

FOREIGN EXPERIENCE IN CREATING JOINT INVESTIGATION TEAMS TO INVESTIGATION OF CRIMINAL OFFENSES

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Annotation. The experience of combating transnational crime in the process of criminal evolution demonstrates immunity to traditional systems of investigation and prevention of criminal offenses, administration of justice and bringing guilty persons to criminal responsibility. In today's conditions, the creation of joint investigation teams for the investigation of criminal offenses is a topical issue, in particular through the prism of foreign experience. This specificity actualizes the need to find optimal ways of interaction between competent authorities of states for the investigation of criminal offenses through the creation of joint investigation teams. The purpose of the article is to analyze the organizational and tactical aspects of the creation of joint investigation teams for the investigation of criminal offenses in foreign states. The methodological tools were general methods of scientific knowledge, namely: analysis and synthesis, induction and deduction, abstraction and scientific forecasting. The study substantiates the need to create joint investigation teams through the interaction of pre-trial investigation bodies of different states. Attention is drawn to the fact that ensuring international cooperation in the field of investigation of criminal offenses of a transnational nature directly depends on the activities of the joint investigation team. A special form of international cooperation during the investigation of criminal offenses involves interaction with a wide range of participants in the criminal process.

Common methods, organizational and tactical recommendations of individual states testify to the positive foreign experience of creating joint investigation teams to improve the efficiency of criminal investigations.

Key words: international cooperation, pre-trial investigation, transnational crime, human rights.

1. Introduction.

Society's efforts to combat transnational crime consist in developing measures to have a destructive impact on the criminogenic phenomenon. One of the factors in preventing crime is the joint actions of all counteraction subjects at both the national and international levels. An important measure in this aspect is the study of positive foreign experience of states and the possibility of borrowing the best world practice. Thus, the study of individual provisions of the legislation of foreign countries, clear algorithms of actions and instructions on measures to combat transnational crime, as well as the features of the formation and functioning of various law enforcement systems during the investigation of criminal offenses are relevant issues of today, requiring ways to solve problematic aspects.

2. Analysis of scientific publications.

M.A. Pogoretsky's opinion on using the experience of other countries is correct, given that the norms of the institute of law are found in different models of criminal procedure. Each of them has

formed levers of “deterrence” and “counterbalances” over the centuries, which are harmoniously implemented at all stages of legal proceedings, taking into account the form, principles, legal status of subjects, etc. It should be remembered that mechanical transfer to modern criminal procedural legislation without coordination with the relevant legal institutions (its separate norms) can cause an imbalance. In turn, the above can be traced in the weakening of measures to ensure human rights and freedoms or generally weaken the effectiveness of the fight against crime. In addition, one should take into account traditions, the economic situation in the country, mentality, the state of scientific development of this legal problem and moral and ethical principles [1, p. 131]. As M.L. Gribov and O.I. Kozachenko, the use of the experience of other states is an integral element of improving law enforcement activities [2, p. 84].

European standards for ensuring human rights in criminal proceedings perform the functions of identifying and eliminating gaps and conflicts in criminal procedural legislation regarding the provision of human rights; providing guidance during the formation of criminal procedural legislation; establishing limits on the coercive intervention of state bodies in human rights during criminal proceedings; ensuring respect for human rights by state bodies; establishing limits on guaranteeing and monitoring the provision of conventional human rights [3, p. 156; 4, pp. 70-71].

3. The aim of the work.

The purpose of the article is to summarize foreign experience of interaction between pre-trial investigation bodies, in particular the creation of joint investigation teams for the investigation of criminal offenses. To achieve the goal, it is necessary to analyze the scientific views of scientists on the positive experience of creating joint investigation teams in different countries of the world; to reveal certain aspects of the experience of states, in particular the USA, Germany, France, etc.; to determine possible ways of implementing positive foreign experience into the national legislation of Ukraine.

4. Review and discussion.

Let us consider the experience of creating joint investigation teams (hereinafter referred to as JITs) using the example of individual states. Let us start with the United States of America (hereinafter referred to as the USA), where there is a system of law enforcement agencies that carry out activities aimed at conducting pre-trial investigations. In the USA, there is an extensive system of entities authorized to conduct pre-trial investigations. First of all, there is a two-tier system of law enforcement agencies, which includes federal and local authorities. Federal agencies investigate criminal offenses that are transnational in nature or that pose a threat to the national security of the United States. Local law enforcement agencies are authorized to investigate criminal offenses that occur within a particular state or county.

