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International cooperation when collecting evidence in the investigation of transnational organized crime: challenges and opportunities

Організація міжнародного співробітництва під час збирання доказів при розслідуванні транснаціональної організованої злочинності: виклики та можливості

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Abstract

The purpose of the article is to highlight the organizational aspects of international cooperation during the collection of evidence in criminal proceedings related to the investigation of transnational organized crime. The results of the study indicated that international cooperation to collect evidence in criminal proceedings related to transnational organized crime involves a variety of actors, including international organizations, intergovernmental institutions, state and local authorities, judicial and law enforcement agencies, public associations and organizations and individual citizens, the main purpose of which is to detect, investigate, and prevent the commission of criminal offenses by transnational organized criminal groups and criminal organizations, and searching ways to combat such criminal manifestations. One of the types of international cooperation in the area under consideration is the provision of international legal assistance during the

Анотація

Мета статті полягає у висвітленні організаційних аспектів міжнародного співробітництва під час збирання доказів у кримінальному провадженні щодо розслідування транснаціональної організованої злочинності. Результати дослідження показали, що організація міжнародного співробітництва під час збирання доказів у кримінальному провадженні щодо транснаціональної організованої злочинності полягає у спільній діяльності міжнародних організацій, міждержавних інституцій, органів державної влади та місцевого самоврядування, судових та правоохоронних органів, громадських об'єднань та організацій, окремих громадян, основною метою якої є виявлення, розслідування, запобігання та профілактика вчинення кримінальних правопорушень організованими злочинними групами і злочинними організаціями, які мають транснаціональний характер, пошук шляхів

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collection of evidence. Practical implementation. It is established that expansion of international cooperation with foreign countries, improvement of existing international conventions and treaties, national legislation, constant exchange of experience between law enforcement agencies of foreign countries, development of a single mechanism for providing international legal assistance in criminal proceedings in various directions of its implementation are important factors of international cooperation. Value/originality. The study highlights the peculiarities of the organization of international cooperation in the investigation of transnational organized crime; directions for increasing its efficiency are suggested.

Keywords: investigation organization, organized crime, criminal proceedings, international cooperation, transnational crime, evidence.

Introduction

As a result of globalization, States are now increasingly confronted with crime crossing national borders. As a result, enhanced international cooperation is an important component of pre-trial investigation and judicial proceedings. Since criminal activity transcends national borders, it is clear that the international community has recognized the need for enhanced cooperation (Yepes-Enriques & Tabassai, 2002), in particular regarding the collection of evidence that is beyond national State borders. At the same time, its most dangerous form is transnational organized crime.

Transnational organized crime, in particular of a general criminal orientation, covers both the Eastern and Western hemispheres and includes persons with ethnic or cultural ties from Europe, Africa, Asia and the Middle East. Besides, its presence in a certain field represents a significant growing threat to national security in the form of serious consequences for public safety, health care, democratic institutions, economic stability, etc. At the same time, members of organized crime groups constantly seek to corrupt officials both domestically and abroad, penetrate global energy and strategic material markets that are

боротьби із такими злочинними проявами. Одним із видів міжнародного співробітництва у розглядуваній сфері є надання міжнародної правової допомоги під час збирання доказів. Практичне значення. Встановлено, що важливим в процесі організації міжнародного співробітництва під час збирання доказів у кримінальному провадженні про розслідування транснаціональної організованої злочинності є розширення міжнародної співпраці з іноземними державами, удосконалення існуючих міжнародних конвенцій та договорів, національного законодавства, постійний обмін досвідом між правоохоронними органами іноземних держав, розроблення єдиного механізму надання міжнародної правової допомоги в кримінальних провадженнях за різними напрямками її здійснення. Цінність/оригінальність. У дослідженні виокремлено особливості організації міжнародного співробітництва у розслідуванні транснаціональної організованої злочинності; запропоновано напрямки підвищення його ефективності.

Ключові слова: організація розслідування, організована злочинність, кримінальне провадження, міжнародне співробітництво, транснаціональна злочинність, докази.

vital to national security interests, and provide logistical and other support to terrorists and foreign intelligence services.

This negative phenomenon constitutes a multifactorial criminal system with a devastating effect on the economic, political, spiritual, social life, psychological state and gene pool of the nation. Members of organized transnational crime operate in different regions of the world, have their own specific specialization, tactics, and use various methods. Although they have different quantitative and ethnic composition, they are united by a single common goal – to obtain extremely high profits from criminal practices, including those combined with formally legal activities. Transnational organized crime poses a significant and growing threat to national and international security, undermines democratic institutions and economic stability around the world. This trend is related to the growing connection of transnational organized communities with government bodies, intelligence services, and high-ranking businessmen.

