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The matter (question) of cooperation of State Border Guard Service of Ukraine with law enforcement authorities of the contiguous states in struggle against violations of state boundary

Annotation: The concept of report consist in the separates aspects of cooperation State Border Guard Service of Ukraine with law enforcement authorities of the contiguous states in the field of criminal proceedings. Under consideration get questions relating to the improvement of the legal adjusting of international legal assistance at investigation of criminal cases, and also her progress trend taking into account activity of law enforcement authorities of the contiguous states.

Key words: State Border Guard Service of Ukraine, cooperation, law enforcement authorities, international legal assistance, criminal proceedings, transnational organized crime.

The guard of state boundary is one of the priority directions of state power's activity, because only the presence of border determinates the presence of the state.

Considering modern tendencies, we can bravely declare that is lately observed hasty growth of transnational organized crime, which operates on territories of a few states, using "transparent" state boundaries for the conducting of the illegal actions.

Mainly, the crime which is related to violation of state boundaries includes: conducting of terrorist actions; illegal turn of weapon, ammunitions, radioactive materials, explosives and poisonous substances; trade in people; illegal passage of persons through the state boundary; illegal turn of narcotic drugs and psychotropic substances and precursors; crimes in the economic sphere; besides, the illegal operations with currency values, illegal international, financial and export operations; legalization of profits, got from criminal enterprise; smuggled goods; thefts of vehicles, using scienfer of false documents for crossing border.

At the same time, competence of Government of frontier service of Ukraine in the field of criminal proceeding is characterized by counteraction on the state boundary to such crimes as illegal passage of persons through the state boundary and using scienfer of false documents for crossing border.¹

In connection with activity, relating to illegal passage of persons through a state boundary and carrying international character, and also the organized crime in it's updating forms and methods of illegal actions, the law enforcement authorities of the different states must to search the most effective mechanisms of fighting against the transnational organized crime.

One of such mechanisms is providing of mutual assistance in the field of the criminal proceeding from the side of law enforcement authorities, within the limits of contiguous states cooperation.

The problems of international relations in the field of providing of legal assistance on criminal cases are main topic for works of such Ukrainian scientists as V. Tertyshnik, L.Loboiko, N. Pashkovskiy, U. Chornous, N. Smirnov, A. Syzonenko. Post-Soviet science which engaged in the problems of international cooperation in the field of criminal trial was represented by such leading scientists as A. Bastrykin, O. Aleksandrova, A. Volevodz, V. Volzhenkina, V. Milenchuk.

The transferred authors spares the great attention to illumination of problem of concept interpretation of international legal assistance in criminal cases, determination of kinds and

¹ Кримінально-процесуальний кодекс України: чинне законодавство зі змінами та допов. на 1 листопада 2010 року: (Відповідає офіц. текстів) – К.: Алерта; КНТ; ЦУЛ, 2010. – 184 с. П. 7. Ст. 101.

judicial forms of legal assistance, modern condition and prospects of development of this institute (in their works).

In spite of fundamental theoretical development of separate aspects of international cooperation in the field of the criminal proceeding, still unsolved questions in practical using of facilities of this institute in activity of law enforcement authorities of different countries (especially organs of guard of state boundary) take place.

The term "transnational criminality" means committing crime by international criminal groups on the territory of a few states, or executing by them crimes which foresees simultaneous or continued criminal activity in a few countries. This threatening tendency is conditioned by considerable achievements in development of technologies and communication means and unprecedented expansion of international and economic business, transportations, tourism.

Transnational criminal organizations use the today's international situation with impunity. As a result, criminality broadens and becomes more profitable.

Internationalization of the organized crime is reflected in market's expansion and sale of narcotic drugs, stolen things, weapon and other illegal commodities and services which are supplied and processed through the network of criminal commercial organizations world over. The amount of these transactions is hundreds of milliards of dollars and exceeds the national budgets of many states.

