

# THE FORMS OF INTERNATIONAL CO-OPERATION IN THE AREA OF UNDERCOVER INVESTIGATIONS

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## ABSTRACT

*Description: The purpose of the article is to investigate forms of international co-operation in the area of undercover investigations. The subject of the study is the legal regulation and practice of applying specific forms of international co-operation in the area of undercover investigations.*

*Methodology: The general and specific methods have been used during the study, which are the means of scientific search. In particular, comparative legal was applied in the analysis of substantive and procedural law of international and national legislation of different States, scientific categories, definitions and approaches; systematic analysis was used to comprehensively summarize the features of international criminal activity and the use of the measures for the private transmission of information to combat its manifestations; systemic and structural method made it possible to identify the tasks of law enforcement agencies of the States in the international co-operation in the area of undercover investigations; statistical was applied when summarizing the results of the study of empirical sources. The studied materials are international treaties, the laws of the States (Ukraine, Germany, Poland, Belgium, Czech Republic, Belarus, Kazakhstan, etc.), the scientific works, statistical materials on the state of crime and the results of work of pre-trial investigation bodies of individual countries and Interpol, materials of criminal proceedings. The results of the study made it possible to identify the forms of international co-operation in the area of undercover investigations, which are: exchange of information between States required for conducting undercover investigations and information obtained during such investigations; sharing of equipment, objects and substances necessary when conducting undercover investigation on mutually agreed terms; involvement of foreign specialists for their participation in undercover investigations or in certain undercover investigation (search) actions; conducting some undercover investigation (search) actions at the request of another country; conducting joint cross-border undercover police operations by law enforcement agencies of two or more countries; conducting undercover investigations (criminal intelligence, investigative activities) at the request of law enforcement agencies of another State; simultaneous undercover investigations in the case in the territories of two or more States by their law enforcement agencies in co-operation.*

*Practical implications: According to the results of the research, proposals have been made to improve the effectiveness of international co-operation in the area of undercover investigations (criminal intelligence, investigative activities).*

*Value/originality: On the basis of the authors' approach to the classification of the forms of international co-operation in the area of undercover investigations, the ways of improving international law and harmonization of the norms of national laws of different countries in terms of using undercover methods for obtaining information necessary for combating international crime have been determined.*

**Keywords:** International Crime, International Co-Operation, Law Enforcement, Undercover Investigations, Criminal Intelligence, Operational Search Activities.

## INTRODUCTION

Crime is one of the most dangerous threats to the safety and well-being of people in many countries around the world. It has different scales, structures and dynamics in different countries. The progress of governments and law enforcement agencies in different countries in combating it is not the same as well. However, the only global trend in crime remains-it is becoming increasingly organized and international. Organized crime groups are often active in several countries in the areas of drug business, terrorism, human trafficking, money laundering and other types of crime.

Such transnational crime groups are taking active and varied measures to conspire their activities, as well as they are taking advantage of the latest achievements in science and technology. Their representatives penetrate the executive and local governments, the judiciary, where they lobby their illegal interests. Therefore, exposing their criminal activity requires the use of undercover forms and methods of law enforcement. These forms and methods make it possible not only to effectively investigate the crimes, which have already been committed, but also facilitate timely detection of crimes and bringing an end to the crimes, which are prepared.

Thus, an important aspect of investigating crime in the modern world is international co-operation in the area of undercover investigations.

The purpose of the article is to identify the forms of international co-operation of law enforcement agencies of different States in the area of undercover investigations, as well as to evaluate the effectiveness of their application.

## MATERIALS AND METHODS

In the course of the study international treaties and legislation of several States (Ukraine, Germany, Poland, Belgium, Czech Republic, Belarus, Kazakhstan, etc.), scientific works on combating international crime, the results of scientific research on the use of undercover methods for obtaining information to combat crime by law enforcement agencies of different countries; materials of criminal proceedings, in the course of the investigation of which the measures of international co-operation and undercover methods for obtaining information were used; systematic statistical material on the state of crime and the results of the work of the investigation bodies of Ukraine and Interpol have been studied.

The study used general scientific and special methods, which are the means of scientific search. In particular, comparative legal was applied in the analysis of substantive and procedural law of international and national legislation of different States, scientific categories, definitions and approaches; systematic analysis was used to comprehensively summarize the features of

international criminal activity and the use of the measures for the private transmission of information to combat its manifestations; systemic-structural method made it possible to identify the tasks of law enforcement agencies of the States in the international co-operation in the area of undercover investigations; statistical was applied when summarizing the results of the study of empirical sources.