The increase in the level of transnational organized crime is influenced by the events taking place in Ukraine now. With the beginning of the large-scale invasion of the Russian Federation on the territory of our State, the occupation of port cities, causing the closure or restriction of shipping, the activities of transnational organized groups deepened their activities both on the territory of Ukraine and around the world. In particular, this is an increase in the level of drug and weapon smuggling, illegal import and export of goods, human trafficking, etc. (The Economist, 2023).

The specified scale and global consequences of the activities of transnational criminal groups require the establishment of relations between the States and international organizations to combat such negative manifestations. Over a long period of interaction among subjects of international law in the fight against crime, a rather large array of international legal norms, principles and mechanisms of prevention, counteraction, termination and investigation of transnational organized crime has accumulated both in theory and practice.

The scientific achievements used in our article are of interest and are theoretical basis for conducting further scientific research on the issues related to the organizational aspects of international cooperation during the collection of evidence in criminal proceedings related to the investigation of transnational organized crime. However, considering the constant changes taking place in the world and in Ukraine, the institution of international cooperation in criminal proceedings during the investigation of transnational organized crime needs constant updating and expansion, taking into account the needs of modern times, in particular in terms of the organization of its implementation.

Therefore, the purpose of the article is to highlight the organizational aspects of international cooperation during the collection of evidence in criminal proceedings related to the investigation of transnational organized crime.

The scientific novelty lies in the formation of practical recommendations for increasing the efficiency of the organization of international cooperation during the collection of evidence in criminal proceedings on transnational organized crime.

Literature Review

The issues related to international cooperation in criminal proceedings traditionally attract the interest of the scientific community due to objective reasons related to the need to fight crime, but primarily attention is paid to the activities of the prosecution, the investigation of international crimes, crimes of international nature or other crimes with "international connections".

Scientific achievements by A.B. Antoniuk (2016) are devoted to the study of procedural aspects of international cooperation in the investigation of criminal offenses, the experience of certain foreign countries in the field of international cooperation in the investigation of criminal offenses.

Bilenchuk et al., (2011), considering the issue of investigating transnational crimes, notes that "investigation of this type of crime have a rather specific nature both in terms of typical investigative situations and in terms of their disclosure methods, and draws attention to the fact that international criminal investigation techniques are beginning to emerge in modern conditions. The sources of this methodology should be international agreements along with traditional methods of crime investigation."

The research by Zavydnyak (2021a) is dedicated to the study of legal regulation, levels and types of international cooperation in the criminal process.

A complex scientific work with fundamental theoretical and practical issues of forensic support for pre-trial investigation in cases of crimes of an international nature, belongs to Chornous (2012). The author highlighted the most general provisions relating to the content of international cooperation in the fight against crimes of an international nature, the specifics of conducting separate procedural actions within international legal assistance, technical and tactical forensic support of pre-trial investigation in cases of crimes of an international nature.

Zharovska (2019) revealed scientific approaches to the definition of transnational organized crime, disclosed the structure and dynamics of crimes, allocated the models of criminal groups.

The urgent tasks of improving international cooperation in the investigation of financial fraud are the use of new methods and means of investigation (procedural actions within

international legal assistance, creation of joint investigative teams, etc.); effective interaction with competent bodies of foreign countries and international organizations (Ortynskiy et al., 2018).

At the same time, the establishment of effective cooperation between the authorized bodies of the states involved in such activities, is among the important conditions for success in the investigation of transnational organized crime.

In the context of our research, it should be noted that the organization of international cooperation is an integral component in the activity of investigating transnational organized crime, taking into account its complex nature. At the same time, one can find content-like concepts in normative legal acts and legal literature: "international cooperation", "international legal assistance", "mutual legal assistance", etc.

In accordance with Clause 1, Part 1, Art. 541 of the Criminal Procedure Code of Ukraine, "international legal assistance" is the conduct of proceedings by the competent authorities of one State, the performance of which is necessary for pre-trial investigation, trial or for the sentence imposed by a court of another State or an international judicial institution.

Instead, international cooperation means purposeful and permanent, joint and coordinated, broad in scope and diverse in forms and directions, organizational and legal, investigative, informational in nature, aimed at achieving the tasks set before law enforcement agencies (Zharovska, 2014).

In view of the above, we believe that the concept of international cooperation covers a much wider range of interactions between authorized bodies of different States in their joint efforts to combat crime through international organizations collaboration, intergovernmental institutions, state authorities and local self-government, judicial and law enforcement agencies, public associations and organizations, individual citizens, the main purpose of which is to detect, investigate, and prevent the commission of criminal offenses, finding ways to combat criminal manifestations.

In view of the above, in order to reveal the subject matter of the research, in particular in the context of the investigation of transnational organized crime, we will consider the concept of "international cooperation in criminal proceedings" in the context of the joint activity

of the authorized bodies of the central executive power with judicial and law enforcement agencies, which lies in providing international mutual legal assistance in criminal proceedings during the collection of evidence, conducting procedural actions, handing over documents, etc.

