *Краткий философский словарь : 288 понятий, 156 персоналий* (Изд-во Эксмо 2003) 268.

13 Вислави Зорин, *Евразийская мудрость от А до Я* (Сөздік-Словарь 2002) 238.

14 Леонид Головко (ed), *Курс уголовного процесса* (Статут 2017) 179.

15 Валентина Лазарева, *Доказывание в уголовном процессе* (Изд-во Юрайт 2015) 53.

16 Людмила Карнозова, *Введение в восстановительное правосудие (медиация в ответ на преступление)* (Проспект 2014) 202.

17 Becker, *supra* note 9, at 8; Christoph Safferling, 'Die Rolle des Opfers im Strafverfahren – Paradigmenwechsel im nationalen und internationalen Recht?' [2010] 122 Zeitschrift für die gesamte Strafrechtswissenschaft 87 at 116.

ing, considering and resolving criminal cases. The need to take into account international legal provisions by a law enforcement officer is also noted by German specialists, speaking about the internationalisation of criminal procedure law[18]. As a result of the internationalisation, an international legal paradigm of modern criminal procedure has developed, that is, a paradigm based on the norms of international law. At the same time, we recognise that penetration, as well as the influence of international legal norms on internal criminal procedure law, does not eliminate the border between two independent legal systems[19], because public international law is, first of all, "a set of customary and conventional norms that legally bind civilised states and other communities with international legal personality in their relationship with each other"[20], it functions as an independent system in relation to the internal law of any state[21]. The norms of public international law regulate relations, first of all, between states, as well as the subjects created by them (for example, international organisations). However, the need to apply such norms within the framework of the national legal system naturally leads to the erosion of this border.

Given the content of the provisions of Art. 8 of the Constitution of the Republic of Belarus, the agencies conducting the criminal procedure are obliged in their activities to take into account the priority of the generally recognised principles of international law. Accordingly, we can talk about the fact that these principles penetrate into the modern criminal procedure of Belarus, although some authors[22] indicate that these principles should be normatively enshrined in international law. But if criminal procedural norms are constructed in the context of international legal norms and generally recognised principles of international acts, then the very activity of the agencies conducting the criminal procedure is subordinate to the international legal paradigm.

In our opinion, the international legal paradigm implies a system of ideas of the legislator, enforcer and society about law and activities based on it, as well as the corresponding values in the context of generally recognised principles and norms of international law. This paradigm can also be viewed from a sectoral perspective. So, given that the criminal procedure is the regulated by the criminal procedure law activity of the agencies of inquiry, investigation, the prosecutor's office and the court directed to the investigation of crimes, the consideration of criminal cases and their resolution, as well as, in part, for the execution of the sentence[23], then the mediation in the relevant legislation of the principles enshrined in inter-

18 Rieß, *supra* note 8, at 23, 27.

19 Самуил Зивс, *Источники права* (Изд-во «Наука» 1981) 222 at 224.

20 Ben Wortley, 'The interaction of public and private international law today' [1954] 85 Collected Courses of the Hague Academy of International Law 253.

21 Эдуард Пушмин, 'Система советского права и перспективы ее развития: круглый стол журнала «Советское государство и право»' [1982] 8 Советское государство и право 67.

22 Мікалай Сільчанка, *Тэорыя крыніц беларускага права* (ГрДУ 2012) 22.

23 Анатолий Данилевич, Ольга Петрова, Вадим Самарин, *Уголовный процесс* (БГУ 2016) 13.

national legal acts, the admission of direct application of international treaties in criminal procedural activity presupposes the manifestation of the international legal paradigm in the national criminal procedure.

As Immanuel Kant pointed out, the political idea of state law implies that it should be "considered in relation relate to an international law that is universal and has power". And here he understood the national law as state law. However, at that time he believed that "experience tells us 'Don't waste time hoping for that to happen'"[24]. The international legal paradigm of criminal procedure leads to the need to constantly correlate the norms of national criminal procedure law with indefinite international standards that are not clearly enshrined in any one international legal act, which allows each researcher to refer to different formula. Through the prism of the norms of international law (not always valid for the Republic of Belarus), the norms of national criminal procedure law are analysed not only by scientists, but also by the judges of the Belarusian Constitutional Court.

Under the influence of the emerging paradigm, the science of criminal procedure has to be rebuilt as well. And in this case, it will be required to expand and transcend the main topics it studies. As M. Langer points out, in the comparative legal aspect of the criminal procedure, one should take into account the achievements of science in the study of issues of globalisation of law, international relations and postcolonial research[25].

The international legal paradigm of criminal procedure replaced the "closed criminal procedure", the national-state paradigm after the state gradually began to "concede" sovereignty in the most delicate sphere – in criminal justice. It became a response to the manifestations of the inquisitional process of the "closed state" in its worst qualities in the 20th century. The national-state paradigm of the criminal procedure was characterized by a positivist legal thinking, when law was considered a closed system, "formed primarily by the norms of law contained in national legal acts adopted by state authorities"[26]. However, the change of paradigm at the legislative level, in the science of criminal procedure, is largely ahead of law enforcement. This is due to the need to change the mentality of enforcers.

