

# Problems of Criminal Law and Criminal Procedure in International Search

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**Keywords:** Criminal law; operational search activities; international search; grounds for international search; competence to issue an international search warrant; standing of a wanted person; applying a measure of restraint to a wanted person; statutory regulation of international search.

**Abstract:** During the operational search activities and criminal proceedings it is often necessary to issue an international search warrant for a person in order to arrest and extradite him/her. In such cases, a number of questions related to the regulation of criminal law and criminal procedure arise, the answers to which are not obvious, and are not available in the scientific literature. Based on the analysis of Russian legislation and practice of its application, the standards of international law, as well as scientific information sources and references, the answers to a number of questions have been substantiated, including: the types of offences for which an international search warrant can be issued against a person; whose competence it is to issue an international search warrant against a person; documented justification for issuing an international search warrant against a person; against which persons (with what standing) an international search warrant can be issued; who and at what stage applies the measure of restraint in the form of taking into custody for an internationally wanted person. The answers received provide grounds for improving the regulations governing the declaration of an international search for a person in the Russian Federation with a view to arrest and extradition, as well as the practice of their application. The purpose of the research is to identify the problems in criminal law and criminal procedure in the field of international search and to substantiate options for solving them in the legislation and law enforcement practice. In order to achieve this, the following objectives are being pursued: the types of offences for which an international search warrant is issued against a person are identified; the bodies and officials whose competence includes issuing an international search warrant against a person are identified; the documented justification for issuing an international search warrant against a person are identified; the analysis is made in order to identify against which persons (with what standing) an international search warrant can be issued; the analysis is made in order to study who and at what stage chooses the measure of restraint in the form of taking into custody for an internationally wanted person.

## 1 INTRODUCTION

The international search for persons who have committed crimes and are absconding from prosecuting authorities abroad is a civilized form of ensuring the unavoidability of punishment and the maintenance of public order and security. Both the state searching for the person charged with a crime and the foreign state detecting the absconded on its territory are interested in the search effectiveness. The trends towards the “transnationalization of prisoner population” (Pakes, 2017), noted in Western European countries, do not cancel out the issues of international search and extradition, thus the

extradition issues remain relevant. Diverse aspects of extradition have been analysed in various academic sources published both in Russia (Chekotkov, 2016; Voronin, 2018; Alieva, Temirsultanova, 2019) and abroad (Hingoraney, 2002; Herrington, 2015; Stefanovska, 2016; Davies, Arnell, 2020). Particular attention is paid to respecting citizens’ rights, balancing state interests and preserving the rule of law (Bassiouni, 2014), and to the side effects of the free migration of people, which is equally free for the migration of criminals (Klimek, 2011). In this situation, the issues of precise adherence to the established procedure for issuing an international search warrant against a person, with the options for

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its improving and simplifying, remain important (Boister, 2018). In this context, some criminal law and criminal procedure issues in international search for the purpose of arrest and extradition, not fully resolved or causing some difficulties in practice, are of particular concern, including: the types of offences for which an international search warrant can be issued against a person; whose competence it is to issue an international search warrant against a person; documented justification for issuing an international search warrant against a person; against which persons (with what standing) an international search warrant can be issued; who and at what stage chooses the measure of restraint in the form of taking into custody for an internationally wanted person. The research undertaken provides answers in relation to the international search for a person for the purpose of arrest and extradition for prosecution or execution of a sentence. In order to establish control over the migration and location of a person suspected or accused of committing a crime, or a person connected to a police dossier where there is no procedural decision to declare him/her a suspect or charged in a criminal case, they have certain peculiarities for the international search.

## 2 MATERIALS AND METHODS

The research is based on the study of case files and police dossiers, procedural materials of the General Prosecutor's Office of the Russian Federation, the Russian Interior Ministry and the Federal Penitentiary Service of Russia, the Russian and foreign regulatory acts, and works by other scholars. The research is based on the participant observation method, expressed in the collection of factual material during direct participation in the work of the Main Department of International Legal Cooperation, the General Prosecutor's Office of the Russian Federation on the organization and handling of international search and extradition. As a result of this method the main results were obtained. Observation, interviewing, experimentation, analysis, comparison and other methods were also used.

