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Law enforcement and implementation of harmonization of law enforcement norms related to drug smuggling

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Abstract

The article examines the problem of the development of Russian law in the framework of the implementation of the criminal procedure norms related to drug smuggling. It is proposed to consider the prevention and effectiveness of offenses related to drug smuggling through the harmonization of national legislation. Special attention is paid to the interaction of international and domestic norms of procedural law. Special attention is paid to a comprehensive analysis of the construction of a system for the implementation of the norms of law, on which the effective achievement of goals in the suppression of crime in the sphere of drug trafficking depends. Based on the study of the material, it has been found that the mechanism for the implementation of the norms of the criminal procedure is not quite simple: on the one hand, the appeal to foreign legal norms is regarded as an unproductive scientific discourse, on the other hand, theories are modeled on the damage to one's own legal system as a result of unjustified borrowings from other legal systems. The results and conclusions can be used in the practical activities of customs, law enforcement agencies.

Keywords: criminal proceedings; procedural law; smuggling narcotics; compliance with the rule of law, legal system.

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Aplicación de las normas y peculiaridades de la armonización (aplicación) de las leyes relativas al contrabando de drogas

Resumen

El artículo examina el problema del desarrollo de la legislación rusa en el marco de la implementación de las normas de procedimientos penales relacionadas con el contrabando de drogas. Se propone examinar la cuestión de la eficacia y la prevención de los delitos relacionados con el contrabando de drogas mediante la armonización de la legislación nacional. Se presta especial atención a la interacción de las normas rusas e internacionales de derecho procesal. Se hace hincapié en el análisis exhaustivo del sistema de aplicación del derecho, del que depende el logro efectivo de los objetivos en materia de represión del delito de tráfico de drogas. El estudio del material documental demuestra que el mecanismo de aplicación de las normas penales no es del todo sencillo: por una parte, las apelaciones a las normas jurídicas extranjeras se consideran un discurso científico improductivo y; por la otra, las teorías se basan en el daño causado a su propio sistema jurídico como resultado de los préstamos injustificados de otros sistemas jurídicos. Los resultados y las conclusiones pueden utilizarse en la labor práctica de las aduanas y los organismos encargados de la aplicación de la ley.

Palabras clave: procedimiento penal; derecho procesal; contrabando de estupefacientes; cumplimiento del estado de derecho, sistema jurídico.

Introduction

The relevance of the study is associated with the dynamic processes taking place between the EU and Russia in the economic, political, legal, and other areas of interaction. The Russian Federation has signed and ratified several international treaties regulating topical issues of international cooperation in the framework of joint conduct of criminal procedural actions. One of them is joint (international) investigations related to drug smuggling, which implies the implementation of the norms on joint investigations into domestic legislation.

The relevance is due to the need to study the positive experience of legal regulation of criminalistic procedures in the law of the EU: an analysis of the formation of a single policy aimed primarily against transnational criminal structures associated with drug trafficking. The norms of the criminal procedure are implemented, first of all, through mechanisms of cooperation between various states and the Russian Federation within the

framework of the economic space. Analysis of the situation related to drug smuggling shows that criminal groups of drug dealers have entered into active interaction around the world. The revenues of criminal organizations that produce and distribute drugs reach USD 600 billion a year. Almost 271 million people, or 5.5 % of the world's population aged 15-64, used drugs in 2017. These data are close to 2016 estimates; however, long-term analysis shows that the number of people who use drugs is now by 30 % more than in 2009. It should be noted that the crimes in this category have a steady upward trend (World Drug Report, 2019).

A significant place is given to increasing the efficiency of joint procedural actions of states in the field of judicial and police cooperation. At the same time, several original legal institutions, organizational and legal forms, and areas of interaction, as well as courts and competent authorities within the framework of judicial and police cooperation, are regulated under the EU law. The experience of the EU in the field of regulation of joint forensic investigations is of interest not only because of the wider legal framework it has created, in comparison with other regional organizations but also because of the practical results obtained. Without fundamental research into the patterns of functioning and development of the mechanisms for committing the crimes under consideration, the activities of law enforcement agencies in their disclosure, investigation, and prevention are also ineffective. In the scientific literature, the issues of initiating a criminal case were considered in the most general terms, and not concerning certain types of crime.