Some authors highlight, first of all, the *international Human Rights paradigm* of the modern criminal procedure[27]. In this case, it is meant that criminal justice should protect not only and not so much public interests as individual human rights enshrined in international legal acts. As Albin Dearing points out, criminal justice is in a state of transformation, moving towards the paradigm of human dignity in

24 Immanuel Kant, *Religion within the Limits of Bare Reason*, https://www.earlymoderntexts.com/assets/pdfs/kant1793.pdf.

25 Maximo Langer, 'La portée des categories accusatoire et inquisitoire' [2014] 4 Revue de Sciences Criminelle et de Droit Penal Compare 727.

26 Валентин Ершов, 'Универсальное в национальном и международном праве' [2018] 7 Журнал российского права 47.

27 M. Cherif Bassiouni, *Globalization and its impact on the future of human rights and international criminal justice* (Intersentia 2015) 67; Albin Dearing, *Justice for Victims of Crime: Human Dignity as the Foundation of Criminal Justice in Europe* (Springer 2017) xi.

the context of the emerging global humanistic society. And then he continues: "we are not talking about international law, not about legal relations developing between peoples, but about the universal rights of individuals to effective protection from impunity, the rights guaranteed by the world community of people and applied in practice by state institutions"[28]. However, in our opinion, we cannot be limited only to a separate, albeit very important, element of international legal penetration into the criminal procedure. The immersion of the institute of international legal assistance in criminal matters from the international level to the level of national regulation is another important point in the transformation of the paradigm of the criminal procedure. But this institute is primarily aimed not at ensuring human rights, but at a joint fight against criminal acts based on the confidence of states. The rapprochement of nations and globalisation naturally require joint efforts in the field of criminal justice. Although trust in a foreign criminal procedure also largely depends on the observance of generally recognised principles of international law, including those related to ensuring human rights. According to Immanuel Kant, "the problem of establishing a perfect civil constitution is dependent on the problem of a *lawful* external relation between states and cannot be solved without the latter"[29]. In an interdependent, largely integral world, international law plays a fundamentally new role "in the process of regulating interstate relations, the core of which is the recognition of universal human values"[30].

The paradigm under consideration, both in general and in the criminal procedure, is characterised by chaotic and fragmented norms, which is due to the search for a consensus of various legal norms and types of criminal proceedings. At the present stage of the development of the Belarusian criminal procedure, the international legal paradigm is manifested in:

- expanding the range of international treaties, which are the source of criminal procedure law, with the introduction of international legal standards;
- active use of international legal assistance in criminal proceedings;
- the emergence of the possibility of judicial (quasi-judicial) protection in international bodies.

3. Principles for the provision of international legal assistance in criminal matters

International legal standards predetermine common principles of international legal assistance in criminal matters. The latter are inherent for all types of such an assistance. Based on the essence of the activity under research, and also, taking

28 Dearing, *supra* note 27, at 298.

29 Allen Wood, Immanuel Kant, 'Idea for a universal history with a cosmopolitan aim', in Robert B. Louden and Günter Zöller (eds), *The Cambridge Edition of the Works of Immanuel Kant: Anthropology, History, and Education* (Cambridge University Press 2007) 114.

30 Камиль Бекяшев, *Международное публичное право* (Проспект 2008) 104.

into account the opinion prevailing in the doctrine[31], the principles of international legal assistance in criminal matters can be roughly divided into three groups: *universal principles of international law* (the principle of sovereign equality of states, the principle of reciprocity, humanism, respect and observance of human rights and freedoms, the fulfilment in good faith of the obligations assumed by a state, protection of the rights of citizens abroad, the principle of interstate cooperation, non-interference in internal affairs, etc.), *general principles of national criminal law and procedure* (legality, ensuring the inevitability of responsibility for a committed illegal act, ensuring the suspect, accused and the convicted person of the right to qualified legal assistance, the administration of justice on the basis of adversariality and equality of parties, stimulation of law-abiding behavior of citizens, etc.), *special principles* (counteraction only to common crimes, dual criminality, the principle of specialty). First of all, it is necessary to dwell on the principles directly related to a human.

Humanism implies the recognition of the value of a person as an individual, the recognition of his right to free development and the manifestation of his abilities. In the course of providing international legal assistance in criminal matters, attention is needed to each person (a participant in a criminal procedure or a person involved in the process of providing such an assistance), respect and a good attitude towards the human being. At the core, this principle extends from national and international criminal law. International acts based on the principle of humanism and other generally recognised principles instruct the political elite to ensure and protect human rights and freedoms[32].

The *principle of respect and observance of human rights and freedoms* is not directly enshrined in the UN Charter. It implies the obligation of the state to respect and observe human rights and freedoms, as well as to promote their universal respect and observance, i.e. to act in the spirit of the Universal Declaration of Human Rights. First of all, in the sphere of criminal procedural legal relations, it is necessary to strictly observe the right of every person to personal inviolability. That is why a person can be wanted for detention in another state for the purpose of extradition only on the basis of the relevant act of the competent authority of the requesting state.

