

CHARACTERISTICS OF TRANSNATIONAL ORGANIZED CRIMINAL GROUPS AND FEATURES OF THE INVESTIGATION OF THEIR CRIMINAL ACTIVITIES

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ABSTRACT

Description: The purpose of the article is to form a description of transnational organized criminal groups at the current stage and to clarify the features of the investigation of their criminal activities. The subject of the study is description of transnational organized criminal groups at the current stage. Research methodology. The research is based on the use of general scientific and special-scientific methods and methods of scientific knowledge, in particular: dialectical method, comparative and legal method, normative and dogmatic method, system and structural method, the methods of grouping and classifying, legal modeling method. The Results of the Study. It is established that the activities of transnational organized criminal groups encroach on the interests of the world community, violate the rules of international treaties concluded within the UN, the Council of Europe, implemented in the national legislation of Ukraine and foreign countries. Practical implication. The features and characteristics of transnational organized criminal groups are singled out. Value /originality. The circumstances influencing the effectiveness of the investigation of crimes committed by transnational organized criminal groups are determined.

Keywords: Transnational Organized Criminal Group, Investigation, International Cooperation, Law Enforcement Agencies, International Agreement.

INTRODUCTION

Nowadays, the level of crime in Ukraine threatens the national security. The criminal situation in the country is quite difficult, tense and unstable in terms of level, content and negative consequences. From year to year, organized crime and the number of crimes against life, health and property of citizens are growing. Organized criminal groups are not detected at

the stage of their creation, so they can operate on the territory of the State from two to five years (Kysliy et al., 2020).

Transnational organized crime groups pose a particular international threat and public danger and are of great concern to the law enforcement agencies in virtually every country in the world. The investigation of crimes committed by transnational organized criminal groups requires the solution of problematic issues related to: the identification of all persons involved in the criminal chain and the need to identify all its elements; high level of training of criminals, development of action plans in different situations; the presence of corrupt connections, including in State and law enforcement agencies; the need to ensure operational cooperation with other entities, including law enforcement agencies of Ukraine, competent authorities of foreign countries, the involvement of Interpol and Europol, the application of international cooperation, etc.

Transnational organized crime has been the subject of research in the works of a number of scholars in recent years. In particular, it is worth noting the study of Zelinska “*International legal concept of international crime*” (2007) and “*Transnational Crime*” by Verbenskyi (2009). However, transnational organized criminal groups are constantly subject to quantitative and qualitative changes, and accordingly, systematic research on their characteristics, forms of manifestation, features of the investigation is needed. The coverage of these issues is the subject matter of our research.

The purpose of the scientific article is to form a description of transnational organized criminal groups at the present stage and to clarify the features of the investigation of their criminal activities.

MATERIALS AND METHODS

The methodological basis was chosen taking into account the goal, the specifics of the object and subject matter of the research. The determining factor is a general dialectic method of scientific knowledge of phenomena as well as their relations with practical activity of law enforcement agencies of both Ukraine, and foreign States. The following special research methods are used as well: comparative law was applied in the course of analysis of international and national legislation and scientific categories; historical and legal method was implemented in order to reveal scientific views on the concepts and characteristics of transnational organized criminal groups; system and structural helped to formulate the characteristics of transnational organized criminal groups.

RESULTS AND DISCUSSION

According to Zelinska (2007) transnational crime is an act recognized as criminal in at least two States under whose jurisdiction it is committed. The commission of such acts entails criminal liability only if the criminal prohibition is contained in national law. The fight against these offenses may be under international control, but responsibility for them is not established directly by international law. Thus, transnational crime is national in nature of the criminal prohibition and international in its prevalence.

Verbenskyi (2009) defines transnational organized crime as the functioning of criminal organizations and communities with an extensive network of branches in other countries, which

use international links to continuously carry out global illegal transactions involving the movement of information, money, physical objects, people, other tangible and intangible assets across State borders in order to use favorable market conditions in one or more foreign countries to obtain significant economic benefits, as well as to effectively evade social control through corruption, violence and the use of contradictions, gaps in the systems of criminal law and justice of different countries.

Zorin and Tankevych (1997) note that transnational criminal organization is a system of risky interrelated behavior by its members in committing criminal acts in the territories of States of origin and functioning.