In turn, JITs are created to investigate particularly complex or high-profile criminal offenses. They are formed from representatives of federal and local authorities. Investigators have a wide range of powers (for example, the right to search, detain and interrogate suspects). Also, in accordance with the US Criminal Code, a pre-trial investigation is carried out, in particular, the legal foundations of a pre-trial investigation are established (the powers of investigators, the rights of suspects, the procedure for conducting a pre-trial investigation) [5, p. 227].

A prominent place in the pre-trial investigation process in the USA is occupied by the interaction of various bodies, which plays a key role in ensuring the efficiency and success of justice processes. Pre-trial investigation bodies actively exchange information (data, evidence). Coordination of the actions of agencies contributes to the streamlining and optimization of the investigation. A vivid example of the interaction of pre-trial investigation subjects is the creation in 2023 of a JIT consisting of the FBI, the New York Police Department and other local pre-trial investigation bodies to investigate a terrorist act in New York. Also in 2022, a JIT was created consisting of the FBI, the Drug Enforcement

Administration (DEA), and other federal agencies to investigate the activities of an organized crime group involved in drug smuggling [5, p. 228].

In addition, within the framework of the above-mentioned issues, it should be noted that in the United Kingdom of Great Britain and Northern Ireland (United Kingdom) there are a number of mechanisms for effective interaction between central and local authorities, namely: 1) the creation of a JIT to investigate particularly complex and high-profile criminal offenses, which includes representatives of central and local authorities; 2) the creation of groups to coordinate the investigation of transnational criminal offenses, from among representatives of central and foreign pre-trial investigation authorities; 3) information support and operational exchange of information between central and local pre-trial investigation authorities. An example of interaction between pre-trial investigation authorities in the United Kingdom is the creation of a JIT to investigate a terrorist act committed in London in 2017. This team included representatives of Police Scotland, the London Police and other central pre-trial investigation authorities [5, p. 230].

The experience of interaction between pre-trial investigation bodies in the Federal Republic of Germany (Germany) is relevant. Interaction between pre-trial investigation bodies in Germany is regulated by the German Code of Criminal Procedure. According to this Code, federal bodies and state bodies carry out pre-trial investigation of criminal offenses. The federal bodies include the Federal Criminal Police Office; Federal Border Protection Agency; Federal Agency for the Investigation of Economic Crimes. The above-listed bodies are authorized to investigate crimes of a transnational nature and those crimes that pose a threat to the security of the state. State bodies investigate criminal offenses committed on the territory of Germany [5, p. 230-231].

A positive experience in the implementation process is the creation of JITs to investigation of criminal offenses related to corruption, organized crime, terrorism and other dangerous types of criminal offenses. Thus, conditions are created under which different law enforcement agencies in the process of solving complex cases will be able to independently interact with each other, combining common resources. In particular, the autonomy and independence of pre-trial investigation bodies will be taken into account, primarily in the context of cooperation [5, p. 231].

In Germany, there is an established system of collecting and exchanging information between law enforcement agencies, a network of special units to combat organized crime has been created, which has a clear coordination and hierarchical structure [7, p. 189].

In addition to exchanging information and using common databases, the following methods are widely used in European practice:

- JITs (Denmark, Austria, Luxembourg, the Netherlands, Turkey, Portugal, Slovenia, Finland);
- interdepartmental investigation centers (the Netherlands, Finland, Sweden);
- secondment of employees and joint management of personnel (Great Britain, Finland, France, Norway, Spain, Italy, Ireland, France) [6].

Foreign experience allows us to state the fact that the interaction of pre-trial investigation bodies of different countries has a positive impact on the effectiveness of the investigation of criminal offenses.

As noted by O.I. Khoronovsky, foreign experience highlights examples of unification of databases and provision of law enforcement structures with access to them; control over financial transactions; creation of special bodies to combat organized crime and construction of models of the law enforcement system; effective interdepartmental and international cooperation; horizontal integration in the form of JITs, interdepartmental investigation centers, secondment of employees and joint management of personnel, etc. [7, p. 190]. We also emphasize the need to use a wide range of specialists, thorough analysis of the norms of current legislation and forecasting of practical significance, as well as the implementation of innovative approaches in the law enforcement system of our state.