States commit themselves to respecting historically achieved human rights standards and strive to ensure that officials of agencies conducting criminal proceedings do not violate human rights and freedoms during their activities. All acts of violence or inhuman treatment, that are, those that violate human dignity, committed by such persons in the exercise of their procedural functions, must be brought to justice. To this end, the UN General Assembly in 1979 adopted a Code of Conduct for Law Enforcement Officials. The state's failure to comply with the

31 See Валентина Волженкина, *Нормы международного права в российском уголовном процессе* (Юридический центр Пресс 2001) 69 at 72; Максим Глумин, *Международно-правовая помощь по уголовным делам как институт уголовно-процессуального права России* (Нижегородская академия МВД России 2005) 23.

32 Татьяна Титова, 'Реализация принципа гуманизма в актах организации объединенных наций' [2017] 1 Юридическая наука 90.

relevant standards may lead to the limitation of the provision of international legal assistance in criminal matters on the basis of reciprocity on the part of other members of the world community.

On the other hand, the principle of respect and observance of human rights and freedoms is implemented by ensuring the extradition of persons accused of committing acts recognised as crimes in accordance with international conventions and violating fundamental human rights and freedoms.

At the same time, it should be understood that the special principles in force in the provision of international legal assistance do not turn into procedural rights of an accused. As noted by the Federal Supreme Court of the Federal Republic of Germany, "the principle of specialty serves only to protect the rights of the requested state for extradition, ... but not to protect the extradited person, which cannot receive any rights from it"[33].

For the effective exercise of rights by the person subject to extradition, the principle of *fulfilment in good faith of the obligations assumed by a state* must be implemented. The principle of *pacta sunt servanda* is enshrined in Art. 2 of the UN Charter, art. 26 of the Vienna Convention on the Law of Treaties. From the second half of the 20th century a rule was established: the state cannot refer to the norms of its constitution in order to evade obligations that were imposed on it by international law[34], and, accordingly, by an international treaty, consent to be bound by which the state has voluntarily expressed. From this, we can conclude that the norms contained in the international treaty ratified by the Republic of Belarus are of priority nature not only over the Code of Criminal Procedure, but also over the Constitution itself. By virtue of Art. 8 (3) of the Constitution of the Republic of Belarus, it is not allowed to conclude international treaties that contradict the Basic Law. During the period of its validity, an international treaty has priority in relation to normative legal acts adopted earlier or later[35]. The corresponding priority of the norms of international treaties containing norms on the provision of international legal assistance is laid down in Art. 1 (5) of the Code of Criminal Procedure of Belarus (hereinafter referred as CCP).

4. Personal inviolability

At the moment, the content of the general (constitutional) principle of the criminal procedure, the inviolability of the person, is based on the norm of Art. 25 of the Belarusian Constitution. Within the framework of a social contract, the state

33 Robert Esser [et al.] (Hrsg.), *Internationale Rechtshilfe in Strafsachen: Rechtsprechungssammlung 1949–1992* (Max-Planck-Inst. für Asländ. u. Internat. Strafrecht 1993) 135.

34 Игорь Лукашук, 'Международное право и конституции государств' [1998] 1 Журнал российского права 45.

35 Григорий Василевич, 'Реализация актов межгосударственных объединений в национальных правовых системах Республики Беларусь и Российской Федерации: действующие механизмы и совершенствование правового регулирования' [2019] 2 Журнал БГУ. Право 87.

guarantees and ensures the freedom and inviolability of the person. In this case, the grounds of restriction and deprivation of personal freedom, as well as the corresponding procedure, can be provided exclusively in the law. Taking into account the constitutional norm, the provisions of the CCP on the principle of personal inviolability (Art. 11), on the detention (Chapter 12), the application of a preventive measure in the form of arrest (Art. 116–119, 126, 127), as well as on appeal the application of these measures of criminal procedural coercion (Art. 143–146) have been designed. These provisions are extended to cases of imprisonment of a person subject to extradition.

The procedure for the application of arrest has not undergone significant changes with the adoption of the new (post-Soviet) CCP. As before, in the Soviet period, in order to apply this pre-trial restriction, the person conducting the inquiry and the investigator need to authorise the decision by the prosecutor. The prosecutor and the court can make the respective decision independently. The Concept for Improving the Legislation of the Republic of Belarus, approved in 2002, provides for the need to establish a judicial procedure for authorising an arrest (clause 49.3). At the end of 2020, a draft law was prepared, which was supposed to introduce appropriate amendments to the norms of the CCP. The draftspersons proposed to implement the possibility of applying an arrest on the basis of a court order, adopted at the request of a agency of inquiry, a person conducting the inquiry, an investigator or a prosecutor.

We believe it is also possible to borrow the experience of the Federal Republic of Germany: in accordance with §§ 121–122 of the German Code of Criminal Procedure, after 6 months of an arrest, a decision on the extension is made by a higher court – the Supreme Regional Court after hearing the accused and his (her) defence counsel. The Minsk city and regional courts can be vested with appropriate powers.