## RESULTS

All countries of the world have special (undercover) methods for obtaining information needed to prevent, detect, suspend and investigate crime. Such methods are, for the most part, used in conjunction with and preceded by the application of transparent criminal procedural measures to combat crime (detention, interrogation, search, appointment and conduct of expertise, investigative experiment, etc.). The activities of law enforcement agencies on integrated applications of special (undercover) methods for solving specific problems of combating crime in different countries have different names: “*undercover investigations*”, “*criminal intelligence*”, “*investigative activities*”, etc. The transnational and conspiratorial nature of modern crime necessitates international co-operation in the area of undercover investigations (criminal intelligence and investigative activities).

Today, such co-operation is an integral part of international co-operation in the fight against crime, as a complex system of public relations implemented to prevent, detect and investigate crime, and to ensure the proper administration of criminal proceedings.

According to the interpretation of the notion of «form» as the method of organizing and external expression of activity, the forms of international co-operation in the area of undercover investigations (criminal intelligence, investigative activities) include:

1. Exchange of information between States necessary for conducting undercover investigations (criminal intelligence, investigative activities) and information obtained in the course of such investigations.
2. Inter-State sharing of equipment, necessary for the use in the process of undercover investigation (criminal intelligence, investigative activities) on mutually agreed terms.
3. Involvement of specialists from among law enforcement officers (or civilians who secretly cooperate with them) of one State by the authorized law enforcement agencies of another one for their participation in undercover investigations (criminal intelligence, investigative activities) or in undercover investigation (search) actions (undercover police operations, intelligence activities in the criminal environment).
4. Conduction of some undercover investigation (search) actions by law enforcement agencies of one country at the request of another one.
5. Conduction of the complex of undercover investigation (search) actions (undercover police operations, intelligence activities in the criminal environment) by law enforcement agencies of one country at the request of another one (within the same case).
6. Conducting joint cross-border undercover police operations by law enforcement agencies of two or more countries for non-transparent control of crimes related to illegal crossing of borders and (or) illegal movement of goods and substances banned for free circulation.
7. Conducting undercover investigations (criminal intelligence, investigative activities) by law enforcement agencies of one State upon request of law enforcement agencies of another one.
8. Simultaneous undercover investigation in the case in the territories of two or more States by their law enforcement agencies in co-operation.

These forms differ in their complexity. The simpler ones may be part of more complex ones. The wider the range of forms used and the more complex they are, the more effective will be the fight against international crime.

## DISCUSSION

The results obtained are fully consistent with the fundamental provisions of the latest scientific research regarding the use by police of undercover methods of searching and recording information on the preparation and commission of crimes. However, if these scientific works (Albul, 2019; Atkinson, 2019; Christopher, 2017; Kruisbergen, 2013; Loftus et al., 2015; Loftus, 2019) focus on the issues of legal regulation, organization, and tactics of conducting undercover investigations, then this study focuses on international co-operation in this area. Its results are the development of the work of its predecessors in terms of interaction between law enforcement agencies of different countries in the area of undercover investigations (criminal intelligence, investigation activities).

The results obtained in this paper are also largely consistent with the fundamental provisions on levels, trends and forms of international co-operation in the area of crime prevention, which have been published in recent scientific papers (Schlembach, 2018; Henry et al., 2019; Kniaziev, 2019; Cherniavskyi et al., 2019). And it is quite natural. Our results are based on the analysis and deductive development of these provisions in terms of undercover investigations (criminal intelligence, investigative activities).

International co-operation in the area of undercover investigations (criminal intelligence, investigative activities) does not find direct fixation in leading international documents at the global level and is carried out in accordance with the Principle of Co-operation of States enshrined in leading international documents Articles 1, 11, 13, 55, 56 of the Charter of the United Nations (UN); the Preamble to the Vienna Convention on the Law of Treaties concluded in within the activities of the United Nations of 23 May 1969 etc. (Laws, 1969; Charter of the United Nations, 1945).

Besides, today the international legal basis for co-operation between the countries of the world in the area of undercover investigations (criminal intelligence, investigative activities) is made up of separate provisions of international treaties concluded within the United Nations in certain areas of combating crime.

The analysis of bilateral and multilateral (regional) international treaties in the area of combating crime, as well as the practice of their implementation, allowed us to distinguish various forms of international co-operation in the area of undercover investigations (criminal intelligence, investigative activities).

The most common of these forms is the exchange of information. This form of international co-operation is divided into two types: formal and informal. The formal type is represented by the following actions:

1. Provision of information necessary for conducting undercover investigations (criminal intelligence, investigative activities) by the authorized law enforcement agencies of one State to the authorized law enforcement agencies of another one (at the request of the latter).
2. Initiative provision of information obtained in the course of conducting undercover investigations (criminal intelligence, investigative activities) by the authorized law enforcement authorities of one State to the authorized law enforcement authority of another one.

