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ABSTRACT

of the dissertation for the degree of Doctor of Science

PROBLEMS OF CRIMINAL PROCEDURAL AND CRIMINALISTIC PROBLEMS OF LEGAL ASSISTANCE IN CRIMINAL MATTERS AT THE MODERN STAGE

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GENERAL CHARACTERISTICS OF WORK

The actuality and degree of development of the topic. The development of social relations requires approximation and mutual harmonization of legislation of the Republic of Azerbaijan and foreign countries. And the development of social relations in its turn determines the struggle against crime and provides cooperation of the states distinguished by the originality of legal systems in the field of criminal policy and justice. Cooperation in the field of justice is also carried out through the provision of legal assistance in criminal proceedings, which is carried out based on bilateral and multilateral treaties on mutual legal assistance in criminal matters or based on reciprocity.

Integration processes have also affected the international nature of the crime, which increasingly affects more and more States. Despite the internationalization of crime, the fight against crime at the national level has not lost its relevance. Legal assistance in criminal matters is one of the forms of cooperation between states in the fight against international crime. The fight against crime has taken on an inter-State character and therefore requires closer cooperation between the law enforcement agencies of different States at the national and international levels. Sometimes the delivery of justice in some criminal cases also depends on the law enforcement cooperation of a State.

The fight against crime at the international level has led to closer cooperation in the area of legal aid in criminal matters. Criminal cases in which legal assistance is provided are characterized by the presence of a “foreign element” and the specific nature of their involvement in criminal proceedings. The foreign element is linked to the object, subject, and other elements of criminal procedure. Therefore, criminal procedural aspects of legal assistance are relevant in strengthening the rule of law, respect for human and civil rights and freedoms, and implementation of international obligations of states.

Legal assistance is carried out based on national legislation. Some international instruments contain separate procedural rules whose operation and application depend on domestic law, i.e., they are

implemented after being transformed into domestic law. The issue of the study of procedural issues of legal aid in criminal cases is controversial. Authors[1] who have to be supported of the study of procedural issues of legal assistance within the framework of national criminal procedure law should be supported, international cooperation with other states in the field of legal assistance in criminal cases without national criminal procedure cannot be carried out, since the regulation of implementation of international treaties under the terms of the same treaties is assigned to the criminal procedural legislation of the implementing country.

It is not a question of shaping international criminal procedure, but of international cooperation in criminal matters. International cooperation in criminal matters is regulated by the criminal procedural legislation of states. International treaties do not establish the procedure for the work of domestic law enforcement and other bodies involved to the legal assistance because the establishment of such orders is the prerogative of the state, based on sovereignty. We agree with Volevodz A.G. that "*Therefore, it is impossible to bring it into full conformity with the rules adopted in other states. That is why international treaties do not regulate a strict procedural form, but only the substance of a particular type of international cooperation in criminal matters. With this in mind, direct application of the rules of an international treaty outside the procedural form can be assessed as procedural simplification*" [2]

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[1] Kleshchev M.R. Legal assistance to bodies of preliminary investigation of foreign states. Author's abstract of the dissertation for the degree of Candidate of Legal Sciences. Karaganda Law Institute of the Ministry of Internal Affairs of the Republic of Kazakhstan named after. B. Beisenov, Karaganda, 2002. – 28 p.; Rahimov B.M. International legal bases of mutual legal assistance in criminal cases between the CIS countries and the Baltic states: Dissertation abstract for the degree of candidate of law. M., 2002. –20 p.; Rajabov F.N. International-legal cooperation in the sphere of criminal proceedings between the Republic of Tajikistan and the CIS countries: Dissertation abstract for the degree of candidate of law. M., 2020. –33 p.

[2] Volevodz A.G. Legal regulation of new directions of international cooperation in the field of criminal procedure. Moscow, Ed. by Yurlitinform, 2002. –p.13.

We believe that the convergence of States' criminal procedural legislation is a promising trend in the development of legal assistance in criminal matters. The fight against crime and cooperation in combating transnational crime sometimes require mutual harmonization, which in turn necessitates the convergence of national laws. The interest in the convergence of national legislation is also because those countries are oriented towards common principles in the fight against crime in the framework of international organizations. The trend towards the convergence of national legislation is supported by bilateral cooperation treaties. The common objectives in the fight against crime and cooperation in the field of criminal justice also require the convergence of the criminal procedural legislation of the countries regulating mutual legal assistance in criminal matters.

Raising the measuring standards of human rights, controversial aspects of the study of procedural aspects of legal aid within the national criminal procedure law, elimination of the divergence of legal provisions governing the conduct of certain procedural actions belongs to the priority area of study of the science of criminal procedure law.

The actuality of the work is related to the increasing of human rights standards as a result of the reforms carried out in the country; improvement of the judicial system; improvement of criminal procedural legislation norms regulating legal aid, disputability of studying procedural aspects of legal aid within the national criminal procedural law; inconsistency of legislative provisions regulating individual trials and legal assistance; the insistence on the convergence of national legislation under the influence of integration processes and multilateral international treaties and agreements; the common goal of combating international crime and ensuring and protecting human and civil rights and freedoms more reliably; errors in the practice of performing letters rogatory in the framework of mutual legal assistance; sometimes with political approaches to the problems of mutual legal assistance. These problems require in-depth scientific research and subsequent legislative and law enforcement solution.

These circumstances have determined the relevance of the chosen topic of the study, predetermined its goals and objectives, object and subject.

The problem of mutual legal assistance was the subject of studies in the late XIX - early XX century due to the relevance and increasing role of mutual legal assistance between states. The problem has been studied by scientists-proceduralists of post-Soviet countries and European and American scientists. No special studies were conducted in the Republic of Azerbaijan to explore problems of mutual legal assistance between states.

The studies considered mutual legal assistance in criminal matters mostly as an institute of international law or international procedural law or addressed specific aspects of the provision of legal assistance. Mutual legal assistance was studied by Volevodz A.G. from the aspect of improvement of the legal basis for the international search of arrest, confiscation of criminally obtained money and property as well as their return to rightful owners, cooperation during computer crimes investigation; by Lazutin L.A. from the aspect of legal assistance norms in international law; by Glumin M.P. from the aspect of legal assistance as a complex of norms of domestic criminal p r o c e d u r a l l e g i s l a t i

The general theoretical provisions of the thesis are based on the works of such scientists as Abbasova F.M., Asgarov B.M., Aliyev A.I., Aliyev I.H., Alikperov H.D., İsmayılov Kh.C., Andreeva O.I.,

Bunijatov Z.M., Veliyev I.V., Qrigoryev V.N., Qrinenko A.V., Qutsenko K.F., Dzhafarkuliev M.A., Doğan Soyaslan, Zahidov B.S., Zueva S.V., Ismail Mahmud, Kalinovski K.B., Gafarov M.S., Kozlovski P.V., Qurbanov H.S., Kutueva E.K., Lukasuk I.A., Mustafayeva A.I., Mustafayev C.M., Mustafayev M.H., Petrovski A.V., Pikalov I.A., Pobedkin A.V., Salnikov V.P., Sanai Mehdi, Smirnov A.V., Stoyko N.Q., Suleymanov C.I., Sutyagin K.I., Sukharev A.Y., Tuzov A.G., Hasan ibn Muhammad Safar, Hakan H
akeri, Khimicheva O.V., Shaifer S.A., Sheikh Vahbeh al-Zuhili, S In recent years, a significant contribution to the study of u criminal and procedural problems of providing legal assistance in i criminal cases between states was made by Abdulloev P.S., Bastrykin n A.I., Volevodz A.G., Glumin M.P., Davidova M.V., Zaharenkova V.V., K Kleshhev M.R., Mihajlenko K.E., Radzhabov F.N., Rahimov B.M., S Safarov N.A., Smirnov E.E., Tlehuch Z.A., Shinkevich D.V., and v others.

i Theoretical and applied problems of providing legal assistance in criminal cases between states, certain problems of procedural and other actions, prosecutorial supervision over the provision of legal assistance in criminal cases between states and other institutions in the national legislation were considered and developed in the works of such scientists as Adigamova G.Z., Ahmedov M.M., Balakshin V.S., Bykov V.M., Byhovskij I.E., Volynec K.V., Gerasenkov V.M., Gnatjuk A.Ju., Davidova V.A., Dzhafarov A.M., Dobrovol'skaja T.N., Zhmurova E.S., Eyvazov H.G., Zuev S.V., Kalinickij V.V., Kozhokar V.V., Konevec K.S., Kudrjavceva A.V., Larin E.G., Malofeev I.V., Mandzhieva E.V., Muminov B.A., Nazarov S.N., Omel'janjuk G.G., Polujanova E.V., Possinskij S.B., Rumjanceva I.V., Rybin A.V., Stukonog I.V., Tarzimanov V.M., Tejmurov A.A., Urban V.V., Shamardin A.A., and others.

i European and American scientistes (Adam M.G., Els De Busser, Marc Henzelin, Oliver Borgers, Madeleine Renaud McCarthy Tétrault, Robert Currie, Sergio Carrera, Marco Stefan, Stanislaw Bozca, T. Markus Funk Partner, Perkins Coie, William Bernam) .

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and others.

addressed mainly practical issues of legal assistance in criminal matters in their works.

However, despite the high scientific value of the previously conducted studies, there is currently a need for in-depth theoretical research at the thesis level of theoretical and practical problems of legal assistance in criminal cases between states to create an effective mechanism for implementing the objectives of criminal justice, which primarily provides effective protection of rights and legitimate interests of participants in the process, access to justice, the necessary conditions for the administration of justice with foreign participation.