In urgent cases, when a foreign state authority needs to detain and take into custody a person who will subsequently be requested for extradition, before sending a request for extradition, a request is sent to the Republic of Belarus to apply a pre-trial restriction to the person with the aim of his (her) extradition. The request must be accompanied by the legal basis for the detention (arrest) of the person in a foreign state (certified copies of the relevant documents). In addition, a foreign state authority must submit a written undertaking on the subsequent submission of a request for the extradition of this person. The latter must be presented drawn up in accordance with the requirements of the CCP within 40 days from the date of the actual detention of the person (Art. 513[1] of the CCP). In the framework of the international search for persons, as a request for the application of a pre-trial restriction to a person prior to the request for extradition, an Interpol (International Criminal Police Organisation) notice "Wanted International Criminal (Arrest with the Purpose of Extradition)" may be applied. This practice can cause problems with the protection of the rights of affected persons[36].

36 Вадим Самарин, 'Обеспечение прав человека в ходе международного розыска обвиняемых и осужденных в рамках Интерпола' [2020] 19 Університетські наукові записки 207.

Detention and pre-trial restriction of a person prior to the receipt of a request for his extradition is possible in exceptional cases and cannot be the norm. Such exceptional cases aren't named in CCP, but, to our mind, they should include: the existence of grounds to believe that the person will leave the territory of the Republic of Belarus, or the existence of grounds to believe that the person will continue criminal activity, or the continuation of the crime, etc.

Thus, detention can be applied within extradition procedure to a person:

- in respect of which a decision has been made to execute the request of a foreign state authority to apply a pre-trial restriction with the aim of extradition;
- in respect of which a resolution was issued on the execution of the request of a foreign state authority to extradite him (her) for criminal prosecution and (or) serving a sentence;
- in connection with being on the international wanted list for the purpose of extradition.

The maximum period of detention on these grounds corresponds to the period specified in Art. 108 (3) of the CCP and is 72 hours from the moment of actual detention. Upon the expiration of this period, the detained person is either released, or a pre-trial restriction should be applied to him (her).

Until the extradition is granted or refused, a pre-trial restriction may be applied to the extradited person in the form of arrest (based on a decision on the execution of a request of a foreign state authority, and to a person who is on the international wanted list for extradition) or house arrest (based on a decision on execution of the request of a foreign state authority). Prior to the issuance of an order on the application of a pre-trial restriction to a person who is on the international wanted list with the aim of extradition, the prosecutor or his deputy are obliged in each case to take explanations from the person regarding the fact that he was put on the international wanted list. These explanations may contain an indication of the existence of grounds for refusing to execute the subsequent request of a foreign state authority for the extradition of the person. There is no such obligation in the CCP in relation to a person subject to arrest on the basis of a decision to execute a request from a foreign state authority. This provision does not fully comply with the principles of procedural economy and equality of persons before the law.

On the application of a pre-trial restriction to a person in accordance with Art. 512 of the CCP, within 24 hours, the prosecutor or his deputy, who issued the relevant decision must notify relatives of the person, if they live on the territory of the Republic of Belarus. In our opinion, this Article unreasonably narrowed the right of an arrested person to notify family members or close relatives about the place of detention. Art. 507 and 508 of the CCP do not limit the place of residence of persons subject to notification, and, based on paragraphs 1, 37 and 53 of Art. 6 of the CCP, their list is wider. In addition, taking into account Art. 126 (8) of the CCP, when applying an arrest in relation to persons whose children are left without parental care, no later than the next day after the adoption of the said decision, the local education department should be notified to ensure state protection of the children.

Art. 513 of the CCP sets the terms of keeping a person in custody, under house arrest and the procedure for their extension. The setting period of an arrest and the range of persons authorised to extend it are the most important guarantees of the rule of law. The legislator did not indicate the grounds for the extension. In our opinion, the basis for setting the period of an arrest (a house arrest) of persons for consideration of the request of a foreign state authority for extradition should be the content of the decision of a foreign state authority on the application of a pre-trial restriction to a person. As a rule, this period is set no more than two months from the date of actual detention. The maximum period of an arrest is named in Art. 513 of the CCP and it equals 12 months from the date of detention.

Based on the provisions of Art. 60 of the Constitution of the Republic of Belarus ("*everyone is guaranteed the protection of his rights and freedoms by a competent, independent and impartial court...*"), we believe that the most correct thing is to arrest a person with the aim of subsequent extradition only on the basis of a court decision. The authorisation of an arrest by an independent court is recognised as the most correct and effective in the literature[37] as well as by the Constitutional Court of the Republic of Belarus in decision No. R-423/2009 dated 28.12.2009.

The prosecutor often makes his (her) decision in absentia, not only without questioning the person, but also without familiarising himself (herself) with the case materials, therefore, the prosecutor cannot always assess the person's danger to society and is formally guided only by the norms of the CCP.

> Thus, on the territory of Belarus, a citizen of Russia S., who was on the interstate wanted list by order of the Krasnosulinsk court, for committing theft, was detained and taken into custody. Subsequently, the Russian side reported that the request for S.'s extradition would not be sent, since the criminal case against her was terminated due to the change in the situation. In 2005, a citizen of Armenia M. was detained and taken into custody on the territory of Belarus, but the Prosecutor's Office of Armenia reported that the criminal case against him "is subject to termination upon expiration of the statute of limitations"[38].

These persons were unjustifiably deprived of their liberty and did not have the opportunity to exercise their right to defence. In order not to create the preconditions for making a decision, based on "corporate" interest, changes should be made in the procedure for applying the pre-trial restrictions provided for in Art. 512 of the CCP as part of the extradition procedure.

