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International Cooperation in Investigating Economic Crimes of Transnational Nature

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Abstract

The purpose of the research is to highlight international cooperation in investigation of economic crimes of a transnational nature. The main content. *It is emphasized that the concept of “international cooperation in fight against crimes” is in the sphere of action of various legal systems of both international public law and domestic law of states (countries) taking part in cooperation.*”. *It is established that it is necessary to clearly delineate the subject of international legal regulation of this type of interaction between states and international organizations.* Methodology. Review of materials and methods based on analyzing documentary materials of international cooperation in investigating economic crimes of transnational nature. Conclusions. Due to objective reasons and circumstances modern international relations are characterized by expansion of legal cooperation in investigating economic crimes of transnational nature. At the same time, certain entities can be clearly distinguished in the circle of participants of such cooperation. Considering their goals of creation, their range of powers and features of their implementation such entities operate only in the fight against crimes at the international level - these are international law enforcement organizations.

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Keywords: economic crimes; international legal cooperation; fight against transnational crime; crime prevention and suppression; law enforcement.

Cooperación Internacional en la Investigación de Delitos Económicos de Carácter Transnacional

Resumen

El propósito del artículo es resaltar la cooperación internacional en la investigación de delitos económicos de carácter transnacional. El su contenido principal se destaca que el concepto de “cooperación internacional en la lucha contra los delitos” se encuentra en el ámbito de acción de diversos ordenamientos jurídicos, tanto de derecho internacional público como de derecho interno de los estados (países) que participan en la cooperación. Se establece que es necesario delimitar claramente el objeto de regulación jurídica internacional de este tipo de interacción entre Estados y organismos internacionales. Se efectuó una revisión de materiales y métodos a partir del análisis de textos documentales de cooperación internacional en la investigación de delitos económicos de carácter transnacional. Se concluye que, por razones y circunstancias objetivas, las relaciones internacionales modernas se caracterizan por la expansión de la cooperación judicial en la investigación de delitos económicos de carácter transnacional. Al mismo tiempo, ciertas entidades pueden distinguirse claramente en el círculo de participantes de dicha cooperación. Teniendo en cuenta sus objetivos de creación, su gama de poderes y características de su implementación, tales entidades operan solo en la lucha contra los delitos a nivel internacional: estas son organizaciones internacionales de aplicación de la ley.

Palabras clave: delitos económicos; cooperación jurídica internacional; lucha contra los delitos transnacionales; prevención y represión de delitos; aplicación de la ley.

Introduction

All civilized countries are trying to coordinate their actions in fight against crimes; it is performed by means of concluding agreements on various areas of international cooperation aimed at counteraction to crimes. At present, the level of crimes in the world remains in the field of view of the international community, especially given its transnational character, recognition of international crimes as acts of international

danger, globalization and blurring of borders for economic relations, spread of Internet technologies etc. All this leads to the joint efforts of states and their authorized bodies, whose activities are aimed at counteraction to crimes and criminal prosecution of international crimes and crimes of an international nature, as well as at formation of appropriate legal regulations of substantive rules of international criminal law and other branches of international public law of legal cycle as well as norms of international law aimed at regulating the process of cooperation between states on counteracting to cross-border crimes, as well as national legislation of the Member States (legislation of criminal and criminal procedural nature).

Ukraine is an active member of international cooperation aimed at establishing peace, human rights and freedoms and counteracting crimes and it is a participant of many international legal agreements. Accordingly, Ukraine is in line with its commitments in the sphere of counteraction to crimes in general by means of introducing provisions of international agreements into the national legislation, as well by means as cooperating with other states in this area. Effectiveness of implementation of commitments depends on the state of national legislation governing implementation of authorized bodies' powers in the sphere of international cooperation, the mechanism of their cooperation, real steps at the international level in cooperation with international law subjects, as well as bilaterally - in interaction with other states (countries), represented by the authorized bodies of these states, during implementation of joint measures aimed at counteracting crimes and other forms of combating crimes.