The legal consolidation of the term “*transnational*” is associated with the ratification of the UN Convention against Transnational Organized Crime of 2000 and its Protocols (UN General Assembly, 2000). Article 3 of the Convention states that an offense involving the activities of an organized criminal group is transnational in its nature if: it is committed in the territory of more than one State; it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; it is committed in one State, but with the participation of the organized criminal group that carries out criminal activity in more than one State; or it is committed in one State, but its significant consequences take place in another State.

Article 2 of the Convention enshrines that the term “*organized criminal group*” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit. When ratifying the Convention, Ukraine clarified that the concept of “*serious crime*” corresponds to the concept of “*serious and especially serious crime*” in domestic criminal law (Law of Ukraine, 2004).

The need for our State to fight transnational organized criminal groups follows from the analysis of Ukrainian legislation.

Thus, according to the Law of Ukraine “*On Organizational and Legal Basis for Combating Organized Crime*” (Law of Ukraine, 1993), organized crime is a set of criminal offenses committed in connection with the creation and operation of organized criminal groups.

In order to ensure effective counteraction to transnational organized criminal groups, the relevant amendments were made to the Criminal Code of Ukraine (Law of Ukraine, 2000).

In particular, the Article 255 of the Criminal Code of Ukraine “*Creation, management of a criminal community or criminal organization, as well as participation in it*” and Article 256 “*Assistance to members of criminal organizations and covering up of their criminal activity*” were revised. The Criminal Code of Ukraine was supplemented by the Article 255-1 “*Establishment or dissemination of criminal influence*”, Article 255-2 “*Organization, assistance in conducting or participating in criminal gathering (meeting)*”, Article 255-3 “*Appeal for the use of criminal influence*” (Law of Ukraine, 2001).

However, even these measures did not address the problem of combating transnational criminal groups.

Considering the features of transnational organized criminal groups, will enable us to develop an arsenal of effective measures to combat them.

First of all, it should be noted that the activities of transnational organized criminal groups encroach on the interests of the world community, violate the rules of international

treaties concluded within the UN, the Council of Europe, implemented in the national legislation of Ukraine and foreign countries. Thus, the key feature of transnational organized criminal groups is the encroachment on public relations, which are protected by the world community, the violation of international law and national legislation.

Commitments of the international community to implement a set of measures to combat transnational criminal groups are enshrined in a number of international treaties. These are the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990; the UN Convention against Transnational Organized Crime, 2000; the Convention on Cybercrime, 2001; the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007 and others. The list of international treaties that define the international illegality of transnational criminal groups is quite significant, as they extend their criminal activities to various spheres of public relations.

Thus, transnational criminal groups that commit acts of financial fraud (Cherniavskiy et al., 2019), human trafficking (Chornous et al., 2020), cybercrime (Samoilenko et al., 2020) are particularly dangerous today. Typical crimes committed by transnational organized criminal groups are: terrorism and its financing; crimes in the area of trafficking in drugs, psychotropic substances, their analogues and precursors; crimes against property, including illicit trafficking in cultural and historical property; legalization (laundering) of proceeds from crime; production and sale of counterfeit national currency of States or foreign currency, forgery of means of payment, cards and other means of access to bank accounts, securities and official documents, as well as their use, etc.

The above, as well as other international obligations of Ukraine and foreign countries create the preconditions for the implementation of the set of measures for international cooperation between their competent authorities. These issues are related to the legal regulation of detection, investigation, prevention of crimes committed by transnational organized criminal groups and the practice of implementing the outlined activities.

For example, the Memorandum of Cooperation between the Prosecutor General's Office of Ukraine and the Prosecutor General's Office of the Federative Republic of Brazil in Combating Transnational Crime regulates the development of bilateral cooperation in combating transnational crime, including human trafficking, drug trafficking and laundering of proceeds of crime committed by criminals and criminal groups of a transnational nature.

An important condition for the effective detection, investigation and prevention of crimes committed by transnational organized criminal groups is the regulation in the legislation on criminal liability of States responsible for their commission.

It should be noted that the commission of an offense in the complicity (Article 28 of the Criminal Code "*Criminal offense committed by a group of persons, or a group of persons upon prior conspiracy, or an organized group, or a criminal organization*"), according to the Criminal Code of Ukraine, is a circumstance that constitutes a qualified criminal offense and aggravates the punishment.