## 3 RESULTS AND DISCUSSION

### 3.1 What Are the Offences, for Which an International Search Warrant Is Issued

An international search warrant shall be issued for crimes, for which extradition of a person committing a crime for prosecution or execution of sentence may be sought in accordance with the established procedure. The European Convention on Extradition, drawn in Paris on 12/13/1957 (as amended on 9/20/2012), provides that extradition shall be granted in respect of offences penal under the laws of the requesting Party and of the requested Party by deprivation of liberty or under an arrest warrant for a maximum period of at least one year or by a more severe penalty. (S. Bernholz, M. Bernholz, Herman, 1985). Where a conviction and prison sentence have occurred or an arrest warrant has been issued in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months (Article 2). In accordance with Article 3 of the Convention, extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his/her race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

The Russian practice is structured in accordance with these international legal norms. In accordance with paragraph 118 of Instruction for Information Management for Interpol Cooperation, approved by the Russian Ministry of Internal Affairs No. 786, the Russian Ministry of Justice No. 310, the Russian Federal Security Service No. 470, the Russian Federal Protection Service No. 454, the Russian Federal Drug Control Service No. 333, the Russian Federal Customs Service No. 971 dated 10/6/2006 (as amended on 9/22/2009) (hereinafter referred to as the Interpol Instruction), international search warrant shall be issued against the charged persons, having escaped from the inquiry, investigative or judicial authorities, provided that they are accused of committing medium-gravity, grave and especially grave crimes.

In accordance with Article 15 of the Criminal Code of the Russian Federation, the crimes qualified as medium-gravity crimes shall be premeditated acts

for committing which the maximum punishment stipulated by the Criminal Code does not exceed five years of deprivation of freedom, and negligent crimes for committing which the maximum punishment stipulated by the Criminal Code does not exceed ten years of deprivation of freedom. The crimes qualified as grave shall be intentional acts, for committing which the maximum punishment stipulated by the Criminal Code does not exceed ten years deprivation of liberty, and negligent crimes, for committing which the maximum punishment stipulated by the Criminal Code does not exceed fifteen years deprivation of liberty. The premeditated acts, for committing which the Criminal Code provides for a punishment in the form of deprivation of liberty for a term exceeding ten years, or a more severe punishment, shall be recognized as especially grave crimes.

The non-grave crimes, provided for by the Criminal Code, being premeditated and negligent acts, for committing which the maximum punishment does not exceed three years of deprivation of liberty (Part 2, Art. 15 of the Criminal Code), are not included in the scope of the international search. The explanation for this seems to be that the international search is a very costly procedure, making it "unprofitable" in today's realities to pursue persons who committed non-grave crimes.

However, unjustified deviations from the specified procedure are sometimes made in practice, when Interpol's National Central Bureau at the Ministry of Internal Affairs of Russia appeals to the General Prosecutor's Office of the Russian Federation with a request to organize an international search with a view to the arrest and extradition of persons accused of committing non-grave crimes. The inadmissibility of such actions is pointed out, in particular, in the Information sheet on the organization of the international search for the absconded charged and convicted sought by Russian law enforcement agencies for 2017, prepared by the Main Department for International Legal Cooperation of the General Prosecutor's Office of the Russian Federation (March 2018), as well as in the letter from the Head of the Main Department of Supervision on Investigations, Inquiry and Operational Search Activities of the Prosecutor General's Office of the Russian Federation addressed to the Head of Interpol's National Central Bureau at the Ministry of Internal Affairs of Russia (April 2018).

It should also worth mentioning that the rule on the court's right to change the category of a crime to a less grave one (Part 6, Art. 15 of the Criminal Code)

is intended to apply when imposing punishment for the crimes committed, and does not directly affect the issue of an international search warrant.

### **3.2 What Are the Bodies and Officials Whose Competence Includes Issuing an International Search Warrant against a Person**

To answer this question, it is first necessary to distinguish between the criminal procedure competence to decide on issuing an international search warrant against a person and the operational search competence to issue a particular form of search warrant, i.e. the international search.

If the location of a suspect or a charged is not known, an international search warrant is issued against such a suspect of a charged. The decision to issue a search warrant is a power under the criminal procedure, and applies to all offences for which criminal proceedings are pending, irrespective of their category. Such a decision falls within the competence of a person or a body in charge of the criminal case.