The article is aimed at studying the vector of development of criminal procedural legislation, in an objective and reliable prognostic assessment of the prospects for implementation, in order to determine on this basis, the most promising areas of interaction between law enforcement agencies. Therefore, the study of the experience of other states in the field of legal regulation of the activities of joint (international) investigation teams is the most important target task for Russia, which is a strategic partner of the EU in the field of justice and internal affairs.

The results of scientific research can be used in the formation of a regulatory framework in domestic legislation that allows Russian law enforcement agencies to participate in joint (international) forensic investigations and form joint (international) investigative teams that will effectively perform the assigned tasks. Mistakes made at the stage of initiating a criminal case on drug smuggling are difficult or impossible to correct during the preliminary investigation, therefore the problem of the initial stage of the criminal process – the initiation of a criminal case – has always been of scientific and especially practical interest.

1. Materials and methods

When choosing a research method, the authors proceeded from the fact that the subject of research had features in the nature and understanding of the reasons and grounds for initiating a criminal case, substantiated, in their turn, by peculiar features that characterized the type of crime in question. During the research, the following methods were used: a meaningful analysis of theoretical and methodological sources in the field of theory of law, criminal law, forensic science, and statistics; systematic study of criminological aspects of the development of procedural technologies used in the practice of initiating criminal cases for drug smuggling; examination of regulatory documents; assessment of law enforcement experience. In the course of the study, sociological techniques were used: the study of documents, questionnaire survey, interviewing.

2. Results

Legal liability cannot occur by itself but is implemented by putting a complex legal mechanism into effect, which ensures the implementation of regulatory sanctions in real life (Tompson *et al.*, 2008). Responsibility in criminal law comes through the inclusion of criminal procedure rules in the work. This usually concerns the sphere of the national criminal procedural law of Russia, but many gaps will be revealed if we consider the international aspect of the implementation of the norms of responsibility for criminal offenses against the world and humanity, drug trafficking, and human trafficking (Bakhmaier, 2012).

The development of international cooperation on reducing drug trafficking began in 1909 with the Shanghai Opium Commission. This meeting confirmed the recognition by states of the need for joint control over drug trafficking around the world. The need for procedural interaction between states was established by the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1936. Subsequently, Russia's interaction with foreign countries on issues related to the fight against drug trafficking continued within the framework of separate international organizations. These include the UN, the CIS, the SCO, the Council of Europe, and Interpol.

Part 5 of the Criminal Procedure Code of the Russian Federation regulates issues of international cooperation in the field of criminal proceedings by determining the procedure for the interaction of courts and national law enforcement agencies "with the relevant competent authorities and officials of foreign states and international organizations" (Section 18). It involves the implementation of legal responsibility in the form of requests and petitions for legal assistance on the dominant basis of the principle of interstate reciprocity.

However, it is not always possible to expect such reciprocity on the part of individual states. These circumstances form the outline of the problem of implementing criminal liability in the international legal field. What is it upon closer analysis?

We believe that the scientific analysis of the problems of the international criminal process should also include certain aspects of future applications. One of the sides of this problem is the implementation of international procedural norms in national law – the current Criminal Procedure Code of the Russian Federation reflects only a small fraction of what should have been foreseen and provided.

If the Rome Statute is ratified, this problem will be more exposed: on the one hand, the implementation of international procedural norms in national law and, on the other, the possibility of an official, accessible, and predictable interpretation of the law in the process of state law enforcement. There is too much difference in the legal technique of the national legal system and international acts (Safarov, 2006; Trikoz, 2005). We can agree that the activities of the existing modern international courts (Statut du Tribunal penal international pour le Rwanda, 1994) are ineffective (Beliy, 2008) and materials related to the activities of international justice are difficult to access (Beliy, 2008). In these circumstances, it is also possible to conduct a retrospective analysis of the essence of certain legal norms of international criminal prosecution (Volevodz and Solovev, 2007).