To the institute of international cooperation in combating crimes is also conditioned by intensified activities of the International Criminal Court due to improved legal framework of its activities and law enforcement practices, developed forms of cooperation within international organizations aimed at counteracting and combating crimes. Attention to international cooperation in combating crimes is also conditioned by improving domestic criminal legislation of countries of the world, legislation on operational and investigative and penitentiary activities, as well as by borrowing the best practices. In particular, provisions of Chapter IX of the CPC of Ukraine and other laws form legal rules and standards which are united in the domestic legal institute of international cooperation in criminal proceedings, due to Ukraine's participation in international cooperation at the universal and regional levels, as well as due to integration into the European community, active cooperation with the states at the bilateral level, intensified activities of the authorized bodies aimed at international cooperation of Ukraine in the sphere of fight against crimes according to the powers assigned to these authorized bodies.

1. Literature review

Most researchers of cooperation in counteracting crimes perceive international law as a broad legal phenomenon, including international cooperation in combating crimes and consider a set of international law standards governing interaction of states in this sphere as a complex combination of legal rules based on the standards of international criminal law.

In the science of international law, international cooperation in fight against (combating) crimes means cooperation of various states in fight against criminal acts causing public danger that requires combined efforts of several states (Batsanov, 1986).

The concept of international cooperation “reflects a process of interaction between international actors with dominating common search for opportunities for implementation of interests of all interested parties. Cooperation is based on trust in relations between partners” (Kryvonos, 2012).

When carrying out analysis of international cooperation, Proskurin proposed to define it as “direction and developmental level of the system of international relations characterized by regular purposeful development of international relations coordinated by participants themselves and taking place in various spheres and branches of international life” (Semigina, 2000: 89).

When analyzing international cooperation in the sphere of law enforcement as one of the areas of international cooperation in the fight against crimes

S.M. Perepelkin proposed the following definition: “International cooperation in the sphere of law enforcement is one of the types of joint activities of states aimed at harmonization of their interests and achievement of common goals in solving issues of law enforcement on the basis of generally accepted principles and norms of international law” (Perepelkin, 2018: 31). According to the scientist international cooperation in the sphere of law enforcement is aimed at the regulation and development of various types of international relations, usually on issues which determine security both within a certain geographical region and around the world (for example, development of uniform standards of international law enforcement cooperation, Organization and holding of seminars and training sessions), as well as at provision of own internal interests and security (and this is the primary thing) (Perepelkin, 2018), and therefore international cooperation in the sphere of law enforcement can be considered as one of the directions of international cooperation in fight against crimes.

Thus, the subject of regulation of the set of norms and principles of international law governing international cooperation in combating crimes

as part of the subject of international public law, is much broader than the subject of regulation of international criminal law and, in our opinion, it includes norms and principles of international law all branches of the criminal law cycle.

Recently, an increasing number of researchers emphasize that the legal regulation of international cooperation is carried out not only through norms of international law, but also through norms of domestic law. Several scientists emphasize the polysystemic nature of legal regulation of cooperation between states in the sphere of counteraction to crimes. So, A.V. Pidgorodinskaya draws attention to the fact that the phrase international cooperation in fight against crimes indicates the fact of formation of this institute based on the provisions of international and national law, or more precisely - on the collision of the two legal systems (Pidgorodinskaya, 2015).

2. Materials and methods

Research of materials and methods based on the analysis of documentary sources and normative legal acts of international cooperation in investigating economic crimes of transnational nature. The formal-dogmatic method contributed to development of the author's explanation of the current state, problems, and practical role of legal technologies for further development and improvement of international cooperation when investigating economic crimes of transnational nature. The official legal method gave an opportunity to suggest directions and types of using legal technologies as prospects of international cooperation when investigating economic crimes of transnational nature.

3. Results and discussion

According to O. Ivanchenko, the science of international public law actually recognizes that dynamics of the ratio of norms of international and national law indicates expansion of the sphere of international law regulation, primarily by means of attraction to its orbit of new directions attracting new areas related to international cooperation in addition, the scope of the so-called joint regulation of public relations by norms of international and national law is expanding (Ivanchenko, 2013).

A. G. Volevodz noted quite aptly that the concept of international cooperation in fight against crimes arose at the junction of several legal systems, namely international law and domestic law, as well as several sciences - international, criminal and criminal procedural law, and that it

still retains its special status, which leads to the fact that each of the “parent” disciplines is willing to include its individual elements as part of it, without recognizing its independence and never considering and researching these legal phenomena systematically and in full.