In accordance with Art. 210 of the Code of Criminal Procedure of the Russian Federation the power to search for a person is vested primarily in the investigator in charge of the criminal case. The head of the investigative body, who took over the case in accordance with Part 2, Art. 39 of the Code of Criminal Procedure, shall also have such power. In accordance with Part 1, Art. 223 of the Code of Criminal Procedure, such a power formally extends to the inquiry officer.

The law also grants the power to make a search decision to a court (a judge). During preparation for the trial when the charged has absconded and his/her location is unknown, the judge, in accordance with Part 2, Art. 238 of the Code of Criminal Procedure, shall be entitled to suspend criminal proceedings, and, if the charged has escaped from custody, shall return the criminal case to the public prosecutor and order that the latter to provide for the search of the charged or, if the charged who was not detained has escaped, shall appoint a measure of restraint in the form of taking into custody and order the public prosecutor to provide for a search for the charged. In practice, however, the judge usually does not suspend proceedings, but returns the criminal case to the prosecutor under Article 237 of the Code of Criminal Procedure in order to re-draw the charging document or the bill of indictment due to an incorrect indication of data relating to the identity of the charged regarding the place of residence or location. At the

trial level, if the accused has absconded, the court, in accordance with Part 3, Art. 253 of the Code of Criminal Procedure the court shall pass a ruling or a resolution on the search for the accused who has absconded and order the search to be performed by the body of inquiry, bypassing the prosecutor.

However, not every search warrant, issued in the course of criminal proceedings, immediately takes the form of an international one. In accordance with paragraph 114 of the Interpol Instruction, the international search for persons shall be declared only if, as a result of the investigative and operational search activities performed: information has been obtained that the wanted person has left the Russian Federation; relatives, friends and other links with the person outside the Russian Federation have been reliably established; and reliable information has been obtained that the wanted person intends to leave the Russian Federation for business or other purposes.

The issue of an international search warrant falls within the competence of the operational search units that provide operational support for criminal proceedings. These are the relevant units of the Russian Ministry of Internal Affairs, the Russian Federal Penitentiary Service, etc. Thus, the cases of escape of a charged, an accused, a convicted from a detention facility, arrest, or custody (Art. 313 of the Criminal Code), as well as evasion from serving a sentence of imprisonment, fall within the scope of the international search of the Russian Federal Penal Service, based on its competence. At the same time, paragraph 119 of the same Instruction provides that the international search warrant shall be issued against convicts who evade serving the sentence of imprisonment or escape from the prison, provided that they are condemned to a sentence of imprisonment for period of not less than four months, namely the period as specified in Art. 2 of the European Convention on Extradition, 1957.

### **3.3 Documented Justification of Issue of an International Search Warrant**

The European Arrest Warrant has been in place within the European Union since 1 January 2004. In its evaluation report dated January 2006, the European Commission hailed the Arrest Warrant as an "overall success" as it provided an efficient and speedy transfer procedure, while guaranteeing judicial control and respect for fundamental rights. National evaluation reports show that the arrest warrant is widely used to secure the arrest and transfer throughout the Union. The European Arrest Warrant

has largely replaced the traditional extradition procedure (Van Sliedregt, 2007).

In the Russian Federation, these very traditional procedures, which provide national documentary grounds for issuing an international search warrant, are still in place. In order to determine these grounds correctly, it is necessary to identify the document that reflects the original decision to proceed with the international search and to ascertain its documentary basis.

The document reflecting the initial decision to perform international search is the resolution of the official of the search unit in charge of the fugitive case to issue an international search warrant against the accused or a convicted. This procedure is set out in paragraphs 122-123 of the Interpol Instruction: the decision to issue an international search warrant against a person shall be formalized by an appropriate resolution issued by an officer of the search unit, approved by the head or the deputy head of the unit, coordinated with the head of the relevant body in charge of operational search activities and certified by seal.

This resolution, in turn, has a documented basis. The decision to issue an international search warrant against a person is usually based on an investigator's decision to search for the charged in a criminal case, or on an order to suspend a preliminary investigation, which contains a search warrant as set out in Part 1, Art. 210 of the Code of Criminal Procedure of the Russian Federation. This documentary base is expressly referred to in the Interpol Instruction (clause 121.1).