The objects and subject of research. The objects of research are social relations connected with evolution, essence, and history of the development of the institute of legal assistance, provisions of criminal and procedural legislation, normative and legal acts of the Azerbaijan Republic and other states, international treaties, and agreements regulating mutual legal assistance in criminal matters between states.

The subject of the thesis research is criminal procedural norms governing the provision of mutual legal assistance in criminal cases, the basic provisions of science and practice of criminal procedure, criminal law and other legal sciences, international law on the provision of mutual legal assistance in criminal cases.

The purpose and objectives of the study is development of a concept that reflects the essence and content of the institution of legal assistance in criminal cases, and defines the prospective development directions; to analyze the legislative framework and practice of legal assistance in criminal cases between states, specific investigative, judicial, and other actions in the framework of legal assistance, to identify theoretical and practical problems, and to develop proposals to improve criminal procedure, criminalistics and international framework for legal assistance for the more effective administration of justice and reliable protection of rights and freedoms of a person and a citizen.

To achieve this purpose, the following objectives are formulated:

– to substantiate the doctrinal content of legal assistance in criminal matters between States, defining its concept, essence, and elements;

– to formulate definitions of “legal assistance in criminal cases”, “letter of request” and “letter rogatory”, “procedural actions”, “judicial actions”, “other actions” and to identify their correlation;

– the rationale for improving the concepts of “prosecutor”, “procedural guidance”, ‘prosecutorial supervision” and “judicial supervision” in the aspect of mutual legal assistance;

– define the concept, essence, content of electronic documents, computer data preservation and their use in the framework of legal assistance;

– to justify the development of unified criminalistic terms and notions for organizational, scientific and technical, and scientific-methodological criminalistic support of procedural and other actions;

– to trace the evolution of the institution of mutual legal assistance between States and, considering the evolutionary processes, justify the use of historical experience of mutual legal assistance in contemporary mutual legal assistance relations in criminal matters;

– determine the scope of mutual legal assistance in criminal cases and justify the inclusion of such procedural actions as confrontation, identification, forensic examinations with the participation of specialists from other states;

– exploring the specifics of providing prompt legal assistance, immediately execution of judicial requests in criminal cases, encouraging direct appeals to the relevant authorities of the requested State to strengthen the fight against crime and to reliably ensure the rights of participants in proceedings, justifying the inclusion in the criminal procedure legislation of the concept of “reasonable time for criminal proceedings”;

– identify features of remote procedural actions within the framework of legal assistance in criminal cases with the use of technical means and justify the evidentiary value of the results;

– identification of problems in the provision of mutual legal assistance in criminal cases based on analysis of national legislation and international treaties and development of proposals to improve the

legislative framework and practice of legal assistance in criminal cases;

– identifying current problems in the provision of legal assistance on a non-contractual basis from the perspective of improving legal assistance practice, justifying the adoption of more general provisions at a higher level, at the level of groups of States, multilateral international treaties involving States or international organizations to overcome problems in the provision of legal assistance in criminal matters between States, including problems of overlapping or parallel jurisdictions;

– to systematize the results of the study and develop proposals to improve the theoretical, legislative framework and practice of procedural and other actions in the provision of mutual legal assistance in criminal cases based on the analysis of the legislative framework, the theory and practice of investigation, trial and other actions in the provision of legal assistance in criminal cases.

Research Methods. The author used such general scientific and particular scientific methods as analysis and synthesis, formal-legal, comparative-legal, sociological, statistical, objectivity, historicism and consistency, diachronic, legal analysis, comparative law, "case study", legal-sociological method, method of legal forecasting. Thus, the method of historicism was applied for the study of the historical context of bilateral relations, identification of the main stages in the history of legal assistance in the Republic of Azerbaijan, the historical bilateral and multilateral treaties on legal assistance relating to the territory of Azerbaijan was studied, certain factors which influenced the formation of legal assistance institution in criminal matters were identified. The diachronic method helped to conduct the periodization of the history of the development of the institute of legal aid in criminal cases, starting from the ancient period to the present day. The method of objectivity helped to analyze the formation and development of the institute of legal aid based on the legislative and practical problems of states without territorial, regional, and other differences of states and international organizations. The method of systematicity was used for the determination of goals and priorities based on an analysis of the theory

and practice of legal aid. The method of legal analysis was used in the dissertation research with the help of which the works of scientists and provisions of national legislation and international acts on legal assistance in criminal cases were analyzed. The formal-legal method was used to study the elements of legal assistance, definition, and identification of signs, without taking into account political and other factors. The comparative law method helped to compare the legislative regulation of the institution in other states or regional documents. The "case study" method was applied to study the practice of the European Court of Human Rights (ECHR), states on the application of the institution of legal aid or its elements. The legal sociological method helped to survey law enforcement officials, study criminal records, identify the effectiveness of the application of the institution of legal aid, and identify problems in the execution of court orders. The legal forecasting method was used to propose amendments to national legislation to improve the practice of execution of letters rogatory and to make scientifically grounded forecasts about the future development of the institution of legal aid.

The main statements made for the defense:

(1) The periodization of legal assistance between States in criminal matters is defined: 1) ancient period and Middle Ages - period of interstate relations in the field of legal assistance in criminal cases from the states of Manna, Midia, Caucasian Albania to Islamization and characterized by the almost complete absence of relations in the field of legal assistance; 2) period of states of Kara-Koyunlu and then Ak-Koyunlu and establishment of diplomatic relations, which is characterized by the diplomatic settlement of legal assistance in criminal cases; 3) period of states of Shirvanshahs, Safavids until the murder of Nadir Shah in 1747, which is characterized by strengthening of statehood and international relations; 4) the period of the khanates (Karabakh, Sheki, Shirvan, Baku, Ganja, Quba, Nakhichevan, Talysh, Erivan khanates) before their annexation to Russia at the beginning of the 18th century, where the strengthening of local rulers and trade relations was characteristic; 5) the period of annexation of the khanates to Russia until 1917, which was characterized by the improvement of the legislation of the Russian Empire, the conclusion of agreements in

the field of civil and criminal law, a large number of special treatises in both the field of civil and criminal law; 6) the period of the Azerbaijan Democratic Republic from 1918 to the creation of the USSR, the features of which include the period of concluding treaties of friendship, cooperation and peace with other states, determination the general basis of legal assistance; 7) the Soviet period before the declaration of independence in 1991 was characterized by the fact that legal assistance was the responsibility of the central bodies of the USSR and the relevant bodies of the union republics, including the Azerbaijan SSR, carried out court requests from foreign states under the control of the central bodies; 8) the period of independent Azerbaijan was characterized by the strengthening of the role of interstate relations and legislation in the field of legal assistance in criminal cases, the conclusion of bilateral multilateral agreements on legal assistance in criminal cases [17, p.212-213; 23, p.195; 35, p.1877-1878].

2.The historical experience of legal assistance, including applied in the contract practice of the Prophet Muhammad of severe punishment resisting peace persons, is relevant today for Azerbaijan in the framework of the implementation of a tripartite declaration based on the results of the 44-day second Karabakh war.

3. It is proposed to define the concept of "mutual legal assistance in criminal cases" as an institution of national criminal procedural law, which deals with the execution of judicial instructions. Mutual legal assistance in criminal matters is a form of interaction between state authorities and officials of two or more states. İt may be a form of implementation of treaties and international cooperation accordingly.

4. A letter rogatory for legal assistance is a request transmitted to a competent authority of the requested State to carry out, by the provisions of national law, appropriate proceedings and other actions relating to an offense that is being prosecuted or investigated in the requesting foreign State [2, p.268; 25, p. 96].

5. Legal assistance between States consists of the execution of requests by the relevant competent authorities of the requesting State for relevant procedural and other actions related to offenses in the

territory of the requested State, based on the national law of the criminal case being investigated or prosecuted.

6. Conducting investigative actions in the territory of another State is a historical institution but has generally been practiced as a privilege of the other State. In the absence of language problems, investigative measures under the procedural direction of the prosecutor should be included in multilateral and bilateral legal assistance treaties. It is suggested that legal assistance actions be complemented by investigative measures under the procedural guidance. Conducting investigative actions under the procedural guidance of the prosecutor should be included among the actions specified in the mutual legal assistance procedure defined by the Law of the Republic of Azerbaijan "On legal assistance in criminal cases".

7. We believe that to eliminate the problems associated with the recognition of the results of evidence in the case, an addition to the criminal procedural legislation on the types and concepts of procedural actions, which eliminates the ambiguities in cases of requests for other actions in the case under investigation, is required.

8. The concept of "judicial actions" can be understood as actions conducted by the court, which, without exception, are procedural actions. Judicial actions by nature are controlling, investigative, organizational and supportive. The main distinguishing feature of all these judicial actions is that they belong to the authority of the court and are committed as part of the criminal prosecution of the case, and as procedural actions are formalized by the court decision.

9. To ensure uniformity in the understanding and implementation of all concepts and enhancement of formalization of legislation on legal assistance in criminal cases between states, the definition of "procedural action" should be included in the Criminal Procedure Code (CPC) of the Republic of Azerbaijan and stated as follows: "procedural action is an investigative, judicial and other procedural actions of participants of criminal proceedings provided by this Code and carried out in accordance with its provisions; judicial actions are procedural actions of the court and other participants under the direction of the court".