However, just Part 5, Art. 143 of the Criminal Code of Ukraine "*Violation of the statutory procedure for transplantation of human anatomical materials*" regulates such a qualifying feature of a criminal offense as "actions under parts two, three or four of this article, committed by a group of persons or participation in transnational organizations engaged in such activities.

In this regard, we consider it appropriate to improve domestic legislation, namely to supplement the Criminal Code of Ukraine with the definition of “*transnational organized criminal group*” and to recognize the commission of a criminal offense by a transnational organized criminal group as an aggravating circumstance. This qualifying feature will emphasize the increased public danger of criminal offenses, highlight the transnational nature of criminal activity, will be consistent with the norms of international treaties of Ukraine, by which the Verkhovna Rada of Ukraine has agreed to be bound.

It should be borne in mind that the considered transnational organized criminal groups:

1. Have a highly organized nature, because the commission of a crime in more than one State or the possibility of its preparation in one State and the commission in another one requires complex activities by transnational criminal groups;
2. Are created over a significant period of time;
3. Arise as a result of unstable political, economic or social processes in the country;
4. Cross-border criminal activities require linkages, mostly through acts of corruption, which in the future make it possible to avoid responsibility for crimes.

Such activities become significant, leading to the emergence of transnational criminal organizations, i.e. organized criminal groups based in one State and operating in one or more foreign States with favorable market conditions. These organizations become participants in global economic activity and play a leading role in areas prohibited by law (e.g., drug production and trafficking), which have become global and generate profits larger than the national product of some developed countries (Verbenskyi, 2009).

Thus, we can distinguish the following feature of transnational organized criminal groups: it is necessary to apply measures of international cooperation between States and their competent law enforcement agencies that for the detection, investigation of their criminal activities and the implementation of the preventive function.

The Criminal Procedure Code of Ukraine (Section IX “International Cooperation in Criminal Proceedings”) (Law of Ukraine, 2012) regulates the measures of international cooperation in criminal proceedings that may be used in the investigation of criminal activity of transnational organized criminal groups.

CONCLUSIONS

Thus, according to the results of research, it is possible to identify the features and form a characteristic of transnational organized criminal groups, which gives an idea of the structure, purpose of criminal activity, the sphere of criminal influence. These features are:

1. The formation of transnational organized criminal groups is based on national, ethnic, family, professional and other unifying characteristics;
2. Specialization of a criminal group to commit a certain type of crime or a system of crimes;
3. Hierarchical construction, the presence of a leader, the distribution of roles between the members of the group;
4. Committing criminal activity in accordance with the defined purpose and plan;
5. Compliance with the developed rules of conduct for the members of criminal groups, as well as the requirements for attracting new members;
6. Implementation of the set of measures to ensure the security of an organized criminal group (external and internal);

7. The presence of equipment in the criminal organization (including mobile communications, photo and video equipment, special equipment to ensure the secrecy of their activities, vehicles), adapted to solve the tasks;
8. Weaponry of the transnational organized criminal group;
9. The system of distribution of money and other material goods between the members of the group, with the obligatory allocation of funds for the development of a transnational organized criminal group;
10. Established system of legalization (laundering) of funds obtained by criminal means;
11. Criminal experience of members of the group and recording of criminal activity against them, with the purpose of keeping them on the «on the hook» in case of attempts to leave the composition or to break the rules;
12. The presence of corrupt connections in the State and law enforcement agencies;
13. Transnational relations of an organized criminal group (interregional and international).

Let's pay more attention to the last feature.

Transnationality of an organized criminal group can be expressed in a number of ways. First of all, the feature "*transnational*" is enshrined in Art. 3 of the UN Convention against Transnational Organized Crime of 2000. The transnationality of a crime can be determined by the following features: the crime is committed on the territory of several States; the crime is committed on the territory of one State, but its preparation, planning, management or control takes place in another State; the crime is committed on the territory of one State, but with the participation of an organized criminal group that carries out criminal activity in more than one State; the crime is committed on the territory of one State, but its material effects occur in another State.

According to practical data, the transnational nature of organized criminal activity may be evidenced by the spread of criminal activity (including legal activity as a cover) in foreign countries, control over certain types of criminal, illegal or legal (disguised) activity.

Accordingly, the activities of transnational criminal groups, depending on their scale and distribution, can be regional or international in nature.