We agree with the view of Zavydnyak (2021b), that it is impossible to ensure collection of evidence abroad; prosecution; protection of human and citizen rights and freedoms in criminal proceedings; compensation for damages, as well as possible confiscation of property without proper organization of international cooperation in proceedings regarding crimes of a transnational nature.

The issue of international cooperation of pre-trial investigation bodies with similar bodies of foreign States has recently become very relevant, since the full implementation of criminal proceedings, in this case, most often depends on their cooperation. Thus, it is possible to distinguish two directions of international cooperation of law enforcement agencies in the fight against transnational organized crime. Firstly, international cooperation providing operational police assistance pending official request without reference to treaties on legal assistance. Such direct contacts between investigators are discouraged or even not allowed, but they allow direct communication with colleagues involved in specific criminal proceedings. These contacts provide an opportunity to quickly receive information on requests in real time and help the investigator to establish the presence of certain facts before seeking official access to evidence through «application letters». It should be noted that direct communication without reference to international instruments violates the assistance procedure. At the same time, such deviation is permitted in exceptional cases where there are serious risks: threats to the life and health of the injured person or his family; irreversible loss of very important information, as well as real grounds for the suspect to abscond or his subsequent identification will be impossible. In such cases, information is provided to the employee of the Interpol National Central Bureau indicating the specific grounds for conducting investigative actions without reference to international treaties; all necessary «application letters» are processed in the usual way. Secondly, international cooperation based on formal «letters of application» filed after the opening of criminal proceedings or formal investigations; in this case, the issues of issuing an arrest warrant, ensuring the right of the

suspect/accused to defense, application for questioning of participants in criminal proceedings are being resolved. It should be noted that increasing the level of operational exchange of information between law enforcement agencies of the States and establishment of its use as evidence at the legislative level of States in criminal proceedings will contribute to the effective fight, disclosure and prosecution of those involved in the commission of this category of crimes (Filianina, 2020, pp. 351-352).

Methodology

The methodology of the scientific article is chosen considering the purpose and tasks, object and subject matter of the research. To reveal the main issues, the authors used general scientific and special methods applied in modern legal science.

Bibliographic method was applied to choose scientific literature corresponding the subject matter of our research.

Dialectical method made it possible to determine the main directions and forms of international cooperation in criminal proceedings in the investigation of transnational organized crime and to identify their subject structure.

Formal and logical methods (induction and deduction, analysis and synthesis, evidence and rebuttal, generalization, etc.), helped to systematize scientific views on the definition of transnational organized crime.

With the help of formal legal method, the analysis of international conventions and treaties, acts of international organizations, as well as domestic legal instruments in the field of international cooperation in criminal proceedings was carried out.

Comparative and legal method made it possible to compare international and national legislation in the field of international cooperation in criminal proceedings on the investigation of transnational organized crime, to determine the main areas of improvement of domestic legal acts in the specified area.

Historical and legal method helped to reveal the meaning of such basic concepts as "international cooperation", "international legal assistance", "mutual legal assistance", "international cooperation in criminal proceedings" and "international cooperation in the field of fighting

crime", to highlight the development of scientific views on certain problems.

The method of complex analysis was applied to determine the actual content, main directions and current state of international cooperation in criminal proceedings on the investigation of transnational organized crime.

Using the method of analysis and synthesis, the classification of levels and actors of international cooperation in criminal proceedings on transnational organized crime was carried out. The specified classification helped to distinguish its directions and forms of implementation.

Axiomatic method contributed to the identification of typical features of international cooperation during the collection of evidence in criminal proceedings on transnational organized crime, depending on the form of its conduct.

System and structural method was used to systematize the obtained results and formulate the main conclusions of the scientific research.

Results and discussion

The fight against crime is one of the priority areas of international cooperation. Its growth and internationalization turned this struggle into one of the main social problems and necessitated the interaction of States in its solution.

Transnational crime is a crime that occurs in the jurisdictions of several countries, but its consequences significantly affect other countries. It is crime against the national laws of several countries. The term "transnational crime" was developed by the United Nations (UN) Division of Crime and Criminal Justice in 1974 to guide discussion at a UN conference on crime according to the United Nations Convention against Transnational Organized Crime of 2000. At the same time, crime is considered transnational if, firstly, it is committed in more than one State; secondly, it is committed in one State, but a significant part of its preparation, planning, management, or control is carried out in another one; thirdly, it is committed in one State but involves an organized criminal group engaged in criminal activity in more than one State; finally, it is committed in one state but has significant consequences in another state.

Such crimes should be distinguished from international ones, which are recognized by international law and therefore can be prosecuted under international law, and domestic crimes,

which fall under a single national jurisdiction. To be considered a transnational crime, the crime must involve crossing borders or jurisdictions (Gurule et al., 1996).