A.G. Volevodz notes that independent legal institutions of various forms of international cooperation in fight against crimes which were previously traditionally regulated mainly by international law, are now characterized by the polysystemic nature of legal regulation on the part of different legal systems of the participating states (Volevodz, 2007). This brings us back to the early 20th century, when there were many supporters of characterization of international criminal law as a set of domestic criminal laws, which extended beyond the territory of the state (presence of a foreign element) (Volevodz, 2007).

International cooperation can and should take place at all levels of the criminal prosecution system involving more than one State, in accordance with their obligations under the provisions of various international agreements (including multilateral, regional or bilateral agreements). However, a clear distinction should be made between international public law and domestic law of international cooperation states, i.e., the sphere of international legal cooperation of states and other subjects of international should be separated from the sphere of exercising state powers in fight against crimes (domestic powers exercised by relevant authorized bodies of the state and regulated by the norms of domestic law of the participating states).

In this we agree with S.M. Perepelkin, who defines international cooperation aimed at combating crimes as one of the joint activities of states represented by the respective authorized bodies, which arises from formation and purposeful implementation of foreign policy performed by them based on common or convergent state interests. these activities are of conciliatory, coordinating nature and they arise and are developed between equal subjects of international law (mainly between states) (Perepelkin, 2018).

A.G Volevodz rightly notes that in resolving a specific issue of international cooperation, in particular, issuance of cooperation between two states requires adoption of a wide range of legal acts, at least three legal systems, and it is easy to imagine that this circle will be further expanded if the extradition of the same person is requested not by one but by several states, which in practice is not a rare exception (Volevodz, 2007). This circumstance gives leads the scientist to conclusion that independent legal institutions of various forms of international cooperation in fight against crimes which were previously traditionally regulated mainly by international law, are now characterized by the polysystemic nature of legal regulation on the part of different legal systems of the participating states (Volevodz, 2007).

Thus, no one disputes that in practice actions of each state (especially actions performed by state bodies acting in accordance with the powers granted to them) are conditioned by domestic law, primarily constitutional provisions and provisions of laws establishing such powers. But at the international level, actions of a state, regardless of the body it is represented by, are governed by the rules of public international law, as contained in international agreements concluded by the state (including those approving Statutes of international organizations) as well as by international custom, general principles of law recognized by civilized nations, and by court decisions and doctrine formulated by the most qualified specialists of various nations in public law, as an aid to determine legal norms; such actions are also regulated by other non-statutory sources of public international law.

Thus, an integral condition of international cooperation in fight against crimes consists in existence of norms of international and domestic law, establishing general principles of cooperation, rules of conduct (interaction) of states and authorized bodies acting on their behalf within powers established by the laws, those who implement these norms, responsibility for breach of obligations undertaken based on such cooperation. Content of international cooperation in fight against crimes is revealed through legal norms of both international public law and domestic law.

However, it should not be forgotten that each of the legal systems involved in international cooperation in fight against crimes has clear boundaries, patterns of development and when used does not merge with any other system applied. Therefore, the task of the international public law science is to establish the standards and developmental tendencies of regulating the norms of international public law, some of its branches taking into account that this development is influenced by a large number of factors including such important factors as improving norms of the relevant branches of the domestic law of cooperating states, their harmonization, extension of best practices and their consolidation as standards, in particular in the sources of international law (Martens, 1905).

Based on this, A.G. Volevodz (2007: 12) gives the following definition:

International cooperation in the fight against crimes is joint activities (regulated by norms of international and domestic law) including activities of international law subjects and domestic legal relations concerning ensuring legal protection of individuals, society, the state and the world community from international crimes and crimes of international nature as well as transnational crimes, which are aimed at breaking internal legal order.

This activities consist in: (1) adoption of coordinated measures aimed at establishing at the international and legal level criminality and punish ability of certain socially dangerous acts and unification of national criminal

legislation on this basis; (2) development and conclusion of international agreements and other documents regulating organization and procedural bases of activities performed by international justice bodies of international law enforcement organizations and other bodies, as well as cooperation of states in their fight against crimes; (3) formation (on contractual and other international legal bases) of international justice bodies, international law enforcement organizations and bodies; (4) prevention of planned crimes, including by means of prompt and search actions in necessary cases; (5) provision of legal assistance in the sphere of criminal justice; (6) activities of international courts (tribunals) and other international justice bodies related to criminal proceedings in cases of crimes, criminal prosecution and punishment of persons guilty of crimes they committed; (7) execution of criminal penalties imposed by international courts (tribunals), other international justice bodies, as well as foreign courts; (8) post-penitentiary influence; (9) development of standards for crime prevention and criminal treatment, coordination of activities in the fight against crime at the international level; (10) provision of financial, professional, technical and other assistance in the fight against crime” (Volevodz, 2007).