In our view, the inquiry officer conducting the inquiry in a criminal case is not among the officials whose search resolution could constitute the documented basis for issuing an international search warrant against a suspect. The fact is that search during the inquiry is carried out without a measure of restraint in the form of taking into custody, since the law does not provide for a taking into custody to be resolved in the absence of the suspect. In accordance with Part 1, Art. 225 of the Code of Criminal Procedure, the suspect becomes the charged only after the end of the inquiry and drawing up a charging document. In the event of a need for such a measure of restraint, and if the issue of an international search warrant is a concern at the stage of inquiry, in practice, the criminal case, according to the procedure as per paragraphs 11, 12, Part 2, Art. 37 and Part 4, Art. 150 of the Code of Criminal Procedure shall be transferred through the prosecutor to the investigator to resolve any concerns in the course of the preliminary investigation. After the investigator has

taken the absconded into custody as the charged and the international search warrant has been issued by the international search authority, a measure of restraint in the form of taking into custody shall be applied in absentia in accordance with Part 5, Art. 108 of the Code of Criminal Procedure.

Art. 253 of the Code of Criminal Procedure also refers to a court ruling or a resolution on the search of the absconded accused as a documentary basis for the search if the proceedings in the case of the absconded accused is suspended. (Part 3, Art. 253). These documents provide a second documentary basis for issuing an international search warrant. This would also need to be reflected in the Interpol Instruction, paragraph 121.

The Interpol Instruction supplements the list of documentary grounds for a ruling by an operational search authority to issue an international search warrant against a person, with a prosecutor's instruction given by a judge's order in the case provided for by Part 2, Art. 238 of the Code of Criminal Procedure (paragraph 121.2). Strictly speaking, Part 2, Art. 238 of the Code of Criminal Procedure does not explicitly refer to an "instruction" from the prosecutor. The law provides only that the judge "orders the prosecutor to provide for the search of the charged." Logically, the prosecutor can provide for the search of the absconded only one way: by giving a relevant order to the inquiry body conducting search operations. However, neither the Code of Criminal Procedure, nor the Federal Law "On Prosecutor's Office of the Russian Federation" and the Federal Law "On Operational Search Activities" expressly provide for such a power for the prosecutor, therefore, it seems expedient to supplement the text of Part 2, Art. 238 of the Code of Criminal Procedure of the Russian Federation as follows: "In this case the prosecutor shall give the inquiry body an appropriate instruction to search for the charged." Then the rule in paragraph 121.2 of the Interpol Instruction on "an instruction from a prosecutor given by a judge's order" would have the necessary legitimacy.

Thus, the initial decision to perform an international search is formalized by the resolution of the official of the search unit in charge of the fugitive case to issue an international search warrant against the accused or the convicted, with the documentary basis provided by:

the investigator's resolution about the search of the charged or a resolution on the suspension of the preliminary investigation, containing instructions for the search, provided for by Part 1, Art. 210 of the Code of Criminal Procedure of the Russian Federation;

the court's ruling or resolution on the search for the absconded accused, made in accordance with Part 3, Art. 253 of the Code of Criminal Procedure of the Russian Federation;

prosecutor's instruction given by a judge's order in a case provided for by Part 2, Art. 238 of the Code of Criminal Procedure (with respect to the proposed amendments of the law).

The special rule on documentary grounds for issuing an international search warrant against a person, contained in paragraph 121 of the Interpol Instruction, lists only two of these grounds, the resolution of the investigator (paragraph 121.1) and the instruction of the prosecutor (paragraph 121.2). The above considerations emphasize the need to include a third one as well, the court's ruling (resolution).

In this connection it seems inaccurate to specify the resolution on issuing an international search warrant (Illarionov, Putova, 1999), a request of an internal affairs agency to Interpol's National Central Bureau in Russia (Filippov, 2000), an order of the Prosecutor General's Office of the Russian Federation (Goryainov, Ovchinsky, Sinilov, Shumilov, 2004) as documentary grounds for issuing an international search warrant, since the mentioned documents are "executive" in the procedure of issuing an international search warrant in terms of ruling (resolution, instruction) on issuing an arrest warrant.

### **3.4 Which Persons (with What Standing) Can Be the Subjects of an International Search Warrant Issued**

The scholarly studies, with reference to international and Russian legal instruments, note that in order to issue an international search warrant against persons for the purpose of their arrest and extradition, an offender is required to have a certain standing: a charged or a convicted (Minyaev, 2019). In general, this position is correct, however, it is not entirely in line with the regulations themselves. Let's analyse some of the details.