Given the fact that Ukraine has become the object of growing interest of international criminal groups, solving important socio-economic, political and other tasks is practically impossible without its participation in international cooperation in the fight against crime, in the activities of international law enforcement organizations. As a result, involving our State in international cooperation in the field of combating crime, based on the rules and principles of international law, is quite important. It is quite clear that such cooperation of Ukraine with the countries of the world and international organizations is a significant condition for the successful solution of many problems not only of a foreign political and economic nature, but also of an internal one (Voitsihovsky, 2010).

Since the criminal activity of transnational organized criminal groups covers the territories of different States, the investigation of the specified category of criminal offenses requires proper and effective organization of international cooperation.

In general, international cooperation in the fight against crime as a direction of the State's criminal policy has various aspects, among which are informational and analytical, organizational and legal, methodical and resource-based (Zozulia, 2014).

In the context of examination of activities for the investigation of criminal offenses, in particular transnational organized crime, an important issue is the coverage of the organizational aspect of international cooperation, which includes a set of legal, procedural, tactical and psychological methods and means by which it is carried out. In addition, it is worth noting that the organization of international cooperation in the field under consideration depends on the levels, directions, forms and actors of its implementation.

Three levels of international cooperation in combating international crime are traditionally distinguished:

1. The level of bilateral cooperation between States, which lies in interaction between States and their competent bodies, diplomatic missions, consular institutions and other authorized persons.

2. Cooperation at the regional level, which is carried out between States provided that they are united on a territorial basis (European Union, Council of Europe) or within the activities of regional international organizations. It is about the implementation of international cooperation within the Organization for Security and Cooperation in Europe, the Organization of American States and other regional international organizations, the tasks of which include the promotion of the fight against international crime.
3. Cooperation at the global level, which involves almost all countries of the world in the fight against international crime with the assistance of world-class international organizations. These are the UN and its specialized agencies, the International Criminal Police Organization – Interpol and others (Cherniavskyi et al., 2019).

Thus, the cooperation of States in criminal proceedings on the investigation of transnational organized crime, including during the collection of evidence, can be carried out at 3 levels: universal, regional and bilateral.

Besides, we believe that the organization of international cooperation during the investigation of transnational organized crime should be carried out considering:

- 1) legal aspect – based on a set of international and national legal instruments, treaties, etc., on the basis of which foreign States and their institutions interact with each other in the process of detecting, investigating and preventing crime, in particular transnational organized crime;
- 2) procedural aspect, which lies in the need to comply with the requirements for international cooperation strictly defined by international legal documents and national legislation;
- 3) tactical and forensic recommendations – a set of basic tactical techniques used during the implementation of international cooperation both at the stage of pre-trial investigation and court proceedings;
- 4) psychological principles – application of psychological techniques when establishing and building contact between all actors of international interaction.

To reveal the main issues related to the organization of international cooperation during the collection of evidence in criminal proceedings regarding the investigation of

transnational organized crime, it is important to study the legal basis of its implementation.

Interpretation of international treaties of Ukraine and the practice of the ECtHR made it possible to identify the following directions of influence of these sources on the development of science of forensics, elaboration and practical implementation of forensic tools, methods and techniques: ensuring the protection of human rights and freedoms; investigation of criminal offenses taking into account the best international and European experience; increasing the efficiency of implementation of international cooperation measures during criminal proceedings; ensuring effective investigation and trial of international crimes.

The importance of international cooperation during the investigation of transnational organized crime is emphasized in the UN Convention against Transnational Organized Crime (UN General Assembly, 2000). In particular, the Convention defines the term "mutual legal assistance", which includes the provision of the widest possible assistance by States Parties upon request in the investigation, prosecution and trial of crimes defined by the Convention, which is carried out on a mutual basis, provided there are reasonable grounds to suspect that such crime is transnational in nature and, including, the victims, witnesses, proceeds, means of committing crimes or evidence related to the commission of such crimes are located in the requested State Party, and that an organized criminal group is involved in the commission of this crime.

In addition, the specified Convention defines the main goals of international cooperation in the field under consideration. In particular, after analyzing the provisions of clause 3 of Art. 18 of the Convention, providing mutual legal assistance in criminal proceedings regarding transnational organized crime can be grouped according to the following main areas:

- 1) collecting evidence or requesting information that contains information about the circumstances of a criminal offense (obtaining testimony of witnesses or statements from individuals; providing information, material evidence, and expert assessments; providing originals or certified copies of relevant documents and materials, including government, bank, financial, corporate or commercial documents);

- 2) conducting investigative (search) actions (searching and seizure or arrest; inspection of objects and sights);
- 3) execution of court orders (delivery of court documents);
- 4) other procedural actions (facilitating the voluntary appearance of persons in the authorities of the requesting State-participant, etc.).