These features characterize the territorial aspect of the crime.

Thus, transnational crime can be considered as a criminal act, socially dangerous consequences, acts of complicity or preparatory activities to which go beyond the State in whole or in part.

This feature of territoriality affects the content of the forensic characterization of crimes committed by transnational organized criminal groups. It is reflected in the following: the object of the attack may be outside the territory of the State, in which the criminal proceedings are being conducted; actions on preparation, commission, and concealment of the crime are realized in the territory of several States, which would define the content of the trace. The members of a transnational criminal group, victims of crime, and witnesses are often citizens of different countries. These, as well as other circumstances, determine the features of the collection of evidence in criminal proceedings, determine the specifics of the criminal procedure.

Transnational organized criminal groups involve a number of accomplices in the implementation of criminal activities: citizens of foreign countries; stateless persons and foreigners staying (living) in the territories of other States; persons visiting foreign countries (tourism, work, study). However, all of them are united by the desire for profit, significant income and willingness to take risks, with a low level of development of moral traits.

To attract new members of transnational criminal groups, various forms and methods are used: from material encouragement of future participants, promises of significant rewards without undue effort, to coercion (physical, mental) and intoxication with alcohol and drugs.

Besides, law enforcement agencies do not always have the opportunity to fully clarify all the circumstances of the crime under investigation and to identify all members of transnational organized crime given the complex mechanism of criminal activity, the involvement of a significant number of accomplices due to the spread of criminal activity in several States. This is a problem that must be addressed immediately by the law enforcement agencies of our State.

The effectiveness of the investigation of crimes committed by transnational organized criminal groups depends on clarifying:

1. The circumstances, specified in Art. 91 of the Criminal Procedure Code of Ukraine, to be proved in each criminal proceeding;
2. The circumstances that characterize the peculiarities of the commission of crimes by transnational organized criminal groups, namely:
3. Evidence of a transnational crime;
4. Qualification of criminal acts under the Criminal Code of Ukraine, determination of international illegality of acts under international treaties of Ukraine;
5. Connection of the relevant crime (crimes) with the commission of other illegal (criminal) acts;
6. Circumstances that characterize the offender and transnational organized criminal group (form and features of complicity, international relations of criminals, etc.);
7. Country of citizenship of foreigners, occupation in a foreign country, other social, professional information, criminal experience, etc. ;
8. Ways of forming a criminal group, its structure and composition, the nature of criminal activity;
9. Transnational relations of the criminal group (persons responsible for their maintenance and persons with whom interaction occurs; territories (States) of distribution; method of communication; financing of the specified persons, features of distribution of functional responsibilities);
10. Ways of carrying out criminal activity, including on the territory of foreign States;
11. Clarifying the facts of crossing the border by foreigners, maintaining contacts with foreigners living abroad;
12. Tracking their chains of supply of items prohibited or restricted in civil circulation, as well as items obtained by criminal means;
13. The number of criminals in the commission of each episode;
14. Persons who did not take a direct part in the crimes committed, but are aware of their preparation and commission;
15. Corruption relations (responsible persons, ways of their involvement, issues to be solved);
16. The presence of links with the persons engaged in criminal activities, other criminal groups, ways to counter the investigation;
17. Information on weaponry, financing, means of communication and technical equipment of foreigners;
18. Existing conflicts and contradictions in the group, the reasons for their occurrence;
19. The circumstances that characterize the object of criminal encroachment (which items were found (seized), which of these items are prohibited or restricted in civil circulation), the source of these items, methods of concealment and sale of items obtained by criminal means;
20. Circumstances characterizing the financial activities of foreigners and criminal groups:
21. SOURCES of funds for the purchase of firearms knives, drugs and for the functioning of criminals;
22. Funds received as a result of the sale of items obtained by criminal means, sources of receipt and purpose of Use;
23. Ways to legalize income;
24. Circumstances that characterize the mechanism of committing crimes (information on the preparation and commission of crimes, methods and sequence of criminal acts, as well as ways to conceal criminal activity);
25. The procedure for moving persons and objects across the customs border of Ukraine, outside customs control or concealed from customs control;

26. Circumstances that contributed to criminal activity.

The list of circumstances is not exhaustive, but it highlights a number of key positions that need to be clarified in criminal proceedings concerning the criminal activities of transnational organized criminal groups.

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