10. The use of videoconferencing in the framework of legal assistance is an effective and efficient direction. Based on the principle of reciprocity in the provision of legal assistance, it is proposed to addition the CPC of the Republic of Azerbaijan with a reference on the execution of court orders via videoconferencing: "letter of request of a foreign state to interrogate a person who is in the territory of the Republic of Azerbaijan via videoconference is executed in the same way. Interrogation, confrontation, and identification by videoconferencing shall be carried out with the consent of the accused or the suspect".

11. The institution of anonymization of persons defended in criminal proceedings applied in the activity of international courts and in the practice of states should be included in the Law of the Republic of Azerbaijan on the state protection of persons participating in criminal proceedings, and should help to increase the efficiency of mutual legal assistance.

12. The performance of forensic examinations within the framework of legal assistance with the application of certain exceptions is a matter of time and legislative regulation. To eliminate the restrictions of judicial and investigative authorities related to the choice of forensic experts, Annex No. 2 approved by Presidential Decree "The list of activities for which a special permit (license) is required, and the amount of state duty paid for issuing a special permit (license) for these activities" should be supplemented by a new item "58. expert activity".

13. The current legislation does not provide for the implementation of procedural guidance, prosecutorial supervision, and judicial supervision over the execution of procedural coercive measures carried out in the execution of requests of foreign states in the order of mutual legal assistance, but the execution of requests for procedural actions without procedural guidance, prosecutorial supervision and judicial supervision is simply impossible. But for legal clarity, amendment of Article 7.0.23 of the CPC of the Republic of Azerbaijan has required in the following wording: "a prosecutor is a person who, within the limits of his powers in the manner prescribed by this Code, performs procedural guidance of the preliminary

investigation of a criminal case and the execution of requests of foreign states for procedural actions to provide legal assistance or supports in court as a public prosecutor public or public-private prosecution".

14. It is proposed to supplement Article 7.0.23 of the CPC of the Republic of Azerbaijan with a new part with the following content: "procedural guidance of a prosecutor covers the organization of pre-trial investigation, determining the direction of the investigation, coordination of procedural actions, creating conditions for the work of investigators, ensuring compliance with legal requirements and is a form of prosecutorial supervision" [18, p.81].

15. For the compliance of criminal and criminal procedure legislation with the international obligations on legal assistance treaties, article 46.2 of the CPC of the Republic of Azerbaijan shall include "reports of a competent authority (official) of a foreign state in the framework of legal assistance", and article 205 of the CPC of the Republic of Azerbaijan shall be supplemented with the new part 205.1.1 with the subject "Reports of a competent authority (official) of a foreign state in the framework of legal assistance about a crime committed or being prepared by citizens of Azerbaijan Republic" [1, p.29; 3, p.538-539; 7, p.146].

16. To apply unified concepts, to simplify mutual understanding in the order of rendering legal assistance between states in conditions of integration of legal systems and legal systems of states, it would be advisable to rename Article 48 of the CPC of the Republic of Azerbaijan to "Reasonable time of criminal proceedings" and to provide criteria for a reasonable time of proceedings, based on the case-law of the European Court of Human Rights and rights of participants of criminal proceedings to apply in violation of ensuring speed in pre-trial stage and court proceedings stage.

It is proposed to rename Article 48 of the CPC of the republic of Azerbaijan to "Reasonable term of criminal proceedings" and give a new wording:

"1. Criminal proceedings shall be carried out within a reasonable time.

2. A reasonable period includes the period from the beginning of criminal prosecution until its termination or a guilty verdict, taking into account such circumstances as the legal and factual complexity of the criminal case, the conduct of participants in criminal proceedings, the sufficiency, and effectiveness of actions of the court, the prosecutor, the head of the investigative body, the investigator, the head of the investigation unit, the body of inquiry, the investigator carried out to timely conduct criminal prosecutions

3. Extension of the terms established by this Code shall be allowed in cases and accordance with the procedure stipulated by this Code".

The victim's right to apply for a speedy trial should be included as part of his or her rights and should be added to Article 87.6 of the CPC of the Republic of Azerbaijan.

17. The wording of the notion of documented information (document) in the law "On Information, Informatization and Information Protection" is considered more comprehensive and successful and can be separately recorded for criminal proceedings. It is proposed to supplement Article 135 of the CPC of the Republic of Azerbaijan with a new part 135.4: "Documented electronic information is electronic information recorded on a material medium with requisites allowing its identification obtained in the course of court proceedings".

18. When electronic evidence is located in the jurisdiction of another State, one effective way to partially eliminate the risk of alteration or loss (erasure) of electronic documents is through the institution of "spontaneous information" or information provided voluntarily, which is not an obligation of the parties.

It is proposed to add a new part to Article 137 of the CPC of the Republic of Azerbaijan with the following content:

"137-2. Immediate retention of computer data

Prosecuting authorities shall, in particular when there is reason to believe that the computer data are particularly vulnerable to lose or alteration or, at the request of a foreign State that intends, within the framework of mutual assistance, to request search or similar access, seizure or similar preservation or disclosure of the data, order the rapid

preservation of specified computer data, including data on information flows, which

A person shall ensure the security, integrity, and confidentiality of computer data in his possession or under his control."

19. Unification of criminalistic terms and notions is one of the conditions of standardization, a unified approach to theoretical, legal, organizational, scientific, technical, and scientific-methodological criminalistic support of procedural and other actions increases the reliability and acceptability of their results in the framework of rendering legal assistance. The obligatory indication of the application of criminalistics support means or the description of research methods generally accepted in modern science, technology, art, and other fields can be imposed on the bodies executing requests for legal assistance, with the adoption of a departmental act within the authority of these bodies [19, p.226].

20. Legal assistance in the absence of legal assistance treaties should be based on the flexibility of the principle of dual criminality. Where States are grouped on regional and other grounds, more general provisions adopted at a higher level, at the level of groups of States, at the level of multilateral international treaties involving States or international organizations, should be relied upon to overcome problems in the provision of legal assistance in criminal matters between States. Overlapping or parallel jurisdictions between States or within groups of States can also be addressed by assigning supervisory functions to multilateral treaty bodies on legal assistance in criminal matters [25, p.101; 26, p.242; 38, p.292].

Scientific novelty of the research. The research was conducted with the use of the newest normative material, including the provisions of universal and bilateral agreements in the field of international legal assistance, the practice of non-contractual legal assistance, has been determined the stages of development of the institute of mutual legal assistance, a new definition of the scope of legal assistance, the concept of letter of request, procedural and other actions, judicial control and prosecutorial supervision, court actions, investigative actions, a reasonable period of performance of procedural actions related to the legal assistance. It is justified to

include confrontation, identification and forensic examination with the involvement of experts from the other side the scope of legal assistance. Proposals have been put forward to complete the list of persons who cannot be questioned as witnesses.

Some of the author's proposals put forward in scientific papers have found their legislative solution, to these issues can be attributed the amendments to the Law on forensic activities on the method of forensic research, on the register of forensic experts, the state register of forensic examination methods, the fund of methods of forensic examination, to the CPC of the Republic of Azerbaijan on the implementation of criminal proceedings using the system of videoconferencing, including if it is necessary to interrogate a participant in criminal proceedings through a video conferencing system due to his absence in the territory of the Republic of Azerbaijan to provide legal assistance by the law of June 25, 2020, 140-VIQD [21, p.73].

The author justifies the expansion of the range of competent authorities executing judicial instructions to shorten the terms of execution, the inclusion of separate norms on spontaneous information in the international acts on combating crime and legal aid and bilateral agreements, on the exchange of information between the relevant administrative bodies of states, provision of statistics on sending spontaneous information on detected facts to convention authorities and expanding the range of administrative measures to provide legal aid. The digitalization of international legal assistance is [27, p.174; 33, p.516].

For improvement of the practice of granting of legal aid on the non-contractual basis was grounded recognition of flexibility of principle of dual recognition of punish ability, using historical acts of Azerbaijan Republic encouragement of performance of letter rogatory in his absence, which creates precedents of cooperation and helps further development of mutual legal aid. For the first time, the provisions of the Sacred Koran and treaty practice of the Prophet have been studied in the aspect of rendering legal assistance in criminal cases, the idea of the use of these provisions for improvement of rendering legal assistance in criminal cases between states has been

grounded. The idea of using more general provisions adopted at a higher level, at the level of groups of states, at the level of multilateral international treaties involving states or international organizations to overcome problems in the provision of legal assistance in criminal cases between states was substantiated [39, p.173-174].

The theoretical and practical significances of the research. The theoretical significance of the study is because it develops and complements the established in the science of criminal procedure law ideas about mutual legal assistance in criminal cases. The content of the number of conclusions of the thesis research expands and clarifies theoretical provisions of the science of criminal procedure law related to the provision of mutual legal assistance between states. The thesis summarizes, develops, and formulates theoretical provisions that allow revealing the essence and content of mutual legal assistance in criminal cases. Theoretical conclusions and proposals for the dissertation are aimed at enriching the science of criminal procedure law with new knowledge on mutual legal assistance in criminal cases. New aspects of concepts and categories of legal assistance, theoretically substantiated in the dissertation, were introduced in the science of criminal procedure law.

Conclusions and recommendations made in the thesis can be used in further scientific research of the institute of legal assistance in criminal cases.

