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USE OF EVIDENCE OBTAINED THROUGH INTERNATIONAL REQUESTS FOR LEGAL ASSISTANCE: LEGAL AND PRACTICAL ASPECTS OF DISCLOSURE OF BANKING SECRECY IN THE CONTEXT OF INTERNATIONAL COOPERATION

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The article examines one of the most pressing aspects of international cooperation in criminal proceedings – the legal and practical foundations of using evidence obtained through international legal assistance, with a particular focus on the disclosure of banking secrecy. The legal nature of banking secrecy as a guarantee of confidentiality of financial information is analyzed, as well as its correlation with the needs of investigation in criminal cases, especially in cases concerning transnational crimes related to money laundering, corruption, and the financing of terrorism.

The article considers the provisions of international law, including the European Convention on Mutual Assistance in Criminal Matters (1959), its Second Additional Protocol, the UN Convention against Corruption (2003), FATF recommendations, and other instruments regulating access to financial information through international requests. A comparative legal analysis of European states' approaches to the protection of banking secrecy and the conditions of its disclosure in the context of international cooperation is conducted, highlighting the specificities of the legal regime in different jurisdictions.

Special attention is given to judicial practice – both Ukrainian and that of the European Court of Human Rights. The issue of admissibility of evidence obtained in violation of national or international procedures for accessing banking information is revealed, as well as the consequences of declaring such evidence inadmissible.

The research also examines the risks of violating the right to defense, the right to respect for private life, and the right to a fair trial. Based on a comprehensive analysis, the author formulates conclusions and proposals for improving Ukraine's national legislation on the disclosure of banking secrecy in criminal proceedings, taking into account international standards and the state's human rights obligations. At the same time, the necessity of ensuring a balance between the effectiveness of pre-trial investigation and the guarantees of human rights is emphasized. The article is addressed to researchers, legal practitioners, law enforcement officials, and all those interested in the issues of international legal assistance in criminal proceedings.

Key words: *international legal assistance, criminal proceedings, banking secrecy, electronic evidence, Criminal Procedure Code of Ukraine, admissibility of evidence, financial information, human rights, international request.*

Шипілов Олександр. Використання доказів, отриманих за міжнародними запитами про правову допомогу: правові та практичні аспекти розкриття банківської таємниці в контексті міжнародної співпраці

У статті досліджується один із найактуальніших аспектів міжнародного співробітництва у кримінальному провадженні – правові та практичні засади використання доказів, отриманих у порядку міжнародної правової допомоги, з акцентом на питання розкриття банківської таємниці. Аналізується правова природа банківської таємниці як гарантії збереження конфіденційності фінансової інформації, а також її співвідношення з потребами слідства у кримінальних справах, особливо у випадках розслідування транснаціональних злочинів, пов'язаних із відмиванням доходів, корупцією та фінансуванням тероризму.

Розглянуто норми міжнародного права, зокрема Європейську конвенцію про взаємну правову допомогу у кримінальних справах 1959 року, Другий додатковий протокол до неї, Конвенцію ООН проти корупції 2003 року, рекомендації FATF та інші документи, що регламентують можливість доступу до фінансової інформації за міжнародними запитами. Проведено порівняльно-правовий аналіз підходів європейських держав до захисту банківської таємниці та умов її розкриття у контексті міжнародної співпраці із виокремленням специфіки правового режиму в окремих юрисдикціях.

Особливу увагу приділено судовій практиці, як українській, так і практиці Європейського суду з прав людини. Розкривається питання допустимості доказів, отриманих із порушенням національних чи міжнародних процедур доступу до банківської інформації, а також наслідки визнання таких доказів недопустимими.

У межах дослідження також проаналізовано ризики порушення права на захист, права на повагу до приватного життя та права на справедливий суд.