In accordance with Part 1, Art. 210 of the Code of Criminal Procedure, the decision to issue an international search warrant against a person is made on the basis of a search ruling issued against the suspect or the charged. This means that an international search warrant can be formally issued both against the charged and the suspect. However, a person with the standing of the suspect cannot, in fact, be a subject of an international search. This is prevented by three factors: 1) the short-term nature,

in most cases, of a person's standing of the suspect, which he/she acquires by virtue of the grounds set out in paragraphs 1-4, Part 1, Art. 46, of the Code of Criminal Procedure, when a criminal case is opened in respect of such a person, or the person is detained, or a measure of restraint was applied before the charge, or the person is informed of the suspicion of committing a crime in the manner prescribed by Art. 223.1 of the Code of Criminal Procedure; 2) the need to issue an international search warrant against a person based on sufficient evidence giving grounds to charge the person with an offence, in respect of which the person is indicted as a charged in accordance with Art. 171 of the Code of Criminal Procedure and, therefore, acquires the standing of a charged (Art. 47 of the Code of Criminal Procedure); 3) the possibility of a court order for a measure of restraint in the form of taking into custody only in the absence of the charged and only if an international or interstate search warrant has been issued in respect of the charged.

Thus, a person, who has been detained on suspicion of having committed a crime in accordance with Art. 91 and 92 of the Code of Criminal Procedure (paragraph 2, Part 1, Art. 46 of the Code of Criminal Procedure) may remain as such in accordance with Part 2, Art. 94 of the Code of Criminal Procedure for 48 hours at most and in case of extension of the term of detention in the manner prescribed in paragraph 3, Part 7, Art. 108 of the Code of Criminal Procedure – for 72 hours at most, i.e. for a total of 120 hours at most. If a measure of restraint in the form of taking into custody was applied in respect of the detained (paragraph 3, Part 1, Art. 46 of the Code of Criminal Procedure), charge shall be brought against the person in accordance with Part 1, Art. 100 of the Code of Criminal Procedure not later than 10 days after the arrest. The said time limits are clearly insufficient to complete the procedure of issuing an international search warrant against a person while retaining the standing of a suspect of that person.

A person may be a suspect in relation to at least one of the offences provided for by Articles 205, 205.1, 205.3, 205.4, 205.5, 206, 208, 209, 210, 210.1, 277, 278, 279, 281, 360 and 361 of the Criminal Code for a much longer period. The charges in such cases, in accordance with Part 2, Art. 100 of the Code of Criminal Procedure, shall be brought against a suspect, for which a measure of restraint has been chosen, within 45 days after the imposition of the measure of restraint, and if the suspect has been detained and then taken into custody, within the same term after the time when he/she was detained. A

person may be a suspect for an even longer period if criminal proceedings are brought against him/her (paragraph 1, Part 1, Art. 46 of the Code of Criminal Procedure). In fact, they may amount to the entirety of the preliminary investigation period, not limited in accordance with Part 5, Art. 162 of the Code of Criminal Procedure. Such time limits would be sufficient for the procedure of issuing an international search warrant against a person in the standing of a suspect (which obviously provides the opportunities for the abuse of right (Andreeva, Grigoryev, Zaitsev, Trubnikova, 2018)). However, this is impossible due to the second and third circumstances outlined above.

In order to issue an international search warrant against a person for the purpose of arrest and extradition for prosecution or execution of a sentence, the evidence is needed not only of the crime itself, but also of its commission by a particular person, the very person to be sought abroad. The existence of sufficient evidence to charge a person with an offence constitutes grounds for indicting the person as a charged. If there are such grounds, the investigator, in accordance with Art. 171 of the Code of Criminal Procedure, shall make a resolution on taking the given person to the bar in the capacity of the charged. Therefore, a person acquires the standing of the accused (Art. 47 of the Code of Criminal Procedure). In practice, this means that, as stipulated in paragraph 131 of the Interpol Instruction, the request for an international search warrant to be sent to the Interpol National Central Bureau shall be accompanied by a copy of the decision to indict as the charged.