The practical significance of the dissertation research lies in the fact that the provisions and conclusions formulated in the dissertation help to improve the effectiveness of criminal procedural legislation and relevant legislation in terms of regulation of legal aid in criminal cases. Suggestions for the elimination of theoretical and practical problems can increase the efficiency of procedural activity and criminal justice in rendering legal assistance on a national and international level, help ensure better protection of rights and legal interests of procedural participants of rendering legal assistance in criminal cases. Provisions, conclusions, and recommendations of this dissertation can be used when preparing proposals for amendments of legislation on mutual legal assistance, for correct application in

practice of provisions of national legislation and international acts on legal assistance.

Results of dissertation research can be used at teaching a course “Criminal procedure law” and corresponding special courses for students of faculties of law of educational institutions, and also for listeners of various courses and forms of professional development of practitioners.

Approbation and application. The main provisions, conclusions, and practical recommendations were presented by the author in speeches at conferences: scientific-practical conference “Legal monitoring in the Republic of Kazakhstan: theory, problems, prospects”, organized by the Institute of Law and the Ministry of Justice of the Republic of Kazakhstan (November 29, 2012, Astana); International scientific-practical conference “Actual problems of the criminological study of regional crime”, organized by the Police Academy of the Ministry of Internal Affairs of the AR (October 21, 2014**,** Baku); All-Russian Scientific-Practical conference "Actual problems of modern criminal justice in Russia" dedicated to the 90th anniversary of Professor S.A. Schaefer, organized by Samara State University (January 29-30, 2015, Samara, Russia); III International scientific-practical conference “Actual problems of criminological study of regional crime” organized by the Police Academy of the Ministry of Internal Affairs of the Republic of Azerbaijan (October 16, 2015, Baku); Inter-regional training workshop The Use of Electronic Evidence in the Investigation, Prosecution and Adjudication of Criminal Offences In the framework of the CASC network of Prosecutors and Central Authorities from Source, Transit and Destination Countries in response to Transnational Organized Crime in Central Asia and Southern Caucasus (15 – 17 March 2016, Tashkent, Uzbekistan); Scientific-practical conference on "Personnel training for law enforcement agencies in special purpose higher education institutions in modern conditions: situation and prospects" held by the Police Academy of the Republic of Azerbaijan (May 26, 2021, Baku); “Turkish Law History Symposium” organized by the

Turkish Historical Society, the Academy of Justice and the Turkish Bar Association (October 26-28, 2021, Ankara); Republic scientific-practical conference “Constitutional bases of sovereignty, independence and territorial integrity of the Republic of Azerbaijan” organized by the Academy of the State Security Service of the Republic of Azerbaijan named after Heydar Aliyev (November 5, 2021); the XXII International Scientific-Practical Conference of the Law Faculty of Lomonosov Moscow State University and the XX International Scientific-Practical Conference "Kutafin Readings" "Role of Law in Human prosperity" (23 November - 26 November 2021, Moscow); International conference “XXI century, new challenges and modern development tendencies of law” organized by Baku State University (December 21-22, 2021, Baku).

The results regarding the dissertation were applied to the teaching process and tested in the Justice Academy of the Ministry of Justice of the Republic of Azerbaijan, the Police Academy of the Ministry of Internal Affairs of the Republic of Azerbaijan, the Faculty of International Relations of the Azerbaijan University of Languages and were accepted for use by the Legal Policy and State Building Committee of the Milli Majlis of the Republic of Azerbaijan.

The main theoretical provisions of the thesis research, which constitute the content of the work, are presented in 47 scientific publication recommended by the Higher Attestation Commissions of the Republic of Azerbaijan, including journals recommended by Higher Attestation Commissions of the Russian Federation, the Republic of Ukraine, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Republic of Moldova, and the Republic of Tajikistan for the awarding of scientific degree and scientific name, in the journals included to the international summarizing and indexing databases Web of Science, ERİH PLUS, ULAKBİM as Laplage Em Revista (Brazil), Journal la revista Questiones Políticas (Venezuela), Revista Amazonia Investiga (Colombia), Path of Science (Slovakia), Turkish Online Journal of Qualitative Inquiry (Turkey).

The main provisions of the dissertation were used by the author during the lectures on "Mutual legal assistance in criminal cases

between states" organized for the judges of the courts of first instance of the Republic of Azerbaijan at the Academy of Justice of the Ministry of Justice of the Republic of Azerbaijan.

Structure of the thesis. The work consists of an introduction, four chapters including eleven paragraphs, a conclusion, a bibliography list, and appendices. The first chapter of the thesis consists of 85 182 characters, the second chapter of 105 933 characters, the third chapter of 69 600 characters, the fourth chapter of 132 785, the thesis 495 429 characters.

MAİN CONTENT OF THE WORK

The Introduction are relevance the actuality of the topic of research, explore a degree of theoretical development; shown the information on object and subject of research; purpose and objectives of the research; research methods; provisions to be defended; the scientific novelty of research; the theoretical and practical significance of research; approbation and application; the name of the institution where the dissertation work was performed and the structure of work.

The first chapter, "Evolution and History of the Development of the Institution of Legal Assistance Between States", is divided into three clauses.

The first paragraph "History of the Development of the Institute of Legal Assistance Between States in Criminal Matters in the Republic of Azerbaijan" traces the history of legislative regulation and practice of legal assistance.

The institution of legal assistance is linked to the history and political trends of State. Studying these processes will help to better ensure human rights in the provision of legal assistance and the achievement of criminal justice goals. During the historical development of the institution of legal assistance between states, it has always been influenced by political interventions, related to the notion of so-called political crimes, extradition of political prisoners, etc. Therefore, a detailed study of history will enable the formation of more independent legal assistance in the fight against organized crime, which is becoming more sophisticated and specialized.

The geographical location of the territory, the natural wealth of Azerbaijan has always attracted foreign states, including neighboring states. Therefore, the history of Azerbaijan is rich in various military actions of invasive nature against the territory of Azerbaijan. During various historical periods, Azerbaijan or its separate territories were a part of Russia, Iran, Turkey and were a subject of dispute between separate states. Therefore, the history of legal science and legal regulation as well as the history of Azerbaijan is connected to Russia, Turkey, Iran, European states England, France, and etc. The treaties regarding peace, surrender, trade, etc. also touched upon the issues of jurisdiction, extradition, etc. In almost all treaties the right of the strong and victorious is felt.

The characteristics of the development of the institution of legal assistance in Azerbaijan are related to the absence of elements of mutual legal assistance in ancient times and the Middle Ages; providing legal assistance in a diplomatic manner during the Kara-Koyunlu and Ak-Koyunlu states; providing although limited legal assistance during the period of the Shirvanshahs and the Safavid states; absence of contracts dedicated to legal assistance during the khanate period, inclusion of separate actions related to legal assistance in trade agreements; the presence of special agreements on legal assistance during the period of the unification of the khanates to Russia, providing legal assistance at a relatively advanced level; regulation of legal aid in the period of the Azerbaijan Democratic Republic by legislative acts of the Russian Empire until adoption of a new laws.

The Soviet period of development of legal assistance between states is characterized by the fact that until the eighties of the last century legal assistance was legally included in the competence of the central bodies of the USSR only, had a permanent conventional and contractual nature. The Union Republics, including the Republic of Azerbaijan, fulfilled request letters of foreign states under the control of the central bodies of the USSR and was of a formal nature.

One of the fundamental principles of Islam is cooperation and it means cooperation between peoples, tribes. The Quran stipulates

obligatory observance of promises and agreements, assistance in suppression of offenses. The Quran does not distinguish between assistance between states and people but defines general conditions of assistance. The provisions of the Holy Qur'an regarding the treatment of foreigners, treaties, obligatory observance of treaties, and the treaty practice of the Prophet also regulate relations between tribes and other nations regarding offenders, extradition, and other matters, and do not burden other states with reciprocity. Most states are secular, but the influence of religion on inter-state relations and law-making and law-enforcement practice is indisputable. Therefore, the widespread use of Islamic norms in legal assistance should be supported [40, p.96; 46, p.2241].

Legal assistance in criminal matters between states in the AR has gone from elementary extradition of fugitive serfs, one-time assistance in a diplomatic procedure to institutionalized legal assistance based on multilateral and bilateral treaties by other states, from lack of a legislative basis to codification of legal assistance, from the inclusion of certain norms on certain aspects of legal assistance in treaties of friendship, peace, cooperation or even surrender to the conclusion of special bilateral treaties on the occult, to the conclusion of a special treaty on the occult [17, p.213-214; 23, p.195; 32, p.5].

At certain periods of history, legal assistance included such institutions as the presence of a representative of the accused State in the administration of justice against an alien, the unconditional extradition of offenders who had committed a serious crime, the cruel punishment of those resisting peace, the exemption from jurisdiction over certain offenders, etc., and may still be used today to regulate or improve the institution of legal assistance in criminal matters.

The **second paragraph of the first chapter "Institution of Legal Assistance and Letters Rogatory"** analyses the essence and content of the institute of legal assistance and letters rogatory, the author gives the notion of letters rogatory.

Legal assistance between states consists in the execution of requests by the relevant competent authorities of the requesting state for appropriate actions related to crimes in the territory of the

requested state on the basis of domestic law in a criminal case under investigation or pending. We believe that mutual legal assistance in criminal matters is an institution of national criminal procedure law, which deals with the execution of letters rogatory. International acts governing mutual legal assistance are implemented through implementation into national law. Mutual legal assistance in criminal cases is not a form of mutual activity between state bodies and officials of two or more states. Interaction can be a form of implementation of treaties and international cooperation accordingly. International organizations and judicial bodies influence the development of the interstate legal aid institution, but the main relations take place in the interstate sphere and are formed by their will. Otherwise, this institution would become a concept without specific boundaries.