Thus, international cooperation during the collection of evidence in criminal proceedings on the investigation of transnational organized crime can include a wide range of procedural actions, during which it is possible to obtain information that can later be used as evidence in court proceedings. Conducting investigative (search) actions; obtaining statements and testimony of witnesses, victims, suspects, accused persons, experts; obtaining information related to criminal proceedings, physical evidence and other documents and information, etc. are among the main sources of obtaining evidence in the process of international cooperation.

The procedure for the implementation of international cooperation during the collection of evidence in criminal proceedings on transnational organized crime is regulated by the norms of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 4651-VI, 2012). It defines the following areas of international cooperation during the investigation of such criminal offenses: service of documents, execution of separate procedural actions, extradition of persons who have committed a criminal offense, temporary transfer of persons, temporary transfer of persons, takeover of criminal proceedings, transfer of convicted persons and execution of sentences.

As for the procedure of collecting evidence as part of international cooperation, the Criminal Procedure Code of Ukraine contains direct provision indicating that evidence can be obtained on the territory of a foreign state as a result of international cooperation in the course of criminal proceedings (Part 4, Art. 93). It should be noted that it is in line with Art. 1 of the European Convention on Mutual Assistance in Criminal Matters (Council of Europe, 1959), which states that the parties undertake to provide each other with the widest possible mutual assistance in the prosecution of offenses, whose punishment at the time of a request for assistance falls within the jurisdiction of the requesting party.

The organization of international cooperation when collecting evidence during the investigation of transnational organized crime is a complex process that requires the coordinated activity of authorized bodies. Subject matter composition should be investigated to highlight the main aspects of its implementation, which in turn will vary according to the level at which such interaction takes place, as well as the legal status of actors involved in procedural actions carried out in the course of international cooperation.

Thus, we identify the following actors depending on the levels of international cooperation at the global level: the UN International Court of Justice, the International Criminal Court (hereinafter – the ICC), the International Criminal Police Organization Interpol, etc. At the regional level, interaction is carried out between regional groupings of actors: the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), the Organization of American States (hereinafter referred to as the OAS), the European Union Agency for Criminal Justice Cooperation (hereinafter – Eurojust), the European Police Directorate (hereinafter – Europol). The bilateral level involves the cooperation of the authorized bodies of the competent States that have concluded bilateral agreements on the provision of international legal assistance in criminal proceedings. In Ukraine, international cooperation in criminal proceedings is performed through the Office of the General Prosecutor and the Ministry of Justice of Ukraine.

Besides, it should be noted that the circle of actors of international cooperation is not limited only to competent bodies that are endowed with the relevant powers. Among such actors, parties and other participants in criminal proceedings should also be allocated; in particular, at the regional level of international cooperation in criminal proceedings on transnational organized crime in terms of collecting evidence, the Core International Crimes Evidence Database (hereinafter – CICED) introduced by Eurojust for the preservation, accumulation and analysis of evidence of major international crimes in a protected mode deserves attention.

CICED is a unique ad hoc judicial database created by Eurojust in 2023 to preserve, store and analyze evidence of major international crimes. It consists of three components: secure digital data transmission, secure storage and advanced analysis tools. In addition to the evidence itself, CICED will also contain a register with

information on the source of evidence, as well as the event and type of crime to which it relates (Eurojust, 2023).

In accordance with the Proposal for a Regulation of the European parliament and of the council amending Regulation (EU) 2018/1727 of the European Parliament and the Council, as regards the collection, preservation and analysis of evidence relating to genocide, crimes against humanity and war crimes at Eurojust (European Commission, 2022) evidence related to offences cannot be safely stored in the territory where hostilities are taking place, so it is appropriate to establish a central repository in a reliable place. Since the need to preserve such evidence is urgent, they must be stored in an automated data storage facility. Preservation, analysis and storage of such evidence, as well as the access to it when required by national authorities and international judicial authorities, must comply with the highest standards of cyber security and data protection.

Operation of such database will contribute to the deepening of international cooperation in the fight against crime, provide a fast and reliable way of transferring and storing evidence, to which only authorized bodies will have access. At the same time, it is important to further develop a single mechanism of cooperation in the process of using the CICED database, to settle the main issues by enshrining the relevant procedure in international acts and domestic legislation.

However, the most widespread is the implementation of international cooperation in terms of collecting evidence during the investigation of transnational organized crime at the bilateral level, which is regulated by international treaties concluded between the States and national legislation.