The unofficial form of inter-state information exchange involves provision of information that would be helpful in solving international crimes (represented by the officers of law enforcement agencies or “*liaison officers*”) to each other (Vasylynchuk, 2014). The existence of this type is caused by differences and inconsistencies of the provisions of national laws of different countries in matters of State secrets and the secret of pre-trial investigation (criminal intelligence, investigative activities), complexity of procedures of declassification of information and its provision to the authorized bodies of another State.

Bilateral and multilateral (regional) international treaties regarding counteracting crime often refer to such forms of co-operation as sharing (on mutually agreed terms) of special means, forensic equipment and other material means used in the process of prevention, detection, termination and investigation of crimes. These provisions enshrine the possibility of sharing of special equipment, objects and substances necessary for use in the process of undercover investigations (criminal intelligence, investigative activities).

The use of the aforementioned techniques, items and substances in the process of undercover investigations often requires the involvement of specialists-the representatives of the country of manufacture (supplier). This is quite natural, especially if there is a need for specialized knowledge, skills and abilities to use a particular technical tool. Therefore, another form of international co-operation in the area of undercover investigations (criminal intelligence, investigative activities) is involvement of specialists from another country.

However, the involvement of specialists in international co-operation in the area of undercover investigations (criminal intelligence, investigative activities) could be related not only to the use of certain material means. The assistance of foreign specialists is useful directly when conducting undercover investigations (criminal intelligence, investigative activities). Thus, in case of discreet interception of conversations in the premises (or telephone conversations) of the representatives of underworld of one country in another one, there is a need not just for translators but also for experts in specific criminal jargon and (or) specific dialects. Besides, in order to plan such type of undercover activities successfully, sometimes it is necessary to involve an expert operational psychologist.

Involvement of foreign experts in conducting undercover activities in undercover investigations (criminal intelligence, investigative activities) could be not only in the form of consultations or the use of special technical means for obtaining information. There is also the practice of engaging specialists from other countries for undercover work in organized crime groups. The need to involve foreign specialist in conducting undercover operations is often due to the fact that a police officer must be introduced to an ethnic-based criminal formation (formed of the representatives of particular ethnic groups of another country). A similar situation arises when it is necessary to carry out in-cell working with the representatives of one State in the penal institutions of another one. In this case, a specialist can be both a full-time employee of law enforcement agency and a person who cooperates with this body in a confidential manner.

Unfortunately, national laws and regulations of many countries do not provide for the possibility of involving foreign police specialists (discreet staff members, discreet investigators) in conducting undercover operations. At the same time, the national laws of many EU Member States establish both the features of undercover investigations and the possibility of engaging specialists from other countries in these investigations.

Thus, the Criminal Procedure Code of the Federal Republic of Germany regulates the activities of full-time undercover officers (police officers or the officers of other law enforcement agencies). In accordance with the statutory definition of § 110-a (paragraph 2) of the CPC of the Federal Republic of Germany undercover investigators shall be officials in the police force who carry out investigations using a changed and lasting identity (legend) which is conferred on them. They may take part in legal transactions using their legend. The involvement of undercover police officers from other countries for the purpose of conducting undercover investigations in Germany is permitted (subject to the established procedures). The region or the country, from which foreign specialist is invited is determined according to the requirements of the particular case. Regular undercover officers of the German police (undercover investigators) may be involved in operations conducted abroad.

Undercover police officers in Belgium may act along with Belgian agents (with limited powers). Undercover operations with the involvement of foreign representatives are conducted at the request of another State and with the permission of the prosecutor. In Belgium, however, there is an exchange system of agents, who are able to work in various areas of criminal activity with other countries. Foreign law enforcement officers need to get a formal request from the authority in need of assistance and the appropriate permission of the prosecutor in order to invite a Belgian agent to carry out undercover operations. At the same time, the authority of the requesting State must provide the agents with physical protection and the opportunity to act on the same basis as in Belgium (Savchenko et al., 2004).

Under Polish law, undercover operations in the territory of the State are permitted for combating drug trafficking and only upon the request of a foreign State. In doing so, both Polish agents and agents from other countries are involved. Usually international co-operation is carried out with the United Kingdom and Germany. A foreign agent is subject to the same legal protection as a Polish one, but he (she) is not entitled to take any actions, which are not provided for in the approved plan of operation or go beyond the specified terms of reference.

The activities of an agent of another State is also permitted in the territory of the Czech Republic, provided that he (she) acts as an informer (i.e., as a civilian). This form of co-operation is mostly used in the operations with law enforcement agencies in Germany and Austria (Savchenko et al., 2004).

Such a practice cannot be regarded as interference of one country in the internal affairs of another one (some scientists suggest that conducting undercover operations by law enforcement officials of one State in the territory of another one is a clear violation of the principle of non-interference in internal affairs of the State).