На основі комплексного аналізу сформульовано авторські висновки та пропозиції щодо вдосконалення національного законодавства України у сфері розкриття банківської таємниці у кримінальному провадженні, з урахуванням міжнародних стандартів та зобов'язань держави у сфері прав людини. Водночас підкреслюється необхідність забезпечення балансу між ефективністю досудового розслідування та гарантіями прав людини. Стаття адресована науковцям, правникам-практикам, працівникам правоохоронних органів та всім, хто цікавиться проблемами міжнародної правової допомоги у кримінальному процесі.

Ключові слова: *міжнародна правова допомога, кримінальне провадження, банківська таємниця, електронні докази, Кримінальний процесуальний кодекс України, допустимість доказів, фінансова інформація, права людини, міжнародний запит.*

Introduction. In the modern context of globalization and the transnationalization of crime, international cooperation in the field of criminal proceedings is acquiring particular significance. At the same time, the disclosure of banking secrecy as part of such cooperation remains one of the most sensitive and controversial issues, lying at the intersection of state interests, human rights, financial confidentiality, and the need for effective investigation. Banking information may contain crucial evidence concerning illicit enrichment, corruption schemes, money laundering, and the financing of terrorism. However, obtaining such information through international requests for legal assistance is associated with numerous legal and practical difficulties.

Despite the existence of international standards and obligations, law enforcement practice demonstrates contradictions between the needs of investigative authorities and the principle of inviolability of banking secrecy. In many cases, obtaining such information involves problems of jurisdiction, conflicts of legal systems, and the absence of a unified approach to the admissibility of evidence obtained through international mechanisms. These problems are particularly acute in the context of the digitalization of the financial sector and the active use of electronic payment systems.

Ukraine, as a state actively implementing anti-corruption reforms and modernizing its criminal procedural legislation in accordance with European standards, faces the need to find an optimal balance between the effectiveness of international legal assistance and the protection of financial privacy. The relevance of the research is further reinforced by the need to ensure fair trial guarantees, the protection of human rights, and the effective prosecution of individuals involved in international financial crimes.

Research Aim is to provide a comprehensive analysis of the legal and practical aspects of using evidence obtained through international legal assistance, with a focus on the disclosure of banking secrecy, as well as to formulate practical recommendations for improving the corresponding mechanisms within the Ukrainian legal system.

Research Objectives are: 1) to characterize the legal framework governing the disclosure of banking secrecy in the context of international legal assistance; 2) to analyze national and international judicial practices regarding the admissibility of evidence obtained through such means; 3) to identify key issues and conflicts within legislation and law enforcement practice; 4) to propose ways to enhance mechanisms of international legal assistance while respecting human rights principles.

This research draws upon the works of Ukrainian researchers, including T. Akhtyrska, S. Burchakova, O. Zuyev, O. Kaplin, I. Marochkin, O. Pashkovskyi and M. Savitsky, who explore evidence, international cooperation, and the legal regime of banking secrecy.

Among international authors, notable contributions include Miriam Gur-Arye, Pierre Tapan, as well as analytical reports by the Organization for Economic Co-operation and Development (OECD) and the Financial Action Task Force (FATF).

Main Discussion. International legal assistance constitutes a crucial component of effective efforts against transnational crime, encompassing a wide spectrum of offenses, including organized crime, terrorism, money laundering, human trafficking, terrorism financing, and corruption. Given the often cross-border nature of these crimes, coordinated actions by multiple states are essential to identify and hold accountable perpetrators. The significance of international legal assistance in criminal proceedings has increased due to the necessity of exchanging evidence across borders, including instances where evidence must be obtained from another jurisdiction.

One of the primary instruments facilitating such cooperation is international treaties, which detail the procedures for executing requests, including the provision of financial information such as account details and transaction records. This aspect is particularly critical for investigating financial crimes, as banking documents and records can constitute key evidence.

Legal Nature of Banking Secrecy in the Context of International Legal Assistance. Banking secrecy, as a legal institution, serves as one of the guarantees of confidentiality of financial information of individuals and legal entities. It reflects the fundamental principle of protecting private life and economic autonomy, which is enshrined in both national legislation and international human rights instruments. However, in criminal proceedings, particularly in cases of transnational financial crimes, banking secrecy cannot be regarded as absolute.