Thus, depending on the legal status of the actors of international cooperation during the collection of evidence in criminal proceedings regarding the investigation of transnational organized crime, we distinguish:

- bodies that directly conduct criminal proceedings and request or ensure the provision of international cooperation – court, prosecutor, investigator of the pre-trial investigation body;
- bodies mandated to consider requests and take action to implement them – Office of the Prosecutor General (in pre-trial

- investigation), Ministry of Justice of Ukraine (in court proceedings);
- actors with respect of which issues related to the implementation of international cooperation are being resolved – suspects, accused, persons in respect of whom extradition is sought, persons on international wanted list, etc.;
 - other entities that the requesting or requested party involves in the process of international cooperation (parties and other participants in criminal proceedings).

We agree with the statement that direct interaction between the competent bodies of the States contributes to increasing the efficiency of cooperation, simplifies the solution of a number of organizational issues. Based on the above, measures to increase the effectiveness of international cooperation in the field of combating crime should include improved direct interaction mechanisms between the competent bodies of the states (Cherniavskiy et al., 2019).

The organization of international cooperation in collecting evidence in criminal proceedings related to the investigation of transnational organized crime, depending on the purpose of the request and the requirements for processing the information received during the provision of international assistance, can be carried out in two forms: official (procedural) and unofficial (non-procedural, consultative). A combination of both these forms is necessary at different stages of the investigation, and understanding their purpose, requirements and limitations is essential for successful international cooperation. Let us consider separately the organizational aspects of international cooperation in the specified forms.

Organizational and tactical features of international cooperation in collecting evidence during the investigation of transnational organized crime differ depending on the form of its implementation. Thus, official form of providing international legal assistance involves strict adherence to the procedural form determined by international conventions or treaties and national legislative acts and is carried out in several stages.

Implementation of official international cooperation during the collection of evidence in criminal proceedings based on the fact of the commission of criminal offenses by organized criminal groups or criminal organizations with transnational features is made by requesting international legal assistance.

Criminal procedural legislation provides a clear manner for its implementation. Thus, in accordance with Part 1, Art. 551 of the Criminal Procedure Code of Ukraine, court, public prosecutor or investigator, with approval of the public prosecutor, shall send to the designated (central) authority of Ukraine a request for international legal assistance in criminal proceedings they conduct. At the same time, the central bodies of Ukraine, authorized to review a request for reasonableness and conformity with the laws and international treaties of Ukraine are: the Office of the Prosecutor General (in criminal proceedings during pre-trial investigation), and the Ministry of Justice of Ukraine (in criminal proceedings during a court trial) (Prokopenko, 2014).

Thus, in the course of a pre-trial investigation of criminal offenses committed by organized criminal groups or criminal organizations with transnational links, investigator or prosecutor, where evidence needs to be collected outside our country and if they cannot be obtained during the conduct of legal proceedings in the territory of Ukraine, applies to the relevant authorities with a request for international legal assistance.

A request for international legal assistance must meet the requirements regarding its procedural content, as well as have a proper justification. It is important to have a link between the criminal proceedings for which international legal assistance is requested and specific procedural actions that must be conducted on the territory of a foreign state.

An investigator conducting pre-trial investigation in criminal proceedings on transnational organized crime submits a request for international legal assistance in connection with the need to collect evidence on the territory of a foreign State in agreement with the prosecutor. To avoid problems with the request return, investigator or prosecutor must pay special attention to compliance with its content and form, which are determined by the Code of Criminal Procedure of Ukraine.

Failure to comply with the requirements for the form and content of a request for legal assistance established by an international treaty or domestic law has significant legal consequences: firstly, it may entail a refusal to provide legal assistance; secondly, it greatly complicates obtaining the requested assistance; thirdly, a request made without taking into account the specifics of the procedural legislation of the requested Party may initiate the receipt of assistance formalized in

such documents which cannot be used as admissible evidence in criminal proceedings. That is, the quality of a request for the provision of legal assistance often determines the quality of the requested proceedings (Zavydnyak, 2021b).

Practical data also indicates that it is the lack of proper substantiation of the connection between the requested procedural actions and the actor of criminal proceedings that causes the corresponding request for international legal assistance to be returned.

Thus, if the request concerns the interrogation of a person as a witness, victim, expert, suspect or accused, then a duly certified extract of the relevant articles of the Criminal Code of Ukraine is attached to it to explain to the person his procedural rights and obligations and a list of issues to be put to him, or information to be obtained. If the request concerns the conduct of a search, inspection of the scene, seizure, seizure or confiscation of property or other procedural actions, the permission for which is granted by the court in accordance with the Criminal Procedure Code of Ukraine, then information about the evidence that substantiates the need for the relevant measures is attached to it (Chornous, 2012).

Besides, in practice there is a problem of recognition of evidence obtained during international cooperation. In particular, some authors point out that in order to recognize "foreign" evidence in a criminal proceedings, two mandatory conditions must be observed: 1) the procedure for obtaining and securing evidence in a foreign State, because based on the norms of international law, the Parties are governed by the procedural legislation of the requested State in the process of executing a request for legal assistance; 2) the order of interaction of national law enforcement agencies with foreign authorized actors (Zavydnyak, 2021c).