For the real provision of the proposal laid down in the Belarusian Concept for improving the legislation, we consider it expedient to set at the constitutional level the admissibility of long-term deprivation of personal liberty of a person exclu-

37 Анатолий Данилевич, Ольга Петрова, *Защита прав и свобод личности в уголовном процессе* (БГУ 2008); Владимир Соркин, 'О целесообразности введения судебного контроля при заключении под стражу в уголовном процессе на стадии досудебного производства' [2021] 1 Право.by 66 at 69; Григорий Василевич, 'Расширение правового статуса человека – важнейшая часть модернизации Конституции Республики Беларусь' [2021] 4 Юстиция Беларуси 15 at 17.

38 Archive of the General Prosecutor's Office of the Republic of Belarus [2002] Case Nr. 25/21-2002; [2005] Case Nr. 25/236-2005.

sively by the court. This level will ensure the fundamentality of the new approach. The corresponding norms can be found in the constitutions of many European states: Armenia (Art. 16), Germany (Art. 104), Italy (Art. 13), Lithuania (Art. 20), Poland (Art. 41), Spain (Art. 17), Ukraine (Art. 29), etc. Similar provisions are contained in the basic laws of Kazakhstan (Art. 16), Kyrgyzstan (Art. 24) and the Russian Federation (Art. 22).

Even Ivan Fojnickij, our fellow countryman and a leading theorist of criminal law in the late Russian Empire, in the 19th century pointed out that the detainees, "caught by criminal prosecution, often fall into such a depressed state of mind or so lose their composure and worry that they cannot give themselves a proper account" for the meaning the circumstances of the case[39]. The detainee must be provided with conditions for the exercise of the right to defence. Knowing the reason for the detention, a person will be able to choose the form and tactics of his (her) defence. One of the elements of this right is awareness. The obligation to inform both the rights of a person and the reasons for his (her) detention should be enshrined at the constitutional level.

5. Right to defence

The most important constitutional right of persons subject to extradition is the right to defence. A number of provisions of Art. 507 of the CCP serves as a guarantee of the exercise of this right by a person detained or to whom an arrest, a house arrest has been applied within the extradition procedure:

- to know about the circumstances that served as the basis for his (her) detention or the application of pre-trial restrictions;
- to receive from the agency of inquiry that carried out the detention or the prosecutor or his (her) deputy who applied the pre-trial restrictions immediately upon detention or announcement of a decision on the application of pre-trial restrictions a written notification of his (her) rights;
- to express his opinion and give explanations;
- to have one or several defence lawyer(s), etc.

For the first time at the legislative level in Belarus, this person is given the opportunity to express his opinion and give explanations. This right can be exercised when taking explanations by the prosecutor, as well as in court. The subject of the person's explanations is not a charge brought against him (her) in a foreign state, but the observance by a foreign state authority of the conditions for extradition of the person and the existence of grounds for refusing to execute such a request. It is also important to obtain legal advice from a lawyer at the expense of the local budget from the moment of detention or the application of an arrest (but not house arrest). Such a lawyer may subsequently be elected as a defence lawyer of the person. In addition, despite the absence in the list of the right to participate in the con-

39 Иван Фойницкий, *Курс уголовного судопроизводства* (Альфа 1996) Volume 2 at 61.

sideration by the court of complaints against a decision to extradite the person to a foreign state, such a person should have this right, based on the provisions of Art. 516 (1) of the CCP (but only if the person himself [herself] has filed a complaint).

The persons can implement their rights specified in Art. 507 of the CCP in person or through one or more defence lawyers. Although a number of rights can only be exercised by the specified persons personally (clauses 1, 3, 6, 10 of Art. 507 [1] and clause 2 of Art. 507 [2] of the CCP). With the introduction to the CCP of the Section XV the legislator expanded the functions of the defence lawyer. Now the defence lawyer carries out procedural activities in order to ensure the rights and interests of a person within the extradition procedure (clause 9 of Art, 6 of the CCP). At the same time, the legislator has expanded the criminal procedural function of defence by introducing a foreign element into the criminal procedure of the Republic of Belarus, which is not entirely correct. Despite the name "defence lawyer", this person does not oppose the prosecution, since the agencies of the Republic of Belarus conducting the criminal proceedings are not entitled to resolve the issues of the extradited person's accusation on the merits. In our opinion, this participant should have been called "representative". The task of the defender-representative in the framework of international legal assistance in criminal cases is to monitor compliance with the legislation of the Republic of Belarus and international treaties of the Republic of Belarus within the extradition procedure, the observance of the rights (including procedural) of persons specified in Art. 507, 508 of the CCP. In order to involve a defender-representative to participate in the consideration of a request by a foreign state authority, these persons must be promptly and appropriately explained their right to legal assistance.