Attributing mutual legal assistance in criminal cases between states to the international criminal process also has no basis due to the application of national criminal-procedural norms when executing requests for legal assistance. Currently, court assignments act as the basis for the implementation of legal assistance. However, we believe that at the current level of development of interstate relations, another concrete basis for the implementation of legal assistance is not possible, in any case, a letter request should be sent. These ideas are related to the modern level of development of the legal aid institution. Perhaps in the future, more simplified and more efficient forms of judicial tasks will appear or the grounds for enforcement will be expanded. Of course, the elimination of considerations of sovereignty and, in some cases, formal sovereignty regarding the institution of legal aid may require a longer evolutionary process.

A letter rogatory in the framework of legal assistance is a request transmitted to the competent authority of the requested State to carry out, by the provisions of national law, the procedural steps and other actions related to the offense prosecuted in the requesting foreign State.

It is suggested to include the notion of letter of request in the legislation: article 7.0.15 and article 7.0.14 of CPC of the Republic of Azerbaijan shall be read as follows: letter of request - request to

conduct procedural actions on the criminal case, which is under investigation and court examination by the requesting body or foreign state according to the current criminal procedural legislation, submitted to the criminal prosecution bodies of another city, district or state [25, p.96].

Due to the similarity of the legislation of the countries with which the Republic of Azerbaijan is bound by bilateral agreements and international conventions regarding the provision of legal assistance in criminal cases, mainly due to the fact that it belongs to the Romano-Germanic legal system, there is no noticeable difficulty in the execution of judicial tasks within the framework of legal assistance. The problems are not related to the general requirements for conducting individual investigative actions, but to formalization of the results, a number of technical features. However, the development and expansion of relations with other countries, including common law countries, may create procedural problems in the execution of court orders, which should be considered when concluding bilateral agreements and eliminated by clarification.

The third paragraph of the first chapter, "**Scope of Legal Assistance in Criminal Matters Between States",** is devoted to an analysis of acts in national legislation and international legal assistance treaties.

The scope of legal aid in criminal cases is broader than the procedural actions provided for under the criminal procedure laws of States [11, p.151].

The importance given to the scope of legal aid is due to the fact that it creates opportunities for wider cooperation during its initial definition in documents related to legal aid. In some cases, states prefer to start mutual legal assistance relations with a smaller volume, which we do not think is right. Because when the volume of legal assistance is large, it helps these states to improve their domestic legislation and to increase the efficiency of the execution of letter of request during mutual assistance. Of course, if we consider that the process of formation of human rights has historically passed without a formal declaration, the broad definition of the scope of legal

assistance, that is, in a certain sense, the formal inclusion of some procedural actions in the scope, can be considered as a manifestation of the interest of states in cooperation. If we turn to the practice of implementing procedural and other actions provided for in bilateral and multilateral agreements, we will see that the initiation of mutual implementation of the provided actions requires some time, even if they are sometimes provided, they have not been used yet. However, it is necessary to consider the opposite aspect of this issue, i.e., it should not be considered wrong to continue the formality for a long time, not to take legislative and other measures to eliminate the formality. In fact, when the scope of legal assistance is widely defined in legal aid agreements, certain reservations must be made by the states, that is, specific periods or additional agreements may be provided for the entry into force of individual provisions of the agreements. Therefore, the broad scope of legal assistance serves to improve the activities of implementing the procedural and other actions specified therein, and to build experience.

Proving and procedural means of proving in criminal cases require detailed legal regulation. Procedural and other actions as means of procedural proving are subject to this requirement, which is why leaving even a single means outside the legal regulation inevitably leads to errors and affects the legality of the decision on the case. Therefore, we believe that eliminating problems associated with the recognition of the results of proof in a case requires an addition to the criminal procedural legislation on the types and concept of procedural actions, which will also eliminate ambiguities in cases of requests for other actions on the investigated case [11, p.152].

Investigative acts in the territory of another State are not included in the scope of legal assistance. Conducting investigative measures in the territory of another State is a historical institution, but has usually been applied as a privilege of the other State. In the absence of language problems and other fundamental differences in legislation, the conduct of investigative actions under the procedural direction of the prosecutor should be included in multilateral and bilateral legal assistance agreements. It is proposed to supplement

Article 2 of the Law of the Republic of Azerbaijan "On Legal Assistance in Criminal Matters" with a new part of the following content: "2.4.6. to carry out investigative actions under the procedural guidance of the prosecutor."

The scope of legal assistance between states determines the intensity and effectiveness of legal assistance, it also determines the effectiveness of justice in cases in which legal assistance is provided. We believe that detailing and sometimes enumerating specific procedural and other actions eliminates problems of interpretation, clarification and increases the evidentiary value of the results of procedural actions carried out on the instructions of foreign states.

The second chapter of the dissertation "Procedural Problems of Execution of Certain Investigative, Judicial and Other Actions in the Framework of Legal Assistance in Criminal Cases Between States" consists of three paragraphs.

The first paragraph of the second chapter, "Investigative Actions Carried Out in The Framework of Mutual Legal Assistance in Criminal Matters", is devoted to the analysis of the legislative and practical framework for the execution of investigative actions in the framework of legal assistance.

The lack of a general rule on the concept and types of investigative actions in the CPC of almost all states may in practice create difficulties related to the recognition of the results as evidence in the case. This may be more pronounced in the provision of legal assistance in criminal cases.

Azerbaijan legislation defines procedural actions without dividing them into investigative and other procedural actions. Investigative actions are aimed at establishing the circumstances relevant to the proper resolution of a criminal case, and even if they are not aimed at collecting evidence, establishing relevant factual data, these actions do not lose their procedural nature.

Investigative actions carried out during court proceedings are less voluminous than those carried out during the preliminary investigation of a case and have their peculiarities of conduct, which also remained outside the specification of the legislation.

Investigative actions are aimed at determining the circumstances that are important for the correct resolution of the criminal case, and they do not lose their procedural essence even if they are not aimed at gathering evidence and determining the factual circumstances relevant to the case.

The range of investigative actions that can be carried out at a court hearing is limited to interrogation, conducting forensic examinations, inspection of territories and buildings, investigative experiments, identification and body search. These investigative actions have their own characteristics, that is, the participation of eyewitnesses is not foreseen in their conduct, they are conducted at the initiative of the court, they differ in the formal basis of their conduct, there are no searches and other investigative actions whose efficiency is determined by accident.

Departing from the narrow meaning of investigative actions helps to determine the limits of their procedural guarantees and implementation.

Provision of legal assistance in criminal cases includes procedural actions, and investigative actions are the main, often performed part of these actions, and therefore more detailed regulation of investigative actions in the criminal procedure legislation of countries bound by international and bilateral treaties on legal assistance is needed to define the components of procedural actions.

To eliminate problems related to the recognition of the results of evidence in a case of mutual legal assistance between states, due to the lack of norms on the concept and types of investigative actions in the criminal procedural legislation, we propose to include the new Article 7.0.49 to the CPC with the following content:

Investigative actions - inspection, examination, investigative experiment, search, seizure, seizure of postal, telegraphic, and other correspondence, monitoring and recording of communications, interrogation, confrontation, identification, verification of evidence in situ, forensic examination, exhumation, seizure of property, interception of communications by telephone or other devices, information sent by telecommunications or other technical means,

other information, the conduct of an investigative experiment and the taking of samples for analysis scientific, technical and forensic examination - a procedural action conducted by the prosecutor, investigator and the court, as a rule, on the initiated criminal case and at the stage of the judicial investigation to discover, collect, verify, evaluate and use evidence in the case [5, p.171].

The second paragraph of the second chapter, "Judicial actions in Mutual Legal Assistance in Criminal Matters Between States", focuses on defining the concept, content, characteristics, and scope of judicial actions.

The concept of "judicial actions" remained outside of the definition of legislation but is included in the system of procedural actions and formalized by a court decision. Lack of definition by the legislator is because judicial actions can be defined as actions of supervisory, organizational, and investigative nature, conducted by the court and other participants of the process at the direction of the court, which without exception are procedural actions. And such a position is also associated with the simplicity of the word combination and clarity, at first glance, interpretation of the concept of "judicial actions".

All investigative and other actions carried out by the court may be carried out as legal aid in criminal cases. It should not be considered correct to limit judicial actions only to the holding of a court hearing, depending on the entity that performs it. Because the court also has procedural activities outside the session, for example, the inspection of residence, service or production buildings can be conducted by the court. All procedural and other actions serve to form the evidence base, it does not matter if it is direct or indirect.

Based on the concept, essence, and role of procedural actions, we believe that procedural actions are investigative, judicial, and other procedural actions and belong to the fundamental provisions of criminal procedural legislation and should be defined by law.

Judicial actions by their nature are controlling, investigative, organizational and supportive. The main distinguishing feature of all these judicial actions is that they all relate to the power of the court,

carried out as part of the criminal prosecution of a case and formalized by a court decision as procedural actions. All investigative and other actions conducted by the court are judicial actions. The lack of a definition of "judicial actions" in the legislation can make it difficult to understand and enforce court orders and create difficulties in assessing evidence [15, p.112].