International practice demonstrates that the disclosure of banking secrecy may be justified when it is necessary to ensure the proper administration of justice, the investigation of serious crimes, and the protection of public interests.

At the same time, any interference with the confidentiality of financial information must comply with the principles of legality, necessity, and proportionality.

The *European Court of Human Rights* has repeatedly emphasized that the right to respect for private and family life (Article 8 of the *European Convention on Human Rights*) also extends to banking information. Nevertheless, restrictions on this right are permissible if they are "in accordance with the law" and "necessary in a democratic society" to prevent crime or protect the rights and freedoms of others.

International Legal Framework for Access to Banking Information. The key international legal instruments that regulate access to banking secrecy in the framework of international cooperation include:

– the *European Convention on Mutual Assistance in Criminal Matters* (1959) and its *Second Additional Protocol*, which establish the general framework for exchange of information and evidence between states;

– the *United Nations Convention against Corruption* (2003), which obliges states to provide the widest possible measure of mutual legal assistance, including access to financial data;

– FATF Recommendations, which require effective mechanisms for international exchange of financial intelligence in order to combat money laundering and terrorist financing.

These instruments provide the legal basis for obtaining banking information upon international request, but their implementation in practice often depends on the specific features of national legislation. Some states maintain a strict regime of banking secrecy (e.g., Switzerland, Luxembourg), while others have significantly liberalized access to such information under pressure of international standards (e.g., Germany, France).

Comparative Legal Analysis of National Approaches. In European legal systems, different models of protecting and disclosing banking secrecy have been developed. In Switzerland, banking secrecy is protected at the constitutional level, but exceptions exist for cases involving serious criminal offences and international cooperation. In France, access to financial data is possible through judicial authorization within criminal proceedings. In Germany, investigative bodies may obtain banking information on the basis of a prosecutor's request, subject to judicial control.

Ukraine's legislation follows the European trend of gradually limiting the scope of banking secrecy in order to strengthen the effectiveness of investigations.

The *Criminal Procedure Code of Ukraine* (Articles 159–164) provides a mechanism for temporary access to documents, including banking information, upon court decision.

However, in cases involving international requests, additional challenges arise, particularly regarding the recognition of foreign court orders and compliance with the principles of reciprocity.

Judicial Practice: Ukrainian and European Experience. Judicial practice plays a decisive role in shaping approaches to the admissibility and use of evidence obtained through international requests for legal assistance, particularly when such evidence concerns banking secrecy.

In Ukraine, courts have repeatedly addressed the issue of whether financial information obtained from foreign jurisdictions can be recognized as admissible evidence.

The general position of the Supreme Court is that evidence obtained in violation of the procedures established by the *Criminal Procedure Code of Ukraine* or international treaties ratified by the state must be declared inadmissible.

For example, Ukrainian courts have stressed that the absence of judicial authorization for access to banking data constitutes a violation of procedural guarantees and infringes upon the right to privacy of individuals.

The practice of the *European Court of Human Rights* (ECtHR) also provides valuable guidance. In cases such as *M.N. and Others v. San Marino* (2015), the Court held that the collection of banking information constitutes an interference with the right to private life under Article 8 of the Convention. Nevertheless, the ECtHR acknowledged that such interference may be justified if it pursues a legitimate aim and is proportionate. At the same time, the Court underlined the importance of adequate procedural safeguards to prevent abuse of power by investigative authorities.

Thus, both Ukrainian and European jurisprudence emphasize that obtaining banking information must be strictly regulated by law and subject to effective judicial control. Otherwise, the risk arises that evidence will be declared inadmissible, which may undermine the effectiveness of the criminal proceedings.

Admissibility of Evidence Obtained in Violation of Procedure. One of the most problematic issues in practice is the question of whether evidence obtained in violation of national or international procedures for access to banking secrecy may be used in criminal proceedings.