When determining the scope of persons admitted as defence lawyers of persons subject to extradition, the legislator is guided by the general provisions of the criminal procedure of the Republic of Belarus (Art. 44 [2] of the CCP), which proceed from the fact that only professional lawyers – advocates can defend in criminal proceedings. At the same time, it is envisaged that lawyers who are citizens of states other than the Republic of Belarus exercise defence only if it is provided for by international treaties (at the moment such a treaty is valid only with Lithuania). In the Federal Republic of Germany, when considering an extradition request, as a rule, a lawyer works with a foreign lawyer[40]. Considering that the CCP has equalised the rights of the parties, all conditions must be created to establish a trusting relationship between the client and the defender, including by allowing the involvement of a subject close to the client of the cultural and linguistic space for consulting on legal issues.

Art. 509 of the CCP does not determine the moment of beginning participation of a defence lawyer in the consideration of a request by a foreign state authority for the extradition of a person. Based on the norms of Art. 44 (4), Art. 507, 508 of the CCP, it can be concluded that the defence lawyer should be allowed to partic-

40 Wolfgang Schomburg, Otto Lagodny (Hrsg), *Internationale Rechtshilfe in Strafsachen* (C.H. Beck 1998) 210.

ipate in the consideration of this request from the moment of the actual detention of the person, the application of a pre-trial restriction to him (her) or the issuance of an order to temporarily extradite the person to a foreign state for procedural actions with his participation as an accused.

In order to exercise his (her) functions to protect the rights and interests of the persons specified in Art. 507, 508 of the CCP, the defence lawyer is endowed with a number of rights. The defence lawyer independently exercises his (her) rights, but he (she) chooses the means and methods of defence, often taking into account the will of the client. If we compare the rights of the defence lawyer and the mentioned represented persons, then we can come to the conclusion that they are derived from the rights of the latter. However, unlike the client, the defence lawyer has the right, regardless of the judge's discretion, to participate in the consideration by the court of complaints about the decision to extradite the person to a foreign state, as well as to demand that the records of the circumstances be entered into the minutes of the court session, which, in his (her) opinion, should be noted.

In addition to the procedural rights granted to a person who is detained or to whom an arrest or a house arrest has been applied on the basis of a decision to execute a request from a foreign state authority, the law imposes on him (her) the obligation to obey the lawful orders of the agency conducting the criminal proceedings. The duty of a defence lawyer is to appear when summoned by the agency conducting the criminal proceedings. If it is impossible to appear, the defence lawyer must notify the agency that called him within 24 hours. If in the future the defence lawyer is unable to appear when summoned by the agency conducting the criminal proceedings, then another lawyer must be invited.

6. *Ne bis in idem*

The principle *ne bis in idem* is known to the national criminal procedure, but the CCP extends it, first of all, to domestic court decisions and similar decisions (par. 8, 9 of Art. 29 [1] of the CCP). It implies a ban on the implementation of criminal prosecution and the issuance of a sentence in relation to an act that has already been the subject of an effective sentence (a court ruling (resolution) to terminate criminal proceedings, a decision of an inquiry agency, investigator, prosecutor to terminate criminal proceedings or on refusal to initiate a criminal case). The meaning of this principle is not only to prevent repeated punishment for the same unlawful act, but also to put a barrier to repeated criminal proceedings (for example, in the case of an acquittal).

As a general rule, *ne bis in idem* has no international effect and the existence of a sentence for the same act in a foreign state does not interfere with criminal proceedings in the Republic of Belarus. Exceptions may be provided for in international treaties. So, on the basis of Art. 7 (1) of the Treaty on the Specifics of Criminal and Administrative Liability for Violations of the Customs Legislation of the Customs Union and the Member States of the Customs Union, 2010, the principle is valid on the territory of the Eurasian Economic Union in relation to violations

of the customs legislation of the Customs Union and the legislation of the Member States, control over compliance with which is entrusted to the customs authorities, for the commission of which criminal liability is provided. In addition, court decisions of foreign states in criminal cases may have prejudicial significance on the territory of the Republic of Belarus (Art. 8 of the Criminal Code of the Republic of Belarus).

However, the rules on international legal assistance also contain restrictions based on the *ne bis in idem* principle. There is no general prohibition applicable to all types of assistance. But the existence in the Republic of Belarus of an unlifted decision of the criminal prosecution agency on the refusal to initiate a criminal case or on the termination of criminal prosecution, proceedings in a criminal case, or a sentence or decision (ruling) of the court of the Republic of Belarus on the termination of criminal proceedings, as well as legal acts of the Republic of Belarus on amnesty or pardon for the same act is an obstacle to providing assistance in the form of extradition of a person to a foreign state (incl. temporary extradition), transfer of criminal prosecution of a person, transit of an extradited person (clauses 3, 8, 9 of Art. 484 [1], Art. 486, clauses 1, 2 of Art. 487, Art. 489 of the CCP). This is an imperative ground for refusal to execute the corresponding request of a foreign state authority.

> The application of this principle can be seen in practice. Thus, the decision of the Deputy Prosecutor General of the Republic of Belarus dated November 20, 2014, satisfied the request of the General Prosecutor's Office of the Russian Federation to extradite a citizen of Ukraine S. for the execution of the judgment of the City Court of the Russian Federation dated March 17, 2008. S. claimed in the complaint that there are no legal grounds for his extradition to the Russian Federation. Among other things, for the acts committed in the Russian Federation, he was already convicted on the territory of Ukraine, served his sentence, and arrived in the Republic of Belarus with his family for permanent residence. Having considered the complaint, having examined the submitted materials, the judge of the Supreme Court of the Republic of Belarus found that S.'s complaint was not subject to satisfaction. The regional court correctly recognized S.'s arguments about his conviction in 2007 on the territory of Ukraine for a crime committed in the Russian Federation and serving the sentence imposed as unreasonable, since they are refuted by the materials presented, the reliability of which is beyond doubt. According to the materials, the criminal case against S. was pending at the City Court of the Russian Federation. In this case, S. was not prosecuted on the territory of a foreign state[41].