International criminal societies put under threat economic, political interests of a few states (not only one), hinder to normal international cooperation and put under a threat legal rights and interests of citizens in many states. For example, after disintegration of the USSR, the employees of law enforcement authorities of the different states of the CIS, coming from the necessity of observance of state sovereignty, had no right to search or pursue "on fresh tracks" an offender on territory of other state, as he could do it before.²

In fact, open borders allow the numerous criminal formations to penetrate on territory of other country with ease, commit crime there and hide abroad after.

An effective fight against the transnational organized crime which shows up in activity of criminal structures on territory of a few contiguous states is possible only at active cooperation of countries of world association and, especially, contiguous countries. Unfortunately, it interferes with tendency of same questions in process of becoming of the young states which related not only to organization and right but also with a policy and problems of sovereignty.

According to analysis of activity of organs of inquest of Government frontier service of Ukraine and studied criminal cases which was investigated during the last 5 years, possibilities of institute of international legal assistance within the limits of cooperation of law enforcement authorities were used in 4 cases.

So, on the queries of the Ukrainian side, the transmission of objects and documents passed from Poland and Belarus in two cases, in one case an exchange happened by information, as early as one - a separate commission was directionally on realization of additional interrogation of witness on territory of Moldova, but non-availability of answer affected on the subsequent process of investigation of crime.

To our mind, the low level of cooperation of law enforcement authorities of different countries is conditioned by next factors:

✓the difficult order of serve and receipt of mutual legal assistance, that requires simplification and improvement;

² Родионов К.С. Борьба с транснациональной преступностью // Проблемы расследования преступлений в условиях формирования правового пространства СНГ и развития международного сотрудничества: рабочие материалы научно-практической конференции. -Санкт-Петербург, 1993. С. 11-12.

✓ the question touching probative value of the obtained materials costs. The conflict of jurisdiction of the states requires a decision;

✓ the ignorance by the public servants of realization's order of cooperation between law enforcement authorities of the contiguous states, and, on occasion, unwillingness to use possibilities of international legal assistance.

Polled 44 investigators from the organs of guard of Government frontier service of Ukraine showed that it is necessary to improve procedure of providing of mutual legal assistance on criminal cases, and also development of new kinds and forms of cooperation.

Presently, the use of international legal assistance in the field of criminal proceeding is known by two methods of law enforcement authorities of Ukraine cooperation: basic (in accordance with a current criminal procedure legislation and multilateral international agreements) and simplified order for cooperating with contiguous (border-line) countries (regulated in addition by department normative acts and bilateral international agreements).

Cooperating of Ukraine with other countries in a fight against the transnational organized crime comes true on different levels:

✓ creation of international standards, and also organizations (e.g., Interpol);

✓ within the framework of multilateral collaboration of the states of the CIS;

✓ at the level of bilateral agreements.

These levels correspond to those which are usually designated in an international law. However, actually the study of practice of cooperation of law enforcement authorities of the contiguous with Ukraine states and national law enforcement authorities allowed to reveal a number of other levels of cooperation in the process of opening and investigation of crimes:

✓ it is cooperation at the level of contiguous regions;

✓ it is cooperation at the level of the systems of criminal justice (at coordinating influence of national offices of public prosecutor);

✓ it is cooperation at the level of separate departments;

✓ it is cooperating at the level of decision of certain global problems of fight with transnational criminality (international terrorism, illegal turn of drugs, weapon and so on);

✓ it is the programmatic-having a special purpose cooperating with organization of international coordinating bodies;

✓ it is cooperation at the level of investigation of one criminal case or group of associate criminal cases.

Besides national legislation, which regulated legal relationships in the field of international cooperation, it is possible to designate five groups of international legal acts: 1) multilateral intergovernmental agreements under an aegis UNO; 2) intergovernmental agreements under an aegis CE; 3) agreements and conventions within the framework of the CIS; 4) intergovernmental and interstate agreements, conventions on concrete directions of law-enforcement activity, providing of legal assistance; 5) interdepartmental agreements, for example, between frontier departments or departments of internal affairs.