The general principle established in both Ukrainian law and the practice of the ECtHR is that illegally obtained evidence is inadmissible [17, p. 175].

However, the assessment of illegality and the consequences of procedural violations may differ depending on the jurisdiction. In some legal systems, evidence obtained with minor procedural violations may still be admitted if its exclusion would seriously undermine justice (*doctrine of the "fruit of the poisonous tree" is not always applied strictly*).

In Ukraine, Article 87 of the *Criminal Procedure Code* directly stipulates that evidence obtained as a result of significant violations of human rights and freedoms is inadmissible. This includes cases where banking information was accessed without judicial authorization or contrary to international treaties binding upon Ukraine. At the same time, Ukrainian courts have occasionally adopted a pragmatic approach, recognizing certain evidence as admissible if the violation was not deemed substantial and did not directly affect the rights of the defense.

The ECHR follows a similar approach, focusing primarily on whether the use of the evidence undermines the fairness of the trial as a whole (Article 6 of the ECHR). If evidence obtained in breach of Article 8 is decisive for the outcome of the case, and the applicant had no opportunity to challenge its use, the Court may find a violation of the right to a fair trial.

Risks of Human Rights Violations. The disclosure of banking secrecy at the request of foreign authorities creates a number of risks related to human rights protection.

The most significant among them are:

Violation of the right to defense, when the suspect or accused is not provided with timely access to information about the scope and grounds of the request for disclosure of banking data.

Violation of the right to respect for private life (Article 8 ECHR), when financial information is disclosed without sufficient justification, in an excessively broad scope, or without adequate safeguards against abuse.

Violation of the right to a fair trial (Article 6 ECHR), in cases where evidence obtained through international requests is decisive for the verdict but was collected in violation of established procedures.

These risks necessitate the establishment of clear legal mechanisms that would ensure the balance between effective international cooperation and the protection of fundamental rights.

Conclusions. The conducted research allows us to formulate several general conclusions regarding the use of evidence obtained through international requests for legal assistance, with particular emphasis on the disclosure of banking secrecy.

While it guarantees the confidentiality of financial information, its disclosure may be justified when necessary for the investigation of serious crimes and the protection of public interests. However, such disclosure must always comply with the principles of legality, necessity, and proportionality [18, p. 56].

International legal standards form the foundation for cooperation, but their practical implementation depends largely on national legal systems. Significant divergence exists among states regarding the scope of banking secrecy and the conditions for its disclosure, which complicates effective international cooperation.

Judicial control is the key safeguard against the abuse of powers by investigative authorities. Both Ukrainian and European jurisprudence highlight the importance of prior judicial authorization for access to banking information, as well as the possibility for the defense to challenge the legality of such measures.

Evidence obtained in violation of procedural requirements must be declared inadmissible, especially if such violations affect fundamental human rights. At the same time, a flexible approach is necessary in order not to undermine the effectiveness of criminal justice, provided that the overall fairness of the trial is preserved.

Human rights protection must remain central to any mechanism of international cooperation. The disclosure of banking secrecy should not result in arbitrary interference with the right to defense, the right to privacy, or the right to a fair trial.

Proposals:

1). Ukraine should **harmonize its national legislation** with European standards by further clarifying the procedure for accessing banking information through international requests, including the requirements for judicial authorization and the scope of data subject to disclosure.

2). It is advisable to **strengthen the guarantees of defense rights** by introducing mechanisms for notifying the affected persons about requests for access to their banking information, except in cases where such notification would jeopardize the investigation.

3). Ukraine should consider **adopting specialized guidelines** for law enforcement authorities on processing international requests involving financial information, in order to ensure uniform practice and compliance with international obligations.

4). It is important to **expand judicial oversight** not only at the stage of authorizing access to banking secrecy but also during the subsequent use of such information as evidence in criminal proceedings.

5). International cooperation mechanisms should be built on the principle of **mutual trust**, which requires ensuring the admissibility of evidence obtained abroad while simultaneously safeguarding human rights and freedoms.

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