If we analyse the text of national legal provisions on inclusion of time spent according to the sentence imposed by the judgment of a foreign court, we can see that recognition is possible only in relation to the already served sentence. In our opinion, it is necessary to consider the operation of the *ne bis in idem* principle in the transnational dimension, which can be seen in individual international treaties aimed at combating certain types of crimes. As a basis, we can take the requirements developed by the Court of Justice of the European Union in its decisions:

41 Постановление Верховного Суда Республики Беларусь [6.1.2015] КонсультантПлюс. Беларусь.

- the "same person" requirement – it concerns the same defendant[42];
- the "*bis*" requirement – it concerns a final decision; can be also accepted "a decision that has been finally disposed of", an out-of-court settlement with the public prosecutor[43], a court acquittal based on lack of evidence[44], a court acquittal arising due to the prosecution of the offence being time-barred[45] and a decision of non lieu, i.e. a finding that there was no ground to refer the case to a trial court because of insufficient evidence[46];
- the "*idem*" requirement – it concerns the same acts; the "same acts" is to be understood as the identity of the material acts in the sense of "a set of concrete circumstances which are inextricably linked together in time, in space and by their subject-matter"[47];
- the "enforcement" requirement – the penalty has been imposed, it has been enforced, it is in the process of being enforced or can no longer be enforced;
- the "criminal nature" requirement – the thin line existing between (punitive) administrative sanctions and criminal sanctions[48].

7. Conclusions

The international legal paradigm implies a system of ideas of the legislator, enforcer and society about law and activities based on it, as well as the corresponding values in the context of generally recognised principles and norms of international law. By now, we can talk about the existence of an international legal paradigm of the criminal procedure. The latter implies the mediation in criminal procedural legislation of the principles enshrined in international legal acts, and the admission of direct application of international treaties in criminal procedural activity. This paradigm also includes the influence of international human rights law. Penetration of international legal regulations into national criminal procedure legislation is caused by the need to bring the relevant rules to the attention of the law enforcers. The state's failure to comply with the relevant standards may lead to the limitation of the provision of international legal assistance in criminal matters on the basis of reciprocity on the part of other members of the world community.

42 Case 467/04 *Gasparini and Others*, http://curia.europa.eu/juris/liste.jsf?num=C-217/15.

43 Joined cases C-187/01 and C-385/01 *Hüseyin Gözütok and Klaus Brügge*, http://curia.europa.eu/juris/liste.jsf?num=C-187/01.

44 Case C-150/05 *Jean Leon Van Straaten v Staat der Nederlanden and Republiek Italië*, http://curia.europa.eu/juris/liste.jsf?num=C-150/05.

45 Case C-467/04, *supra* note 42.

46 Case C-398/12 *M.*, http://curia.europa.eu/juris/liste.jsf?num=C-398/12.

47 Case C-436/04 *Van Esbroeck*, http://curia.europa.eu/juris/liste.jsf?num=C-436/04.

48 The Principle of Ne Bis in Idem in Criminal Matters in the Case Law of the Court of Justice of the European Union, http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/caselawanalysis/The%20principle%20of%20Ne%20Bis%20in%20Idem%20in%20criminal%20matters%20in%20the%20case%20law%20of%20the%20Court%20of%20Justice%20of%20the%20EU%20(Sept.%202017)/2017-09_CJEU-CaseLaw-NeBisInIdem_EN.pdf.

The necessity of correlating constitutional norms on the inviolability of the person with the traditions of national criminal procedure law, as well as international legal acts in this area has been established in Belarus. In the course of improving the Constitution of the Republic of Belarus, the admissibility of limiting and depriving a individual's personal freedom should be set solely on the basis of a reasoned court decision. This rule should also apply to the person to be extradited. A person should be guaranteed information about both his rights and the reasons for depriving him of his fundamental right.

Considering that the CCP has equalised the rights of the parties, all conditions must be created for the establishment of a trusting relationship between the client and the defence lawyer, including by permission of involvement of a subject close to the client's cultural and linguistic space in order to consult the person to be extradited.

In our opinion, it is necessary to consider the operation of the *ne bis in idem* principle in the transnational dimension, which can be seen in individual international treaties aimed at combating certain types of crimes. As a basis, we can take the requirements developed by the Court of Justice of the European Union in its decisions.

Bibliography

– – Краткий философский словарь: 288 понятий, 156 персоналий (Изд-во Эксмо 2003).

Bassiouni MC, Globalization and its impact on the future of human rights and international criminal justice (Intersentia 2015).

Becker J-P [et al.] (Hrsg.), Die Strafprozeßordnung und das Gerichtsverfassungsgesetz, Band 1 (de Gruyter 2016).