The mechanism for implementing the norms of criminal procedure is not simple enough. On the one hand, the appeal to foreign legal norms is regarded as a little productive scientific discourse. On the other hand, theories are modeled about harming one's own legal system as a result of unjustified borrowings from other legal systems (Alizadeh, 2010).

The Russian Federation regularly changes and supplements the existing norms (The Single Convention on Narcotic Drugs, 1961; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988) to fulfill its international obligations.

Following clause 21 of the Strategy of the State Anti-Drug Policy of the Russian Federation until 2020. The Russian Federation is implementing measures aimed at improving procedural legislation in the field of trafficking in drugs and their precursors and countering their illicit trafficking.

Implementation of these measures ensures the implementation of the best international legal practices (Tiunov, 2005; Lukashuk, 1997). Particular attention should be paid to the provisions of Part 2 of Article 36 of the Convention, according to which, willful complicity in any drug offense, participation in a community to commit and attempt any drug offense, as well as preparatory actions, should be recognized as punishable.

The implementation of the norms of international procedural law on drug crimes in the national criminal procedural legislation of Russia is incomplete, which significantly affects the effectiveness and practice of their application. The possibility of taking into account international law is due to the reasonableness and abstraction of the proposed rules.

The Rome Statute of the International Criminal Court has been ratified in 121 countries, including 33 in Africa, 25 in Western Europe, 18 in Eastern Europe, 27 in Latin America and the Caribbean, and 18 in Asia, reforming domestic legislation, including constitutional, criminal, and criminally-remedial.

Issues of implementation of the law for international crimes in national procedural law have been repeatedly considered by individual authors. In our opinion, despite the deep differences in national legal systems, there is no absolute unacceptability of international procedural norms in Russia. This conclusion follows from the inherent universality of human rights and democratic values, which unites all democratic institutions. At least since the Nuremberg Tribunal, this concept of a democratic order has been well understood by all lawyers and politicians in the world.

One of the first EU legal acts in the field of countering drug trafficking is the recommendation of the EU Council of April 25, 2002, on improving investigative methods in the fight against organized crime related to drug trafficking. The main purpose of this recommendation is to develop forms and methods of investigation of crimes related to illicit drug trafficking that can not only determine the mechanism for committing the relevant crime but also identify the criminal organization and its assets. In terms of determining the origin of the financial assets of a criminal organization, it is planned to create specialized working groups to investigate these phenomena, as well as to create joint investigative groups by the EU member states to investigate crimes.

In this regard, along with the improvement of the legal framework itself, both at the national and international levels, an international organizational structure is being developed to control the production, movement, and consumption of drugs, represented by specialized and subsidiary bodies of the UN system (Vasileva, 2005).

International Convention "On the Fight against Illicit Traffic in Narcotic Drugs and Psychotropic Substances" of 1988 (Vienna, adopted at the UN Conference on December 20, 1988), its fundamental importance lies in the fact that it qualifies other offenses as crimes. Special emphasis is placed on the organization of procedural interstate cooperation in the fight against illicit drug trafficking.

An important innovation was the introduction of the UN Convention 1988 of the circumstances aggravating punishment for drug crimes,

including committing them to school or public institution, in the immediate vicinity or in other places that are used by students for educational, sports, and social events.

It is of fundamental importance that in the development of the provisions of the 1988 International Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the UN conventions that preceded it, the vast majority of the states of the modern world have ratified them and otherwise implemented them into their national legislation.