Finally, the third circumstance stems from the obligatory condition that an international search warrant for arrest and extradited shall be issued only against the persons who have been taken into custody as a measure of restraint. Such a condition logically follows from the fact that if an absconded is searched and detained in a foreign state, he/she will need to be taken into custody (Grigoryev, 2017; Grigoryev, Kovalchuk, 2018). This condition is enshrined in paragraph 123 of the Interpol Instruction, according to which if in respect of a person for whom an international search warrant has been issued, this measure of restraint has not previously been applied, the investigator is given a copy of the decision to issue an international search warrant against a person in order to apply to the court under Part 5, Art. 108 of the Code of Criminal Procedure to obtain a court order for applying a measure of restraint in the form of taking into custody in the absence of the charged. However, a judicial decision to impose a measure of restraint in the form of taking into custody in absentia is permitted by law only if an international or

interstate search warrant has been issued and only in respect of the charged (Part 5, Art. 108 of the Code of Criminal Procedure). In the case of an absconded suspect, a procedure mentioned above is not provided for by law and is, therefore, not feasible in practice.

If a measure of restraint in the form of taking custody has not been applied to a person for some reason, an international search warrant for arrest and extradition for prosecution or enforcement of a sentence cannot be issued in relation to such person. If a judge decides to deny a petition on the application of a measure of restraint in the form of taking into custody in respect of a charged who is the subject of an international search warrant, pursuant to paragraph 123 of the Interpol Instruction, the warrant is cancelled, and after that only the registers of the General Secretariat and the national registers of foreign Interpol member states can be checked for information within the framework of cooperation in the fight against organized crime (Minyaev, 2019).

Thus, an international search warrant for the purpose of arrest and extradition for prosecution cannot be issued against a suspect; only a person in the standing of a charged can be wanted for these purposes.

This procedure does not exclude the fact that in international search practice, the persons may also appear as suspects, or may have no standing at all. For example, the Interpol Instruction provide for the General Secretariat to issue Blue Notices to monitor the migration and location of a person suspected or charged with a crime (paragraph 38.1) and Green Notices for a person connected to a police dossier where there is no procedural decision to declare him/her to be a suspect or a charged in a criminal case (paragraph 38.2). A distinction should be made here between the persons appearing in searches for investigative purposes and for the purpose of arrest and extradition for prosecution or execution of a sentence. The US law enforcement agencies, for example, use the term "Person of Interest" for this purpose when identifying a person involved in a criminal investigation who has not been arrested or formally charged with a crime (McMahon, 2021).

In accordance with Part 2, Art. 47 of the Code of Criminal Procedure, the charged, on whose criminal case are appointed the court proceedings, is referred to as an accused; the charged, with respect to whom a verdict of guilty is passed, is referred to as a convicted. Therefore, if such persons have escaped and absconded from prosecution, sentence enforcement or a court, it is fair to speak of issuing an international search warrant against an accused and a convicted along with a charged.

This position is confirmed by the existing legal acts. Thus, Part 3, Art. 253 of the Code of Criminal Procedure provides for a court resolution or a ruling on the search for the accused who has absconded. Art. 18.1 of the Penal Code of the Russian Federation provides for the declaration of search for the convicted. The Interpol Instruction stipulates that the Interpol National Central Bureau shall search for the charged, having escaped from the inquiry, investigative or judicial authorities, and the convicts who have evaded serving their prison sentence or have escaped from detention facilities (paragraph 107). The search for the accused is mentioned only once, in paragraph 150, but it is already clear that the absconded charged is the accused.

If we follow strictly the letter of the law, we should talk about an international search of the charged, bearing in mind that an accused and a convicted, based on Part 2, Art. 47 of the Code of Criminal Procedure, are the same as a charged with a clarified standing in relation to the stage of the criminal proceedings. It would not be wrong to indicate the wanted person, clarifying each time his/her standing in relation to the stage of the criminal proceedings in which that person has absconded: a charged, an accused, a convicted. However, in that case the general rules governing the international search (which are the vast majority) need to specify the charged in all three of these standings: a charged, an accused and a convicted, and not only in the standing of a charged and a convicted, as the Interpol Instruction does.