Presently, the basic tendency in cooperation of law enforcement authorities of countries the CIS in their fight against transnational criminality is the conclusion of bilateral agreements which regulate joint activity in more detail then multilateral agreements. At the same time, the most perspective decision of all problems of joint activity of organs of investigation of contiguous countries is based on multilateral agreements, containing:

✓ model criminal procedure norms;

✓ are model positions of department normative acts;

✓ international standards (for example, qualificatory manner and matter of databases of criminalistics registration).

As we said before, the increase of efficiency of cooperation between law enforcement authorities of different countries needs to simplify order of dealings between them by the

acceptance of corresponding decisions at the level of leaders of law enforcement authorities of contiguous countries. Such possibility is foreseen, for example, in an article 18 Conventions of UNO against the transnational organized crime, signed in Palermo 14th of December in 2000.³

At the same time, pursuant to Law in force of Ukraine "About the international agreements of Ukraine", not a single national law enforcement authority has plenary powers on entering into international contracts the article of which are human rights and providing of legal assistance on criminal cases to the foreign states.⁴

Really, Government frontier service of Ukraine is not the subject of international relations, but is the subject of criminal proceeding, in this connection, Government frontier service of Ukraine is responsible for obligations of state of Ukraine (subject of international relations) in international agreements, if proper judicial form for this purpose is presented.

Scientist correspond that, it is necessary to settle in agreements with contiguous countries direct contacts between inquiring a support and by ask able establishment, passing central.⁵ That will allow practical workers more operatively to carry out the production of necessary judicial actions.

Other scientists (V. Tabaldieva, N. Yablokov)⁶ maintain that collaboration must come true through central organs exceptionally, but that is not acceptable. At that rate the terms of consideration and execution of queries increase substantially, especially because of direction through the General prosecution or Ministry of internal affairs.

In the now operating criminal procedure legislation of Ukraine its central organs and order of dealings between them during cooperating with the competent organs of the foreign states are not certain; as well as order and legal grounds of realization of legal assistance (which aren't envisaged). That is why, this blank must be filled by the acceptance of changes in a criminal procedure law.

For information, the criminal procedure legislation of many countries the CIS has whole divisions, which regulate international cooperation in the field of criminal proceeding.⁷ Principle of reciprocity is envisaged in these normative acts, in case of absence of two-sided agreements about a legal assistance. We consider, this position is fundamentally faithful because of impossibility to conclude international treaties with all states of the world.

On a row with legal regulation of cooperation of law enforcement authorities, we consider that in criminalistics scientific researches also the special attention must be spared to the features of realization of transnational tactical operations of law enforcement authorities of separate interactive countries, sent to the fight against the transnational organized crime.

A basic problem during realization of tactical operations becomes the questions of collecting, research, estimation and use of proofs in view of distinctions in criminal procedure legislations.

³ Самарин В.И. Интерпол. Международная организация уголовной полиции / В.И. Самарин. – СПб.: Питер, 2004. – 202 с.: ил. С. 188.

⁴ Закон України «Про міжнародні договори України» від 29 червня 2004 року № 1906-IV. Міжнародні договори України про правові відносини та правову допомогу: Двосторонні та багатосторонні міжнародні договори: Офіційне видання / М-во юстиції України; редкол.: Л.М. Горбунова та ін.. – К.: Видавничий Дім «Ін Юре», 2007. – 912 с. С. 27-39.

⁵ Лукашук И.И. Международное право в судах государств / И.И. Лукашук. – СПб., 1993. – С. 7; А.И. Бастрыкин. Взаимодействие советского уголовно-процессуального и международного права. – Изд. Ленинградского университета, 1986. – 156 с.; Бекишев Д.К. Взаимодействие органов дознания и следствия стран СНГ при расследовании преступлений: дис. ... канд. юрид. наук / Д.К. Бекишев. – М., 1996. – С. 89.