Dearing A, Justice for Victims of Crime: Human Dignity as the Foundation of Criminal Justice in Europe (Springer 2017).

Esser R [et al.] (Hrsg.), Internationale Rechtshilfe in Strafsachen: Rechtsprechungssammlung 1949–1992 (Max-Planck-Inst. für Asländ. u. Internat. Strafrecht 1993).

Kant I, Religion within the Limits of Bare Reason, https://www.earlymoderntexts.com/assets/pdfs/kant1793.pdf.

Langer M, 'La portée des categories accusatoire et inquisitoire' [2014] 4 Revue de Sciences Criminelle et de Droit Penal Compare 707 at 728.

Löwe E [et al.] (Hrsg.), Die Strafprozeßordnung und das Gerichtsverfassungsgesetz: Großkommentar, Band 1 (de Gruyter 1976).

Rieß P [et al.] (Hrsg.), Die Strafprozeßordnung und das Gerichtsverfassungsgesetz: Großkommentar, Band 1 (de Gruyter 1988).

– – Die Strafprozeßordnung und das Gerichtsverfassungsgesetz: Großkommentar, Band 1 (de Gruyter 1999).

Rochester JM, Fundamental Principles of International Relations (Westview Press 2010).

Safferling C, 'Die Rolle des Opfers im Strafverfahren – Paradigmenwechsel im nationalen und internationalen Recht?' [2010] 122 Zeitschrift für die gesamte Strafrechtswissenschaft 87 at 116.

Schomburg W, Lagodny O (Hrsg), Internationale Rechtshilfe in Strafsachen (C.H. Beck 1998).

Wood A, Kant I, 'Idea for a universal history with a cosmopolitan aim', in Robert B. Louden and Günter Zöller (eds), The Cambridge Edition of the Works of Immanuel Kant: Anthropology, History, and Education (Cambridge University Press 2007) 107 at 120.

Wortley B, 'The interaction of public and private international law today' [1954] 85 Collected Courses of the Hague Academy of International Law 239 at 338.

Бекяшев К, Международное публичное право (Проспект 2008).

Василевич Г, 'Расширение правового статуса человека – важнейшая часть модернизации Конституции Республики Беларусь' [2021] 4 Юстиция Беларуси 15 at 17.

– – 'Реализация актов межгосударственных объединений в национальных правовых системах Республики Беларусь и Российской Федерации: действующие механизмы и совершенствование правового регулирования' [2019] 2 Журнал БГУ. Право 85 at 92.

Волженкина В, Нормы международного права в российском уголовном процессе (Юридический центр Пресс 2001).

Глумин М, Международно-правовая помощь по уголовным делам как институт уголовно-процессуального права России (Нижегородская академия МВД России 2005).

Головко Л (ed), Курс уголовного процесса (Статут 2017).

Данилевич А, Петрова О, Защита прав и свобод личности в уголовном процессе (БГУ 2008).

Данилевич А, Петрова О, Самарин В, Уголовный процесс (БГУ 2016).

Ерохина Ю, 'Синергетическая парадигма исследования международно-правовой сферы' [2014] 4 Право. Журнал Высшей школы экономики 19 at 29.

Ершов В, 'Универсальное в национальном и международном праве' [2018] 7 Журнал российского права 46 at 61.

Зивс С, Источники права (Изд-во «Наука» 1981).

Зорин В, Евразийская мудрость от А до Я (Сөздік-Словарь 2002).

Карнозова Л, Введение в восстановительное правосудие (медиация в ответ на преступление) (Проспект 2014).

Кашкин С (ed), Интеграционное право (Проспект 2017).

Лазарева В, Доказывание в уголовном процессе (Изд-во Юрайт 2015).

Лукашук И, 'Международное право и конституции государств' [1998] 1 Журнал российского права 45 at 56.

Поздняков В, 'Международно-правовая парадигма конституционализма: история и методология' [2015] 5 Advances in Law Studies 226 at 237.

Пушмин Э, 'Система советского права и перспективы ее развития: круглый стол журнала «Советское государство и право»' [1982] 8 Советское государство и право 67 at 69.

Самарин В, 'Обеспечение прав человека в ходе международного розыска обвиняемых и осужденных в рамках Интерпола' [2020] 19 Університетські наукові записки 204 at 211.

Сільчанка М, Тэорыя крыніц беларускага права (ГрДУ 2012).

Соркин В, 'О целесообразности введения судебного контроля при заключении под стражу в уголовном процессе на стадии досудебного производства' [2021] 1 Право.by 66 at 69.

Стойко Н, Уголовный процесс западных государств и России: сравнительное теоретикоправовое исследование англо-американской и романо-германской правовых систем (Издательский Дом С.-Петерб. гос. ун-та 2006).

Титова Т, 'Реализация принципа гуманизма в актах организации объединенных наций' [2017] 1 Юридическая наука 90 at 94.

Трефилов А, Организация досудебного производства по УПК Швейцарии 2007 года (Моск. гос. ун-т. 2014).

Фойницкий И, Курс уголовного судопроизводства (Альфа 1996) Volume 2.

Чиркин В, 'Наднациональное право: основные особенности' [2017] 2 Журнал российского права 131 at 137.