In determining the standing of a wanted person, the difference in its designation under Russian criminal procedural law and under the legislation of foreign states, as well as under international legal instruments, needs to be taken into account. In the domestic search, such a person is designated in accordance with the standing the wanted person had at the time of absconding, in particular, it is a suspect and a charged in the Russian Federation (Art. 210, 238 of the Code of Criminal Procedure), an accused (Art. 253 of the Code of Criminal Procedure), a convicted (Art. 18.1 of the Penal Code). However, there may be very significant differences in the definition of the standing of a wanted person, given the possible peculiarities of the national laws of different states. Thus, in accordance with Art. 44 of the INTERPOL's Rules on the Processing of Data (III/IRPD/GA/2011 (2019), a charged is a person against whom criminal proceedings have been initiated for allegedly committing an ordinary-law crime (clause "b"), and a suspect is a person who, as part of a criminal investigation, is considered to be a

possible offender but against whom no charges have been filed (clause “c”). Such definitions of the status of wanted persons are quite different from the corresponding definitions under Russian criminal procedure law (Art. 46-47 of the Code of Criminal Procedure).

In this connection, a different approach seems more appropriate, whereby in the description of an international search, in addition to the categories of national law, it is also appropriate to define the wanted person by means of more universal attributes, which may include: 1) Search object is a person; 2) the reason for the search – a person is absconding from the prosecuting, penal or judicial authorities; 3) purpose of search – arrest and extradition; 4) intention of search – prosecution or execution of sentence.

This approach can be seen, in particular, in the Interpol Instruction, which refer not to the search for the accused but for persons charged with a crime (paragraphs 117, 118), which are not the same things. In such a situation, it is more expedient to speak of a search not for the accused, but for a person being accused (charged) of a crime, who is absconding from the prosecuting, sentence executing or judicial authorities, for the purpose of arrest and extradition for prosecution or execution of a sentence.

Thus, the object of an international search can equally be: either a charged alone; or an accused or convicted in addition to the charged; or a person being accused (charged) of a crime who is absconding from the prosecuting, sentence executing or judicial authorities.

## 4 CONCLUSIONS

On the basis of the analysis presented and the results obtained, the following conclusions can be drawn regarding the issues raised.

a) the types of offences for which an international search warrant can be issued against a person: medium-gravity, grave and especially grave crimes, with the exception of political offences and ordinary criminal offences for the purpose of prosecuting or punishing a person because of their race, religion, nationality or political opinion, and if the convicted person evades serving a custodial sentence or escapes from prison – if sentenced to imprisonment for at least four months;

b) bodies and officials whose competence includes issuing an international search warrant against a person: the decision to search for a person is within the competence of the person or body in charge of the criminal case; the issue of an international

search warrant against a person is within the competence of the operational search units providing operational support in the relevant criminal cases;

c) documentary grounds for issuing an international search warrant: the initial decision to perform an international search is formalized by the resolution of the official of the search unit in charge of the fugitive case, to issue an international search warrant against a charged, an accused or a convicted, the documentary basis for which is provided by: investigator's resolution about the search of the charged or a resolution on the suspension of the preliminary investigation, containing instructions for the search; court's ruling or resolution on the search for the accused who has absconded; a prosecutor's instruction given by a judge's order (with respect to the proposed amendments of the law);

d) against which persons (with what standing) an international search warrant can be issued for the purpose of arrest and extradition: a charged, an accused, a convicted;

e) who and at what stage applies the measure of restraint in the form of taking into for an absconded: at the preliminary investigation stage, by the court based on the recommendation of the investigator; at the stage of preparing the case for trial, by the court; at the trial stage, by the court. While in the first case a measure of restraint in the form of taking into custody may be applied only to a charged against whom a search unit issued an international search warrant, for the latter two cases, which relate to the judicial stages, it should be clarified that if the court applies a measure of restraint in the form of taking into custody in respect of a charged, an accused having absconded at the pretrial and trial stage, the form of the future search (local, federal, interstate or international) has not yet been determined by the court, this must be done by the officers of the relevant search unit on the basis of the court decision on the search, in view of the factual circumstances.

The answers received provide grounds for improvement of the legal acts regulating the issue of an international search warrant in the Russian Federation for the purpose of arrest and extradition, as well as the practice of its implementation, and can be used as a structural material for creating mathematical models (D. Ponomarev, S. Ponomarev, Rumyantsev, Shamsunov, Tarasov, 2020) in the field of international search for crimes of extremist and terrorist nature and other dangerous crimes.



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