For example, key international law enforcement organizations acting in the sphere of prevention and counteraction to transnational crimes in the world include the following: INTERPOL; EUROPOL; ASEANAPOL; AFRIPOL; AMERIPOL; GCCPOL; AIMC.

The main functions of ASEANAPOL as an international law enforcement body in the sphere of counteracting and preventing transnational crimes are: preparation and implementation of work plans for the effective implementation of all resolutions adopted in annual joint communiqués signed at the ASEANAPOL conferences; promoting and coordinating cross-border cooperation in the sphere of exchange of intelligence data and information; promoting and coordinating joint operations and activities, including criminal investigations, creation and maintenance of the ASEANAPOL database, training, capacity building, development of scientific investigation tools, technical support and forensic investigations; support and mutual assistance in organization of ASEANAPOL conferences; quarterly assignment of tasks for ASEANAPOL Police Chiefs on proposals for all planned programs and activities to be implemented; annual reports on own activities and expenditures, which are submitted to the ASEANAPOL Executive Committee immediately before the respective ASEANAPOL Conference and distributed among all members and the ASEANAPOL Conference.

Regarding the relations between Ukraine and this regional law enforcement organization, no active cooperation has been observed in recent years. Law enforcement agencies should pay attention to this and establish effective mechanisms for cooperation with ASEANAPOL, prepare the necessary legal basis for such cooperation (Halaburda *et al.*, 2021).

In up-to-date conditions, AFRIPOL operates on the principles of respect for democracy, human rights, the supremacy of law and good governance in accordance with the Constituent Act, the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights and other relevant documents, as well as on the principles of respect for police ethics, the principles of neutrality, sovereignty, honesty and the presumption of innocence.

AFRIPOL members now include Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Comoros, Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabo Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, Somalia, Somalia, Somalia, Africa Swaziland, Tanzania, Tunisia, Uganda, Western Sahara, Zambia, Zimbabwe.

AFRIPOL focuses its strongest attention on the following main areas: counterterrorism; circulation of small arms and light weapons; human trafficking; drug distribution; wildlife crimes; border management; environmental crimes.

AMERIPOL is a short name of Police Community of the Americas (PCA), which was established in 2007 as a continental international police organization whose main task was to combat drug trafficking.

AMERIPOL consists of 18 member organizations, including: The Royal Police of Antigua and Barbuda, the Argentine National Gendarmerie, the Belize Police Department, the National Police of Bolivia, the Federal Police of Brazil, the Carabiniers of Chile, the National Police of Colombia, the Armed Forces of Costa Rica, Costa Rica Department of Judicial Investigation, the National Revolutionary Police of Cuba, the National Police of Ecuador, the National Civil Police of Salvador, United States Drug Enforcement Administration, Puerto Rico Police, the National Civilian Police of Guatemala, Guyana Police Forces, the Haitian National Police, the Honduran National Police, Jamaica Constabulary Force, the Mexican Federal Police, the National Nicaraguan Police Force, the Panamanian National Police, the State Border Service of Panama, the National Police of Paraguay, the National Police of Peru, the Dominican Republic National Police, the Royal St Kitts Nevis Police, the Royal Saint Lucia Police, the Uruguayan National Police and the Trinidad and Tobago Police Service (Leheza *et al.*, 2021).

In the present situation, the role of international law enforcement organizations should not be underestimated, because they bear the burden of responsibility for successful cooperation and mutual assistance in preventing and combating transnational crimes. Ukraine, as a participant

in international cooperation, is still on the way to forming a regulatory framework, but it is the legislative bridgehead that can become the foundation for successful implementation of all long-term plans and strategies in this direction in the future.

The primacy of the rule of law and the recognition of this principle at the constitutional level is an important factor in strengthening international cooperation in the sphere of investigating economic crimes of transnational nature. Measures aimed at strengthening supremacy of law and respect for international norms in the sphere of human rights and freedoms are also directly related to strengthening cooperation and international cooperation in investigation of economic crimes of transnational nature. Authorities and institutions of the participating States involved in extradition, mutual legal assistance or joint investigations generally fulfill their obligations to ensure legality of all acts taken for the purpose of cooperation.