To ensure uniformity in the understanding and implementation of all concepts and to increase the formalization of legislation on legal assistance in criminal cases between states, the definition of procedural actions should be included in the CPC of the Republic of Azerbaijan and Article 7.0.37 of the CPC should read as follows: "procedural actions - investigative, judicial and other procedural actions of participants of criminal proceedings provided by this Code and carried out in accordance with its provisions; judicial actions - procedural actions of the court and other participants under the direction of the court" [8,p.28; 15,p.112].

The third paragraph of the second chapter "Procedural Problems of Execution of Court Requests for Execution of Certain Investigative, Judicial and Other Actions" examines the problems of execution of court requests for execution of procedural actions and offers proposals for the elimination of problems and improvement of the practice of execution of court requests.

For legislative consolidation, elimination of possible procedural problems in providing legal assistance in criminal cases, and improvement of the national criminal procedural legislation, it is proposed, the list of persons who cannot be summoned and questioned as witnesses in the CPC is supplemented with parts: "95.2.6. clergyman about circumstances known to him from the confession; 95.2.7. family doctor and other persons caring for a patient concerning the private life of the persons whom they serve; 95.2.8. deputies of Milli Majlis of the Republic of Azerbaijan about circumstances which became known to them in connection with the implementation of their powers; 95.2.9. the Human Rights Commissioner on data concerning personal and family life of applicants, which became known to the Commissioner while investigating the circumstances indicated in a

complaint; 95.2.10. The persons specified in Articles 95.2.5-95.2.9 of this Code may be called to testify and interrogated as witnesses, with special justification, only for the purpose of 1) protecting a person's life; 2) prevention of serious crimes; 3) defense of an accused or convicted of a serious crime" [2, p.278; 6, p.47; 7, p.145-146; 12, p.12].

The legislation of many States does not provide for the execution of letters rogatory by officials of one State in the territory of another State. The legislation of Azerbaijan provides only for the participation of official representatives of the requesting authority in the execution of the request for legal assistance of a foreign State with the consent of the Ministry of Justice of the Republic of Azerbaijan. If there are no barriers to the conduct of proceedings in the territory of another State, States should encourage such participation.

Confrontation in the framework of legal assistance in criminal cases is not included in the scope of legal assistance, but it is not excluded as other procedural actions. Confrontation in the framework of legal assistance in criminal matters is a promising trend and may be used mainly in cases of transfer of a criminal case from one state to another for the prosecution of its national, who has committed crimes in the territory of the requesting state, left the country before the initiation of criminal proceedings and is not subject to extradition. However, there may be other cases of confrontation between different participants in criminal proceedings in different states, when there is an imminent threat of serious damage to the well-being of the participant in criminal proceedings and it is impossible to prevent otherwise the illness, infirmity, long distance between the places of residence of the parties to the confrontation, etc. From the point of view of the prompt provision of legal assistance in the process of investigation, detection of crimes, as well as in the administration of justice in the framework of the provision of legal assistance, confrontation is relevant.

When conducting remote hearing and videoconferencing some objections arise related to the admissibility, immediacy of evidence obtained through remote interrogation and confrontation. Therefore,

we believe that only after the legislative definition of the general conditions of admissibility of remote interrogation in criminal proceedings, procedural conditions of interrogation with the remote presence of the interrogated person, the procedural position of persons participating in remote interrogation, it can be considered lawful.

Videoconferencing is a method of direct examination of evidence by technical means and it can be treated as an exceptional circumstance, and in the future, it may even be treated as a normal circumstance allowing for mediated examination of evidence. The exceptionality lies in the fact that videoconferencing is used in cases where it is impossible to obtain and examine evidence directly and, on the condition, that digital technology is properly chosen to record these circumstances.

International acts and national legislation of some states allow the use of videoconferencing hearings only for interrogations and mainly for obtaining witness testimonies. We believe that the confrontation between a witness, victim, suspect, and accused, both between each other and in any combination of them and identification via videoconferencing is a promising area of legal assistance between states and requires its legislative solution at the level of national legislation [24, p.191-192].

For conducting confrontation and identification in the framework of legal assistance between states via video conferencing it is proposed to make specific additions to the national legislation of the countries bound by international and bilateral treaties on legal assistance, including the legislation of the Republic of Azerbaijan. CPC of the Republic of Azerbaijan regulates the interrogation of the person being outside of the Republic of Azerbaijan by videoconference in the order of legal assistance, but the fulfillment of such request of the foreign country is not foreseen. Therefore, it is proposed to supplement to the Article 51-2.13 of the CPC the new point with a reference that a foreign state's court order to interrogate a person located on the territory of the Republic of Azerbaijan via videoconferencing systems is executed in the same way.

The security measures of the interrogated persons should include their anonymization. İt should be included Article 15-1 (Anonymization of protected persons) to the Law of the Republic of Azerbaijan "On state protection of persons involved in criminal proceedings"[47, p.2005].

The performance of forensic examinations in the context of legal assistance between States is part of legal assistance under all of the instruments governing this activity. Although all forensic examinations are based on sound and practically proven knowledge, problems may arise in the assessment of forensic reports performed in the course of legal assistance because of the research methodology used. Therefore, the issue of applying a uniform methodology is relevant when performing forensic legal aid examinations. The issue of applying a common methodology is also relevant at the national level for those states in which there are governmental and non-governmental forensic science institutions.

Legal assistance for forensics requires the integration of forensics and the conduct of forensic examinations based on a common methodology and the application of common international standards. A common methodology is the first step in the integration of forensic science. Before the application of a common methodology, expert methodologies must be tested for suitability, which in turn is verified by validation. After the standardization of forensic research, it is possible to move to the accreditation of forensic institutions based on these standards. The existence of special standards for the accreditation of forensic institutions in a separate state is not able to solve all problems, including problems related to the evaluation of expert opinions. Therefore, in the aspect of legal assistance, it should be accredited in accordance with the ISO 17025 standard in accordance with ENFSI documents, of which the Republic of Azerbaijan is also a member.

The third chapter of the dissertation "Procedural Guidance and Problems of Forensic Support of Procedural Actions Within the Framework of Legal Assistance in Criminal Cases Between States" consists of two paragraphs.

The first paragraph of chapter three, "Procedural Guidance, Prosecutorial Supervision and Judicial Control of Procedural and Other Actions in Mutual Legal Assistance in Criminal Matters Between States", focuses on improving procedural and other actions, prosecutorial and judicial supervision in mutual legal assistance in criminal matters between States.

The legislation of some States uses the term "judicial supervision". Judicial control and judicial supervision at the stage of pre-trial proceedings are used as synonyms. We believe that the control is related to managerial powers and consists in checking the compliance of activities of structural units with regulations and other documents. Prosecutorial supervision throughout the inquiry and preliminary investigation in pre-trial proceedings is carried out before the transfer of a criminal case to court, while judicial supervision is associated with the conduct of actions that restrict human and civil rights and freedoms, and accordingly, in scope, is limited than prosecutorial supervision. Unlike supervision, control is related to the implementation of administrative functions.

Judicial supervision in pre-trial proceedings of the Republic of Azerbaijan is more limited than the prosecutor's supervision and is also exercised over the forced application of procedural coercive measures. Based on the legal analysis of the concepts of supervision and control, the court in pre-trial proceedings carries out control rather than supervision, since control, in contrast to supervision, is related to the implementation of administrative functions. The powers of the court in pre-trial proceedings of the Republic of Azerbaijan are denoted by judicial supervision, which is due to the use of the word supervision in the Azerbaijani language to denote control and supervision. On the other hand, attributing the supervision over the execution and application of law to the prosecutor's power by Article 133 of the Constitution of the Republic of Azerbaijan leaves the choice of terms for the marking of judicial control and judicial supervision in pre-trial proceedings. Based on the verification and administrative nature of the essence of court actions on judicial supervision in the CPC of the Republic of Azerbaijan, judicial supervision in pre-trial

proceedings should be called judicial control (control-yoxlama) [18, p.80].

The current legislation does not provide for the implementation of procedural guidance, prosecutorial supervision, and judicial supervision over the implementation of procedural coercive measures carried out in the execution of requests of foreign states in the order of mutual legal assistance. The execution of requests for procedural actions and, accordingly, the application of coercive measures without procedural guidance, prosecutorial supervision, and judicial control is simply impossible, and it is not even worth discussing the violation of the rights of participants of these actions. Therefore, to codify the issues of providing legal assistance in criminal cases, implementation of international standards and improvement of national criminal procedural legislation should include appropriate changes in the activities and powers of prosecution authorities on procedural guidance and supervision of the execution of requests of foreign states for procedural actions in the order of providing legal assistance between states.

Following the amendment of the legislation, the prosecutor has the right to exercise procedural guidance of the execution of requests from foreign States for procedural actions in the form of legal assistance. The prosecutor's procedural guidance of procedural actions is a form of prosecutorial supervision. Prosecutorial supervision precedes judicial control and may be conventionally called the first instance in pre-trial proceedings. Procedural management of procedural actions for the execution of judicial requests of foreign states for legal assistance gives the right to the compulsory application of a measure of procedural coercion and, accordingly, these actions are covered by both prosecutorial supervision and judicial control.

The CPC does not disclose the content of the term criminal prosecution and based on the analysis it can be stated that the procedural management of the prosecutor covers the organization of pre-trial investigation, determining the direction of the investigation, coordination of procedural actions, creating conditions for the work of

investigators, ensuring compliance with legal requirements and is a form of prosecutorial supervision.