In this regard, we can state the following. Firstly, the direct involvement of a foreign specialist in conducting undercover operations (his (her) roll-up to a criminal group) often takes place at the initiative of the State, in whose territory such operations are conducted. If, however, such an initiative is taken by the other party, its implementation must, naturally, be agreed with the competent authorities of the State, in which undercover activities are planned. Secondly, in these cases, foreign specialists (undercover investigators, full-time and part-time law enforcement officers of another country) are only participants in the corresponding undercover activities. They are neither physically nor procedurally able to organize the roll-out to the

specific criminal group or to conduct an in-cell working, as these are complex measures that require careful training with the participation of local law enforcement officials.

The same can be said about the rest of the undercover measures: their very nature implies that, regardless of the involvement of foreign specialists, these activities should be carried out by representatives of local enforcement agencies. Only they are able to properly organize their effective conducting. The following form of international co-operation in the area of undercover investigations is connected with the above-conducting separate undercover investigative actions (undercover police operations, investigative measures, intelligence activities in crime environment) by the law enforcement agencies of one country at the request of another one.

Sometimes there is a need to hold not just one undercover measure, but the complex of such measures regarding a particular person or a group of people. However, no criminal proceedings are initiated. We consider such comprehensive conducting of undercover activities as a separate form of international co-operation in the area of undercover investigations.

Criminal activities of transnational criminal groups are often connected with border crossing by their members, attempts to transfer (or send) objects and substances prohibited for free circulation across the border, trafficking illegal migrants. Concerted and coherent action by all parties is required to record the commission of such unlawful acts and to use the information obtained as evidence in criminal proceedings in future. The main content of these actions is to control the realization of the offenders' illicit intentions and to further detain them. Conducting such operations is a sufficiently effective means of dealing with many international crimes.

The realization of non-transparent monitoring of the commission of crimes related to the transfer of substances and objects banned from free circulation across national borders of different States, for the most part, ends with the detention of abusers when crossing the border of one of the States. But often this is unjustified. After all, in order to expose and to disarm the members of criminal groups in the country of destination (recipients of the named objects and substances), it is necessary not only to pass smuggle across the State border freely (under non-transparent monitoring), but also to trace its further fate.

The inconsistency of the national laws of the countries concerned is very often an obstacle to it. Obtaining official information on the preparation of a crime related to the import of substances and objects banned from free circulation according to the national legislation of many countries is the basis for an alternative decision to stop this crime at the time of the attempt to commit it (at the moment of border crossing). Therefore, when conducting multi-step operations to expose transnational criminal activity, the information on planning crimes related to cross-border supply is transmitted through informal channels-through "*liaison officers*" or through personal contacts of law enforcement officers. In this case, each State conducts a set of undercover measures (criminal intelligence, investigative activities) as part of the corresponding undercover investigations on its territory.

But at the same time, law enforcement authorities of the country, from which the relevant items and substances are taken out, allowing them to be passed freely across the State border (even under non-transparent monitoring), run the very real risk of losing the main evidence of criminal activity, and accordingly leaving the offenders unpunished. In such a situation, it is important for the other party to further transmit the evidence obtained in the course of its own investigation.

In case of conducting undercover investigations by one party upon the request of another one, non-transparent collection of evidence is conducted only by law enforcement authorities of the country, which received the request. Another country is just waiting for the results. However, international law enforcement practice shows that in many cases there is a need for coherent action by law enforcement agencies of all interested States to conduct undercover investigations (criminal intelligence, investigative activities) simultaneously in each particular case. Each State shall carry out such investigations on its territory in accordance with its own national law. However, all actions should be well coordinated by all parties.

This form of international co-operation is complex and may include other aforementioned forms, such as exchange of information, involvement of foreign specialists in carrying out specific undercover activities, operations on cross-border controlled supply of goods and substances banned from free circulation by international regulations.

## CONCLUSION

Co-operation between different countries in the area of undercover investigations (criminal intelligence, investigative activities) is an important component of the fight against international crime.

The legal regulation of co-operation between different States in the area of undercover investigations at the global and regional levels, at the level of bilateral relations and at the level of national laws of individual countries needs to be improved in modern conditions.

The system of steps for such improvement should pursue an ideal theoretical goal: to provide the legal basis and real opportunities for the application of all forms of international co-operation in the area of undercover investigations (from the simplest to the most complex) in relations of all countries of the world.

In order to achieve this goal, it is necessary to identify the forms of international co-operation in the area of undercover investigations (criminal intelligence, investigative activities) in global documents (UN documents on combating various types of international crimes). It is advisable to introduce a common terminology for defining the basic concepts in this area.

The forms of international co-operation should also be defined in the area of undercover investigations at the level of multilateral and bilateral international treaties using this terminology.

Formation of the common approach to the possibility of using the whole spectrum of forms of international co-operation in the area of undercover investigations is also required at the level of national laws of all interested States.

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