In turn, in the French Republic (France) a national mechanism of responsibility for international crimes has been created, which has the features of an organizational investigation. The National Anti-

Terrorism Prosecutor's Office has formulated the principles of criminal prosecution of international crimes, which include the following stages: 1) detailed and documented establishment of facts with collection of evidence on the spot; 2) investigation of the details of the origin of the actions that constitute these crimes; 3) bringing individuals to justice. Parallel investigations initiated in other legal systems, taking into account territorial, personal or international jurisdiction, encourage close international cooperation, in particular when collecting and preserving evidence in such a way that it is accessible in any jurisdiction (for example, since October 2022, France has been participating in the JIT with Ukraine, primarily providing technical assistance [8]). Also, in addition to "targeted" investigations, France has experience with structural investigations – "matrix investigation" (French – "enquête matricielle") – investigations that can cover all events occurring in a certain state or in a separate territory, primarily through international cooperation in the form of JITs [9].

The volume of evidentiary information raises a number of issues in ensuring the proper and prompt exchange of evidence not only through traditional forms of international legal assistance, but also through the mechanism proposed by the European Union, the Core International Crimes Evidence Database (CICED) [10, p. 187].

We emphasize that a feature of the JIT agreements is that the investigative activity is carried out by means of a request through internal channels by the JIT member of the state in which the activity is to take place. This request is then considered by that state as originating from a foreign source. For example, a police officer in France seconded to a JIT operating in Germany may ask his or her colleagues in the French police to execute a search warrant or interview a witness in France on behalf of the JIT. This procedure eliminates the need to send requests to other countries for formal mutual legal assistance or judicial cooperation. Instead, the relevant member of the JIT requests or carries out investigative activities in its jurisdiction, which allows the JIT to directly collect evidence as if it were an internal investigation in all participating states [11]. Replacing the process of sending a request with this JIT function in practice speeds up the implementation of investigative measures in other jurisdictions. The JIT member can find an alternative way of requesting and speed up the implementation of investigative actions [12, p. 54]. Thus, the implementation of this function allows the JIT to overcome one of the main problems associated with access to evidence in foreign states (provided that they are members of the JIT). It should be noted that a large amount of information about both individual events of violations and the context of an international armed conflict requires procedural fixation, checking for the significance of the evidentiary direction. In foreign practice, "structural investigations" are relevant (the method was initiated by the Federal Prosecutor General in Germany). The adoption of this investigative approach by other jurisdictions is evident in France, Canada, Sweden and other states, and the practice of Ukrainian jurisprudence regarding "broad" investigations of criminal offenses covering a large area and an indefinite number of persons in conditions of armed conflict is no exception [13, p. 657].

For example, in Germany, the use of structural investigations has made it possible to investigation of criminal offenses proactively; to establish the context of the commission of possible crimes and the structure of organizations that could be involved in their commission; to ensure the preservation of evidence at earlier stages than at the stage of detecting an international crime or identifying the person who committed it, in particular to support other proceedings in national and international courts; to enable legal assistance to other states and the International Criminal Court; to ensure the prompt identification of persons involved in the commission of an international crime; to fill gaps in proceedings against individuals for the commission of international crimes by them; to avoid political problematic issues with foreign governments or political forces due to the impersonality of investigations; to ensure the investigation of criminal offenses so that the guilty persons are brought to justice as a result of the criminal proceedings [13, p. 659; 14, pp. 229-230].

5. Conclusions.

Thus, the priority area of international cooperation in the investigation of criminal offenses is the creation of joint investigation teams. Attention should be focused on a comprehensive theoretical study of foreign experience, the possibility of its use and the feasibility of implementation in our

state. The creation of appropriate legal and organizational and tactical prerequisites for effective interaction between pre-trial investigation bodies requires comprehensive theoretical research on the study of positive foreign experience. Thus, in this context, a comprehensive study of the creation and activities of joint investigation teams, taking into account the specifics of their activities in individual countries, is not an exception.