Criminal prosecution and prosecutorial supervision are carried out as part of criminal prosecution, operational and investigative actions. The prosecutor supervises the procedural activities of bodies that carry out search operations and preliminary investigation (investigation and inquiry). As can be seen, the prosecutor's supervision is exercised over the procedural activities.

Procedural guidance and prosecutorial supervision of the preliminary investigation do not repeat, but complement each other and serve to identify, eliminate violations of the law. The supervising prosecutor not only points out errors but also reverses all unlawful decisions at the stage of preliminary investigation. The prosecutor performs the procedural guidance of procedural actions performed in the order of legal assistance between states and coordinates procedural actions, creates conditions for normal work of investigators, ensures compliance with legal requirements, i.e., controls legality and timeliness of performance of procedural actions, and adoption of procedural decisions.

It is proposed to amend Article 7.0.23 of the CPC of the Republic of Azerbaijan and Article 4 of the Law of the Republic of Azerbaijan “On Prosecutor's Office” about guidance over the actions in the framework of the legal assistance [18, p.81; 20, p.73].

The second paragraph of the third chapter “Problems of Criminalistics Provision of Legal Assistance in Criminal Cases Between States” is devoted to the study of issues of criminalistic provision of legal assistance between States in criminal cases in the aspect of reliability and credibility of the evidence.

Legal assistance between States in criminal matters is also inconceivable without the application of scientific and technical methods and tools and requires a specific approach to forensic support for the execution of requests. We believe that to improve the effectiveness of procedural and other actions within the framework of legal assistance in criminal matters, the identification of problems of application of scientific and technical means and knowledge and is

necessary for the recognition of the results of actions within the framework of legal assistance.

The terms technical-criminalistics, tactical-criminalistics, and scientific-technical support for the detection and investigation of crimes are used. And based on the specific characteristics and tasks of means of criminalistic support, it is possible to make further classification.

The use of criminalistics tools in conducting requests for legal assistance between States in criminal matters should be accompanied by appropriate normative documentation on standardization and a brief description of generally accepted methods of investigation in modern science, technology, art, and other fields. Such a normative definition would ensure the reliability of the evidence obtained and eliminate potential fluctuations and risks in assessment. For example, it is possible to refer to the legislative consolidation of the use of criminalistic tools in forensic examinations.

The CPC of the Republic of Azerbaijan does not refer the requirements to the expert conclusion to other procedural actions related to the application of criminalistic means. The legislation defines only reflection of methods of investigation and conclusions in the expert report, which in practice is limited only by indication of names of methods and obtained results. The reliability of applied forensic tools depends on registration or certification. However, it is impossible to find notes on certification or registration of the means in the documentation on the criminal case in terms of the application of forensic tools.

The legislation regulating the activities of forensic authorities provides for international cooperation, but its essence is not disclosed. The legislation of all States has common requirements for methods and techniques, scientific and technical means, such as scientific validity or reliability, safety, then limiting cooperation in practice to the field of science only limits mutual legal assistance.

Carrying out forensic examinations as part of the provision of legal assistance is a matter of time and legislation, with some exceptions. The only obstacle is the citizenship of the experts, but in

another state it is legally possible to involve forensic experts in the research process as a specialist, and the involvement of a specialist is not related to citizenship.

Azerbaijani criminal procedure legislation does not apply the concepts of "persuasiveness" or "unconvincing". Invincibility is used as a synonym for the following notions: evidentiary value, irrefutability, thoroughness, clarity, weight, validity, reliability, strength, intelligibility, vividness, weightiness, sufficiency, strength, incontestability. In this sense, Article 146.1 of the CPC of the Republic of Azerbaijan defines the sufficiency of the evidence as such a volume of admissible evidence collected in criminal proceedings on the circumstances to be established, which allows making a reliable conclusion to determine the subject of proof. This definition can also be considered as the definition of the persuasiveness of evidence. The obligatory indication of the application of forensic means and the description of research methods generally accepted in modern science, technology, art, and other fields can be imposed on the authorities' executing requests for legal assistance with the adoption of a departmental act within the authority of these authorities [19, p.225].

The effective use of the conceptual apparatus, methods, and other means of one field of science in another is a new direction of science development. Strengthening the integrative role of philosophy in forensic science is the final stage of knowledge integration. Forms of integration are conditional, interrelated, complementary, and can even unite parts of different types of knowledge. The synthesis of scientific knowledge itself is an important aspect of knowledge integration. The use of synthesis of scientific knowledge in forensic science shows itself in the improvement of the theory and practice of expert studies, driven by the needs of investigative and judicial practice, leads to new methods and technical tools in a particular stage of scientific development, which serve as a step to the integration processes and corresponds to a new higher level of scientific knowledge. These processes in the field of forensic examination and criminalistics serve to expand the possibilities of forensic expertise in the field of mutual legal assistance and require extensive use of

philosophical categories, coordination, and acceleration of unification processes of the criminalistic terms concepts.

The fourth chapter, "Current Problems of Legal Assistance Between States on criminal cases", consists of three paragraphs.

The first paragraph of the fourth chapter, "Problems in the Provision of Mutual Legal Assistance Between Treaty-Bound States", deals with treaty-based legal assistance in terms of improving legal assistance practice.

The position is supported that the legislation should go in the direction of the execution of letters rogatory through specific prosecuting authorities, namely, bodies of inquiry, investigation, prosecutors, or courts. Implementation of legal assistance by specific criminal prosecution bodies of the state that conduct inquiries, investigations, and criminal justice will simplify procedures and increase the efficiency of execution of letters rogatory of a foreign state [14, p.192; 29, p.157; 30, p.57-58]. At the same time, we believe that control by the central authority remains a necessary condition for the execution of letters rogatory in the requested State to increase the responsibility of national authorities executing foreign judicial instructions, to eliminate cases of untimely and inaccurate execution.

The effectiveness of legal assistance in criminal cases with foreign elements sometimes depends on the timely and high-quality execution of court requests. Even though there is no concept of "reasonable time" in the CPC of the Republic of Azerbaijan and other legal acts, the practice of the Republic contains certain provisions related to ensuring expeditiousness of legal proceedings.

But practically the time passes before the requested party receives the request and receives a response by the requesting party. Some other problems related to the procedural timing of court proceedings also affect the timing of the execution of foreign letters rogatory. It is supported by the results of the questionnaire. According to the opinion of respondent's execution terms of the court requests are too long, requires additional documentation and assistance is provided through the central authorities. 95% of respondents believe

that long providing terms of the court requests affect the efficiency of the criminal proceedings

The CPC of the Republic of Azerbaijan does not use the term "reasonable time", but Article 48 of the Code is devoted to ensuring the promptness of criminal proceedings. The national criminal procedure law uses the terms "complexity" and "special complexity" of the criminal case when extending the procedural time limits without explaining the essence. The practice of the European Court of Human Rights has developed criteria for determining the complexity of a case, but the national practice advocates the impossibility to define a closed list of these criteria.

One of the criteria for assessing the "reasonable time" for consideration of the case is the conduct of the court and the party to the case, namely the authority, the conduct of the applicant himself. We are also talking about a reasonable period of criminal prosecution, including the stages of initiation of criminal proceedings, preliminary investigation, consideration of a criminal case on appeal, when the court may issue a completely new decision against a person, including completely releasing him from criminal prosecution.

Ensuring swiftness of criminal proceedings does not belong to the principles or conditions of criminal proceedings, and therefore the consequences of violation of these principles, specified in Article 9.2 of the CPC of the Republic of Azerbaijan, do not apply to it. There is also another requirement of the CPC on the inadmissibility of evidence obtained with the deprivation or restriction of the legal rights of participants in criminal proceedings.

To expedite the execution of letters rogatory between States in criminal matters, which are mainly governed by the domestic law of the requesting country, a legislative solution to the question of the execution of letters rogatory within a short time frame is required. Legal assistance between member states of the Council of Europe requires the application of the reasonableness of criminal proceedings to letters rogatory in criminal cases as well. To apply common concepts, to simplify mutual understanding in the provision of legal assistance between states in conditions of integration of legal systems

and legal systems of states among others, it would be appropriate to rename Article 48 of the CPC of the Republic of Azerbaijan to "Reasonable time of criminal proceedings", which should provide for the criteria of reasonable time of proceedings, based on the case-law of the European Court of Human Rights, and the right of participants in criminal proceedings to appeal in case of failure to ensure speed in pre-trial stage and the trial stage olardı [16,p.191; 30, p.57-58].

To further improve legal assistance between States in criminal matters, bilateral treaties on legal assistance between States should contain special provisions on specific time limits for the execution of letters rogatory, the participation of foreign authorities, or the conduct by foreign authorities of any investigative acts in the territory of a State, in the absence of language barriers and significant differences in the law.

The national legislation does not provide for the right of the accused, the victim, and other participants in criminal proceedings to apply to the prosecutor in charge of procedural management of the preliminary investigation, the president of the court, and other instances to accelerate the criminal prosecution. The possibility for the applicant to accelerate the procedure of examining a complaint within the framework of the European Court of Human Rights should also be provided for in the national legislation. It is proposed to consider Art. 87.6.23 of the CPC of the Republic of Azerbaijan as Art. 87.6.24 and supplement Art. 87.6.23 with the victim's right: "87.6.23 Request to expedite the consideration of the case;".