In accordance with Art. 3 of the European Convention on Mutual Assistance in Criminal Matters (Council of Europe, 1959), the requested Party executes any judicial instructions related to criminal case and sent to it by the judicial authorities of the requesting Party in the manner provided by its legislation.

At the same time, the Criminal Procedure Code of Ukraine determines that, at the request of a competent body of a foreign State, during the execution of certain procedural actions on the territory of Ukraine, the procedural legislation of

a foreign State may be applied, if it is provided for by the international treaty, to which the Verkhovna Rada has consented, and in the absence of such document – provided that the request is not contrary to the law of Ukraine (Clause 2, Part 1, Art. 558).

Thus, in the process of applying for international legal assistance in criminal proceedings on the investigation of transnational organized crime, competent authorities may request the application of Ukrainian procedural rules. At the same time, the first and foremost important condition for such an appeal is the presence of express reference to the applicability of the law of the foreign State in the international treaty. Besides, to avoid issues related to the inadmissibility of evidence obtained in the course of conducting the requested procedural actions on the territory of a foreign State, in the corresponding request it is necessary to clearly describe the procedure for conducting specific procedural actions, provided for by national legislation, by clarifying terms, as well as references on articles of the Criminal Procedure Code of Ukraine, which must be duly certified and attached to the request materials.

Consequently, to avoid cases of inadmissibility of evidence obtained directly in the process of international legal assistance in criminal proceedings on the investigation of transnational organized crime, authorized subjects should pay attention to the following important conditions:

- 1) the request is submitted with strict compliance with all requirements regarding its form and content;
- 2) the body or the official authorized to make a request or to perform procedural actions is specified in the request for international legal assistance;
- 3) actual data are obtained in compliance with the criminal procedural legislation of the requested Party, and in cases provided for by an international treaty or law of the requesting Party;
- 4) during the collection of evidence in the process of international cooperation, the rights of the persons who participated in the procedural actions are respected;
- 5) evidence obtained from reliable sources, using appropriate methods of recording evidentiary information, and ensuring its retention towards the requesting party.

Equally important is the preliminary study of the procedural law of the requested State, their technical and forensic support, etc. by the

investigator, prosecutor. It will help to avoid situations related to differences in procedures in different States, tactical techniques used in the course of certain procedural actions, the competence of authorized bodies of foreign States to carry out certain procedural actions, training of officials of these bodies, the presence of technical and other opportunities.

In addition, the absence of agreements concluded between States is not an obstacle for the organization of international cooperation in the field under consideration. In this case, the submission or receipt of the request is carried out according to the same rules but involving the Ministry of Foreign Affairs of Ukraine on the basis of reciprocity.

Interesting is the analyze of certain provisions of foreign legislation regulating the interaction of law enforcement agencies, conducted by Pavlenko (2022). In particular, the author notes that some States have established provisions providing for extraterritorial jurisdiction allowing State authorities of different countries to investigate their nationals who commit crimes related to human trafficking abroad.

Despite the fact that the provision of official assistance is a rather lengthy process involving certain procedure, any information collected in the course of receiving official international legal assistance is recognized as evidence that can be used in the pre-trial investigation and in the litigation.

On the other hand, the consultative form of international cooperation in collecting evidence during the investigation of similar categories of criminal offenses is extremely important, as it does not require compliance with formalities and is carried out in a fairly short period of time. It is the process whereby pre-trial investigation bodies or prosecutor informally communicate with colleagues or partner agencies of foreign countries to quickly obtain information that may assist in the investigation. Informal assistance may include (but is not limited to) obtaining information from registers, checking information in police databases, etc.

Besides, its importance lies in the fact that the implementation of informal consultations contributes to identifying direction of the investigation, as well as the needs and scope of further official assistance. However, it should be noted that all information obtained in the process of informal cooperation is not evidence and

cannot be further used in pre-trial investigation or court proceedings.

Informal legal aid is based on trust and trusted networks and requires time and effort from all parties involved. Recognizing this, international organizations encourage peer-to-peer networking through international events and promote networking.

An important form of international cooperation in collecting evidence in criminal proceedings in the investigation of transnational organized crime is the creation and operation of joint investigative teams. Their activities are regulated by the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Council of Europe, 2001) and by the Criminal Procedure Code of Ukraine, under which joint investigative groups may be set up to conduct pre-trial investigation of circumstances of criminal offences committed in the territories of several States, or where the interests of such States were affected (Art. 571).

At the same time, the norms of the Criminal Code of Ukraine are not in line with the provisions defined in the Second Additional Protocol, which states that by mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team.

For this purpose, the Draft Law of Ukraine No. 7330 (2022) amending Article 571 of the Criminal Code of Ukraine and clarifying that joint investigative teams can be created to ensure pre-trial investigation and court proceedings, was developed; these amendments are important for criminal proceedings carried out on the territory of one or more States.