Accordingly, an important factor of both improvement of domestic criminal and criminal procedural law and forms of legal realization is presented as constant improvement of law standards aimed at settlement of international cooperation issues in the sphere of investigating economic crimes of transnational nature, which takes place in the context of intensified functioning of the International Criminal Court concerning elaboration of general principles of law and mutual exchange of best practices of cooperating states in investigation of economic crimes of transnational nature (Leheza *et al.*, 2020).

Conclusion

Thus, norms of law that belong to branches of the international public law of legal cycle regulate activities of international law subjects in the sphere of international cooperation in investigation of economic crimes of transnational nature in such directions as operational and search activities, investigations, criminal prosecution (criminal proceedings), judicial proceedings, execution of sentences, in particular in such forms as: mutual legal assistance, extradition, transfer of convicted persons for serving their sentences, investigation of international crimes, crimes of an international nature and cross-border crimes, including use of special methods of investigation, transfer of criminal proceedings, confiscation of criminal assets, protection of witnesses and victims as well as crime prevention.

However, there are numerous obstacles that still stand in the way of international cooperation in investigating economic crimes of a transnational nature, including sovereignty issues, differences in law enforcement structures and competencies of law enforcement bodies, lack of legislation ensuring respective powers of law enforcement bodies,

lack of communication channels for information exchange, differences in legal systems, law enforcement approaches and priorities of states in counteracting crimes.

Most often, these problems are exacerbated by difficulties in analyzing and enforcing various substantive law and procedural requirements of each jurisdiction, competition, often duplication of powers of authorized bodies acting on behalf of the participating States, or lack of sufficient powers, language issues (problems of translating provisions of international agreements), scope of recognized and guaranteed human rights and freedoms, privacy of private life and housing alongside with secrecy of personal correspondence, as well as protection of banking secrecy.

Bibliographic References

- BATSANOV, Sergii. 1986. Dictionary of International Law: 2nd ed., Revised. International Relations. Moscow, Russian Federation.
- HALABURDA, Nadiia; LEHEZA, Yevhen; CHALAVAN, Viktor; YEFIMOV, Volodymyr; YEFIMOVA, Inna. 2021. "Compliance with the principle of the rule of law in guarantees of ensuring the legality of providing public services in Ukraine" In: Journal of law and political sciences. Vol. 29, No. 4, pp. 100-121.
- IVANCHENKO, Olha. 2013. "Methods of harmonization of national law with international law" In: Legal Bulletin. No. 2, pp. 112-122.
- KRYVONOS, Roman. 2012. International cooperation as an object of scientific research. International relations. Num. 38/39. Kiev, Ukraine.
- LEHEZA, Yevhen; DOROKHINA, Yuliia; SHAMARA, Oleksandr; MIROSHNYCHENKO, Serhii; MOROZ, Vita. 2021. "Citizens 'participation in the fight against criminal offences: political and legal aspects" In: Cuestiones Políticas. Vol. 39, No. 69, pp. 212-224.
- LEHEZA, Yevhen; FILIPENKO, Tatiana; SOKOLENKO, Olha; DARAHAN, Valerii; KUCHERENKO, Oleksii. 2020. "Ensuring human rights in Ukraine: problematic issues and ways of their solution in the social and legal sphere" In: Cuestiones políticas. Vol. 37, No. 64, pp. 123-136.
- MARTENS, Fedor. 1905. Modern international law of civilized nations. 5th ed. SPb. T. 2. St. Petersburg, Russian Federation.
- PEREPELKIN, Sergii. 2018. Parshutin EG International cooperation in the field of law enforcement: textbook. way. Dniprop. state University of Internal Affairs Affairs. Dnipro, Ukraine.

PIDGORODINSKAYA, Anastasiia. 2015. "International cooperation in criminal proceedings: concepts and procedural forms" In: Scientific Bulletin of Kherson State University. Vol. 3. No. 4, pp. 114-118.

SEMIGINA, Hennadii. 2000. Political Science Encyclopedia: in 2 volumes. Misl. N-Ya. Moscow, Russian Federation.

VOLEVODZ, Aleksandr. 2007. On the nature and content of international cooperation in the fight against crime. International criminal law and international justice. Kiev. Ukraine.



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