The relevant international legal norms were also implemented (mainly through transformation) into criminal procedure legislation. Therefore, a partial acceptance by the Russian criminal procedure law of international criminal prosecution procedures for “the most serious crimes of concern to the entire international community” is more than possible and necessary. The absence of these norms in Russian legislation threatens the possibility of legal responsibility for international crimes, while such acts should not go unpunished, and their effective prosecution should be ensured both by measures taken at the national level and by increased international cooperation (Rome Statute of the International Criminal Court (Rome, July 17, 1998) (Framework Decision on Joint Investigation Teams (2002/465/JHA), 2002).

It cannot be allowed for the realization of irrevocable responsibility for internationally punishable acts to remain nothing more than a declarative political statement. Certain provisions of the study based on the analysis of key issues by theme can be used for further improvement of criminal procedure legislation in respect of the regulation stage of a criminal case, in the further development of specialized laws related to trafficking and consumption of drugs (Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offenses, 2005).

The reason for initiating criminal cases on drug smuggling in 100% of cases is the direct detection of signs of a crime by the body of inquiry, investigator, prosecutor, or court. Customs authorities detect signs of this crime in the course of their administrative, including customs, criminal procedures, and operational search activities. The entire activity of customs authorities in the framework of international cooperation to detect signs of drug smuggling consists of several stages (Plachta, 2005).

A necessary condition for initiating a criminal case, except for the reason, is the presence of grounds. It is necessary to have the following information to initiate criminal proceedings for drug smuggling:

- 1) reliable data about the event of the crime.
- 2) availability of narcotic substances and information about their type and method of transfer across the customs border.

- 3) conclusion of a specialist, which gives reason to believe that these are narcotic drugs.

One of these new areas of international cooperation in the field of criminal law is the joint investigation institute. This term refers to crime investigation activities carried out by joint investigation teams made up of representatives of the competent authorities of different states, who are empowered to carry out procedural actions in the territories of those states, representatives of which are included in such teams.

The experience of the EU in the field of legal regulation of joint (international) investigations is of interest not only because of the broader legal framework it has created compared to other regional organizations but also because of the practical results it has obtained.

3. Discussion

Russia has joined and ratified interstate normative documents that provide the possibility of conducting joint investigations: the UN Convention against Transnational Organized Crime, the UN Convention against Corruption. However, not all parties to these international legal instruments have implemented the rules on joint investigations into domestic criminal procedure legislation (Treaty on European Union (consolidated text), 2002).

In many respects, the current situation is due to the novelty and rather general nature of international legal norms on joint investigations, as well as the lack of knowledge about the international experience of legal regulation of joint investigations and the activities of joint investigation teams (Alizadeh, 2010). Even though the member states have actually created harmonized legislation on joint investigations, the EU continues to create new regulations in this area as necessary. For example, the rules on expanding joint practice in the investigation of certain types of crimes affecting the interests of EU member states. The practice of recent years shows that Russian law enforcement agencies are gradually beginning to use the capabilities of interstate investigative groups, after regulatory regulation of interaction in the investigation of crimes that affect the interests of more than one state.

Conclusion

As a result of systematization and study of the EU experience in the field of legal regulation of joint (international) investigative groups, we came to the conclusion that an effective strategic partnership of the EU in the field of investigation of drug smuggling and, first of all, within the framework of

the implementation of criminal procedure norms is relevant and promising for Russia. The implementation of the norms of the criminal procedure can be used in the formation of a regulatory framework in Russian legislation that allows Russian law enforcement agencies to participate in joint (international) investigations and form joint (international) investigative teams for this purpose. The reasons for the development of the “shadow” criminal drug business through transnational criminal organizations are rightly attributed by UN experts to the emergence of appropriate opportunities at the global level and the lack of effective procedural norms.

It is important to use the experience of foreign countries and implement the norms of customs conventions in advance, including the normative provisions of documents in their legislation (secondary reception by adaptation). The foregoing testifies to the need for an in-depth theoretical analysis of the implementation of international legal norms in the criminal procedure law of Russia to develop scientifically grounded recommendations for improving the domestic provision of the implementation of international law related to drug smuggling.

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