Thus, we believe that the introduction of the specified changes is appropriate, especially under Russian Federation's military aggression against Ukraine, as they will facilitate the investigation of criminal offenses.

It is necessary to make changes to Article 571 of the Criminal Code of Ukraine as well, in particular, to enshrine in Part 1 of the Article that joint investigative teams can be created to conduct pre-trial investigation of criminal offenses committed on the territories of one or more States, or if the interests of these States are violated.

The use of psychological techniques to overcome barriers between the actors of interaction in the process of organizing international cooperation during the collection of evidence in criminal proceedings on the investigation of transnational organized crime is no less important. Thus, Ukraine's expansion of international cooperation with foreign countries on different continents in the fight against crime, differences in legal systems, language barriers, etc. necessitate the solution of not only legal, but also organizational, tactical and psychological issues.

Establishing psychological contact in the process of the actors' interaction at the interstate level can be carried out with the help of the following means: proper selection and management of staff; identification of employees with special training for investigating specific types of criminal offenses; study of interpersonal relations in the group and in the international space; education of the necessary qualities (ethical, moral, strong-willed, etc.); perfect command of foreign languages (at least one of them) for communication between authorized persons of competent bodies of different States, etc. In this case, the informal relationships in the team are of particular importance: common interests, friendly and other relations that may affect the effectiveness of the investigation (Sharay, 2022).

Conclusions

Thus, after conducting an analysis of the main international documents and national legislative acts, as well as scientific works of domestic and foreign scientists in the field of international cooperation during the collection of evidence in criminal proceedings on the investigation of transnational organized crime, it should be stated that its content lies in the joint activities of international organizations, interstate institutions, State and local authorities, judicial and law enforcement bodies, public associations and organizations, individual citizens, the main purpose of which is to detect, investigate, and prevent the commission of criminal offenses by organized transnational criminal groups and criminal organizations, seeking ways to combat criminal activities.

One of the types of international cooperation in the field under consideration is the provision of international legal assistance, which may also differ depending on the directions of its implementation, of which collecting evidence in criminal proceedings related to the investigation

of transnational organized crime is of great importance.

The analysis of scientific literature helped to highlight the following main levels and, as appropriate, actors of the international cooperation in the course of investigating transnational organized crime:

universal – the UN International Court of Justice, the International Criminal Court, Interpol, etc.;

regional – Council of Europe, OSCE, Eurojust, Europol;

depending on the legal status, the actors of international cooperation during collecting evidence in criminal proceedings regarding the investigation of transnational organized crime can be classified into:

agencies, which directly conduct criminal proceedings and request or ensure the provision of international cooperation – court, prosecutor, investigator of a pre-trial investigation body; bodies authorized to consider requests and take measures to fulfill them – Office of the Prosecutor General (in pre-trial investigation), Ministry of Justice of Ukraine (in court proceedings);

entities with respect to whom the issues related to the implementation of international cooperation are addressed – suspect, accused, persons in respect of whom extradition is to be decided, persons on international wanted list, etc.; other entities that the requesting or requested Party involves in the process of international cooperation (parties and other participants in criminal proceedings).

The organization of international cooperation during collection of evidence in criminal proceedings in the investigation of transnational organized crime is carried out considering:

- 1) legal aspect – based on a set of international and national legal acts, treaties, etc., on the basis of which foreign States and their institutions interact with each other in the process of detecting, investigating and preventing crime, in particular transnational organized crime;
- 2) procedural aspect – lies in the need to comply with the requirements for international cooperation strictly defined by

- international legal instruments and national legislation;
- 3) tactical and forensic recommendations – a set of basic tactical techniques used during the implementation of international cooperation both at the stage of pre-trial investigation and court proceedings;
 - 4) psychological principles – application of psychological tools when establishing and building contact between all actors of international interaction.

To make international cooperation in the investigation of transnational organized crime more effective, it is expedient to implement effective coordination of all pre-trial investigation bodies, because currently various law enforcement agencies are involved in the pre-trial investigation process and due to improper communication there are unjustified delays in the investigation, loss of materials or parts of case materials. Besides, an important aspect of effective interaction is the rapid exchange of information both between the pre-trial investigation bodies themselves and between the pre-trial investigation bodies and other state authorities possessing important information for the investigation. Therefore, the issue of digitization of all pre-trial investigation materials and simplification of bureaucratic procedures is urgent.

Besides, it is appropriate to approve the algorithm for the investigation of international crimes with a detailed description of the implementation of urgent investigative actions. Finally, investigation of international crimes today requires substantial investigative knowledge of IHL and a lot of work with materials from open sources of information, electronic evidence, so it is necessary to introduce training and advanced training for investigators in these areas.

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