The problem of regulating overlapping, and parallel jurisdictions is one of the current problems of legal assistance between States in criminal matters. The application of the European arrest warrant to the practice of legal assistance between States in other regions or on other continents is not possible without certain conditions. Even with the theoretical approach to the application of such a warrant between States, the coordination of the administration of justice remains a problem. Pending the identification of an instrument corresponding to the European arrest warrant, in the first instance, if States are bound by international agreements on legal

assistance in criminal matters, assigning the function of supervisory authority to multilateral criminal legal assistance agencies would be a way out and would set a precedent for cooperation in this field [45, p.10].

The second paragraph of chapter four, "Perspectives on the Use of Electronic Evidence and Spontaneous Information in Inter-State Legal Assistance" examines the issues of obtaining the use of electronic and spontaneous information relevant to evidence in inter-State legal assistance.

There is no concept of electronic evidence in the national legislation. Azerbaijani legislation recognizes only a document as documented information and proceeding from technical ways of fixing, storage, and transmission of information refuses from absolutization of the written form of documents. It can be stated that electronic information is understood as the information presented in the form enabling it to be transmitted, processed, and the like using electronics. Electronic documents include plastic payment documents (plastic cards), documents related to using electronic payment by sending and receiving funds by electronic means, etc.

The wording of the notion of documented information (document) in the Law "On Information, Informatisation, and Information Security" is more voluminous and successful; it would be appropriate to fix it for criminal proceedings and to add a new part 135.4 to Article 135 "Documented information (document) is any requisites information recorded on a material carrier in the form of text, sound or description and allowed to identify regardless of source, place of detention, official status, type of property, whether it was created by the organization to which it belongs" [44, p.63-64].

Electronic evidence is sometimes located in the jurisdiction of another State and obtaining such evidence requires recourse to that jurisdiction in the manner envisaged in the legislation, which creates additional challenges related to the risk of loss, tampering, or erasure of electronic data. The institution of legal assistance in criminal matters between States requires the making of appropriate requests to the other State and a certain amount of time to execute and receive a

response to that request from the requested State. Under multilateral and bilateral treaties between States on assistance in criminal matters, each State designates its designated authority responsible for making and executing requests from foreign jurisdictions, which requires adequate time to complete the formalities.

Another effective way to partially eliminate the risk of alteration or loss (erasure) of electronic documents is the institution of "spontaneous information" or information provided voluntarily, which has been used successfully in international cooperation to investigate selected offenses. Under this institution, the competent authorities of the State in whose territory and jurisdiction the evidence is located send information or material on the circumstances and elements of the offense within that State. The timely and expeditious receipt of such information can contribute to more effective and expeditious investigations.

The receipt of spontaneous information from a foreign jurisdiction does not explicitly fall within the reasons for initiating criminal proceedings, it can be subsumed under the communications of a legal person under civil law, international treaties, and bilateral legal assistance treaties.

The spontaneous forwarding of identified information depends on the will of the party who has identified the information and as already noted, judicial requests for information are time-limited. In such cases, the use of administrative or police assistance will provide an opportunity to apply some restrictions. Traditional forms of international cooperation involve lengthy and onerous procedures and their success often depends on the goodwill and competence of the parties to the process. The scope of the global Internet is becoming increasingly wide-ranging and requires moving beyond traditional forms of international cooperation, including formal mutual legal assistance frameworks and structures. One of the most effective forms of cooperation is also the channeling of spontaneous information on all criminal offenses and other violations. This requires the improvement of the referral of spontaneous information, the inclusion of specific rules in international crime control and legal assistance

instruments and bilateral agreements on the exchange of information between the relevant administrative authorities of States, the mandatory exchange of annual reports on the referral of spontaneous information on detected facts and the expansion of the scope of administrative-legal assistance measures [28, p.67].

The third clause of the fourth chapter, "Challenges of Providing Legal Assistance in Criminal Matters Between States on a Non-Contractual Basis", deals with issues of identifying and addressing challenges in providing legal assistance on a non-contractual basis to improve legal aid practice.

In the absence of treaties, the execution of foreign letters rogatory sometimes depends on political will, i.e., friendly relations between States, the level of democracy of the judicial system, the advisability of extradition on the political side, etc. In providing legal assistance in the absence of legal assistance treaties, the flexibility of the principle of dual criminality should be considered [38, p.292].

Providing legal assistance in the absence of a legal assistance treaty through diplomatic channels creates problems related to the timing of assignments and involves a large number of State authorities.

The current transnational nature of crime is due to the commission of individual criminal acts in the territories of several States, the different nationalities and nationalities of the perpetrators, and the location of evidence of the crimes in the territories of different States. Under such circumstances, the pursuit of justice for these crimes requires the widest possible cooperation by the States concerned.

The absence of multilateral and bilateral treaties on State cooperation does not preclude the use of other forms of cooperation. Legal assistance between States is an area of cooperation between States and is subject to the principle of reciprocity in the absence of multilateral and bilateral treaties [36, p.288].

The provision of legal assistance on a non-contractual basis is linked to expediency, and this may be related to the initiation of criminal proceedings, the execution of requests for procedural actions. Expediency can also be applied in terms of the reasonableness of the

prosecution, but it should be noted that despite overlapping elements, expediency, for example, if the State is guided by political considerations or official positions regarding the sovereign right of the State in the administration of justice, does not always mean reasonableness.

The principle of reciprocity, based on the principle of sovereign equality of States in relations between States, is a peremptory norm (jus cogens) of international law. Applying the principle of reciprocity to situations of legal assistance between States in the absence of a treaty, it may be stated that States must execute a request for legal assistance with the condition that the requesting State also executes such requests.

Providing legal assistance on a non-contractual basis poses some challenges, some of which are inherent to the provision of legal assistance on a contractual basis.

The execution of a directly received letters rogatory a foreign judicial authority in the absence of a mutual legal assistance treaty sets precedents for cooperation and helps to further develop mutual legal assistance.

One point of contention is the forcible transfer of criminals in the form of kidnapping from the territory of another State. It is not an institution for mutual legal assistance in criminal matters or a legal institution in the general sense. It applies in cases where mutual legal assistance does not produce the expected results, takes longer, the State in whose territory the perpetrator is present is unwilling or unable to transfer for political or other reasons, or is disguised as a refusal to extradite to facilitate the kidnapping. The appeal to this institution cannot be justified by the fact that the effective administration of justice in criminal cases depends on the timely execution of certain procedural actions. The purpose of kidnapping is to arrest, interrogate and punish criminals, all of which, of course, are just as illegitimate as the kidnapping itself. In some cases, States usually chose to remain silent after an illegal transfer. İt is a violation of the State's human rights obligations and, although formally, a violation of their sovereignty. Extradition has been resorted to in recent years to obtain

intelligence and unofficial punishments, which has led to an increase in disappearances. The State's refraining from engaging in unlawful activities also encompasses State action to eliminate those activities through legitimate means, regardless of the attitude towards those activities. In some cases, third States that allow the use of their territory or airspace when States do not share borders are responsible for participating in these unlawful activities, for acquiescence and negligence if they had information. When a State asks another State to detain persons secretly, sends questions for interrogation, fails to take measures to detect transport routes passing through the State's territory, and in other cases becomes involved in illegal operations. In some cases, counter-terrorism cooperation has also been compared to cases of unlawful extradition. The difference here, however, is that such cooperation measures allow for the proper administration of justice. Of course, this cannot justify the use of this cooperation by a State for unlawful purposes. The frequent recourse by States to any procedure to achieve desired results in cases of threats to national security is among the practices of recent years. To eradicate this "practice", bilateral agreements on mutual legal assistance as well as on cooperation and friendship should include provisions on the inadmissibility of the illegal forced transfer of criminals [37, p.153].

The Conclusion summarizes the provisions reflecting the results of research, scientifically and theoretically grounded position of the author on the necessity of new approaches to the problems of mutual legal assistance in criminal cases between states, doctrinal ideas on the prospective improvement of mutual legal assistance in criminal cases, recommendations on modernization of criminal procedure legislation and proposals regarding ratification of certain international acts, unilateral information of states are formulated.

It is proposed to introduce amendments and additions to the CPC, laws of the Republic of Azerbaijan "On Legal Assistance in Criminal Matters" and "About Prosecutor's Office" on procedural guidance and supervising procedures, addition the application of the competent authority (official) of a foreign state in the framework of the of legal assistance to the reason for starting criminal proceedings,

reasonable time of criminal proceedings , questioning of witnesses, located on the territory of the Republic of Azerbaijan by a foreign state with the videoconferencing systems, providing of the confrontation and presentation for identification with the videoconferencing systems, victims' rights apply for expediting cases; enlarging the circle of individuals who may not be called or questioned as witnesses, concept of documented information (documents), regulations on mutual legal assistance in criminal matters on a reciprocal basis in the absence of international agreements, rename of the judicial supervision judicial control , introduction of the new article on expedited preservation of stored computer data for the improving of the criminal procedural bases of mutual legal assistance between states.

The author substantiates the execution of letters rogatory received directly from a foreign judicial bodies, the expansion of the scope of investigative and judicial bodies executing letters rogatory, the introduction of the concept of the electronic evidence, inclusion of the execution of investigative actions in another state under the prosecutor guidance to multilateral and bilateral agreements on legal assistance, widely using of the provisions of the Qur'an and of the Prophet's treaty practice legal assistance, extradition and other issues in dealing with criminals among tribes and other nations in current practice etc.

The annexes contain the results of a survey of judges, prosecutors, preliminary investigation officers, and lawyers, diagrams reflecting the provision of legal aid at the State level, specific proposals for improving legislation on the provision of legal aid between States.

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