References:

1. Pohoretskyi M.A. (2003). Vykorystannia informatsii, oderzhanoi vid nehlasnykh dzherel, dlia otrymannia dokaziv u kryminalnomu protsesi zarubizhnykh krain. *Visnyk Natsionalnoho universytetu vnutrishnikh sprav. Kharkiv*. Vyp. 22 P. 131–138. [in Ukrainian].
2. Hribov M.L., Kozachenko O.I. (2019). Mizhnarodnyi dosvid pravovoho rehuliuвання nehlasnoho spivrobitnytstv. *Naukovyi visnyk Natsionalnoi akademii vnutrishnikh sprav*. № 3. P. 83–97. DOI: 10.33270/01191123.83. [in Ukrainian].
3. Tsyktich V.M. (2016). The activities of the investigating judge in the light of international standards for ensuring human rights in criminal proceedings. *Bulletin of criminal proceedings*. № 1. P. 154–162. [in Ukrainian].
4. Talyzina Ya.O. (2022) Normatyvne zabezpechennia ta realizatsiia konfidentsiinoho spivrobitnytstva u kryminalnomu provadzhenni. Dissertation ... Doc. in Philosophy, specialty 081 "Law". Naukovo-doslidnyi instytut vyvchennia problem zlochynnosti imeni akademika V.V. Stashysa NAPrN Ukrainy, Kharkiv. 307 p. [in Ukrainian].
5. Kolomiiets V.I. (2023). Zarubizhnyi dosvid vzaiemodii mizh orhanamy dosudovoho rozsliduvannia ta mozhlyvosti yoho vykorystannia v Ukraini. *Visnyk Kryminolohichnoi asotsiatsii Ukrainy* № 28 (1). P. 226–233. DOI: <https://doi.org/10.32631/vca.2023.1.20>. [in Ukrainian].
6. Oliinyk Yu.Ia., Sereda T.M. (2023). Yevropeyskyi dosvid zapobihannia orhanizovanoi zlochynnosti. *Borotba z orhanizovanoi zlochynnistiu i koruptsiieiu (teoriia i praktyka): nauk. pr. zhurn. Mizhvid. nauk.-dosl. tsentr z probl. borotby z orhaniz. zloch.* № 1 (29). Kyiv. P. 365–370. [in Ukrainian].
7. Khoronovsky O.I. (2023). Zarubizhnyi dosvid protydiialnosti transnatsionalnykh orhanizovanykh zlochynnykh uhrupuvan na shkodu ekonomichnym interesam derzhavy. *Nove ukrainske pravo* 2. P. 185–191. DOI: <https://doi.org/10.51989/NUL.2023.2.25/>. [in Ukrainian].
8. Lartigue M. (2023). Les nouvelles armes de l'Europe de la justice face à la guerre en Ukraine - Pénal | *Dalloz Actualité*. URL: <https://www.dalloz-actualite.fr/flash/nouvelles-armes-de-l-europe-de-justice-face-guerre-en-ukraine>.
9. Alonso P. (2020). Nous avons montré que la justice universelle était digne et concrète (entretien avec la procureure Aurélia Devos). *Monde*. P. 6. URL: [DevosJusticeUniverselleLibe4aout2020.pdf](https://www.monde.fr/document/DevosJusticeUniverselleLibe4aout2020.pdf).
10. Pashkovskyi M.I. (2023). Osoblyvosti rozsliduvannia mizhnarodnykh zlochyniv u Frantsii: dosvid dlia Ukrainy. *Development trends and improvement of old methods: the 13th International scientific and practical conference (December 12–15, 2023)*. Warsaw, Poland. International Science Group. 2023. 449 p. P. 185–189. DOI: 10.46299/ISG.2023.2.13. [in Ukrainian].
11. Block L. (2011). From Politics to Policing: The Rationality Gap in EU Council Policy-Making. The Hague: Eleven International Publishing. ISBN: 978-94-9094-737-8, 361 p. [in English].
12. Andrea Furger (2024). The Practice of Joint Investigation Teams (JITS) in Core International Crimes Investigations. *Journal of International Criminal Justice*, 22, Oxford academic. P. 43–58. DOI: <https://doi.org/10.1093/jicj/mqae005>. [in English].
13. Pashkovskyi M.I. (2023). Strukturni rozsliduvannia mizhnarodnykh zlochyniv: dosvid Nimechchyny. *Yurydychnyi naukovyi elektronnyi zhurnal*. № 11/2023. P. 656–661. DOI: <https://doi.org/10.32782/2524-0374/2023-11/159>. http://www.lsej.org.ua/11_2023/159.pdf. [in Ukrainian].

14. Schüller A. (2013). The Role of National Investigations in the System of International Criminal Justice – Developments in Germany. *Sicherheit & Frieden*. Vol. 31, № 4. P. 226–231. DOI: <https://doi.org/10.5771/0175-274x-2013-4-226>. [in English].

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