⁶ Табалдиева В.Ш. Правовая помощь по уголовным делам: автореф. дис. ... канд. юрид. наук / В.Ш. Табалдиева. – М., 1997. – 24 с. С. 12.; Яблоков Н.П. Организационно-правовые и криминалистические проблемы борьбы с организованной преступностью в рамках межгосударственного правового пространства СНГ / Н.П. Яблоков // Вестник Моск. ун-та. Сер. 11. Право. – 1994. - № 3. - С. 12.

⁷ Комментарий к Уголовно-процессуальному кодексу Российской Федерации. / Под общ. ред. В.В. Мозякова. – 2-е изд., перераб. и доп. – М.: «Издательство «Экзамен XXI»», 2002. – 896 с.; Уголовно-процессуальный кодекс Республики Беларусь-<http://pravo.kulichki.com/vip/upk/index.htm>.

The specific of investigation of crimes, accomplished by the participants of transnational criminal structures, consists in admission of the method's using, which is determined by not only a national legislation but also legislation of other state, his interests, and also international standards and agreements.

However, it is obvious to notice connections with other perspective for research in criminalistics problem, related to the necessity of deepening of legal regulation of criminalistics receptions and methods.

The important mean for a stepping-up efficiency of joint activity of law enforcement authorities of the different states on investigation of transnational crimes would be mutual confession as proofs of results of realization of criminalistics and another examinations; results of realization of trial actions in other countries, and development of single requirements to proofs.

The change of estimated criteria of organs of investigation's work will get great effect with regard to the results of joint activity, for example, establishment of brief terms for implementation of international commissions, effectiveness of implementation of those commissions, amount of reports, directed in the contiguous states of the CIS, assisting opening and investigation of crimes which were accomplished by the participants of transnational criminal groupings.

At the present day, the transnational coordinating organs of countries the CIS begin their fight against the international organized crime very effective. But the problem of organization and activity of international investigative – operative groups are still waiting.

Than is way, basic tendencies in the field of international cooperation in a fight against criminality presently are: perfection of the international legal adjusting of this sphere and forming new directions of collaboration in the national legislation of legal base. Particularly, scientific representatives bring up the question about foundation of new direction of collaboration, for example, investigation of crimes with the use of the newest facilities of communications and computer technologies, with the use of videoconferencing; put into practice of production of distance interrogation (which already got distribution in the USA)⁸.

In conclusion, basic directions in the increase of efficiency of international cooperation of countries the CIS in a fight against the organized crime are:

- ✓ the further concerted research-and-development of problem new methods of opening and investigation transnational crimes;
- ✓ the perfection of criminal - legal and criminal procedure base for opening and investigation of transnational crimes; improvements of international cooperation in a criminal proceeding;
- ✓ the creation of international coordinating and informative bodies;
- ✓ the organization of intergovernmental следственно-оперативных groups;
- ✓ the question about expedience of creation for neutralization of counteraction of criminal structures and judicial trial of criminal cases about crimes, accomplished simultaneously on territory of a few states of international tribunals on the organized crime analogously to international judicial bodies in Western Europe.

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Кľúčové slová: štátna služba pohraničnej stráže Ukrajiny, spolupráca, represívne orgány práva, medzinárodná právnu pomoc, trestné konanie, nadnárodný organizovaný zločin.

Summary

Predmetom tejto odbornej práce sú rozdielne aspekty spolupráce štátnej služby Pohraničnej stráže Ukrajiny s donucovacími orgánmi činnými v susediacich štátoch v oblasti trestného konania. Posudzované sú otázky týkajúce sa lepšej právnej úpravy medzinárodnej právnej pomoci pri vyšetrovaní kriminálnych prípadov, a tiež vývoj trendu s ohľadom na činnosti orgánov činných v trestnom konaní v susediacich štátoch.

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