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TYPE OF LEGAL ASSISTANCE IN CRIMINAL CASES CREATION OF JOINT INVESTIGATION TEAMS – ON THE EXAMPLE OF EU COUNTRIES

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ABSTRACT

Cooperation between EU States in combating crime and preventing transnational crimes in the field of legal assistance in criminal cases is developing from year to year. Within the framework of parallel cooperation, a mechanism related to the creation of joint interrogation groups and the regulation of their activities has already been formed as a means of promoting mutual assistance in criminal cases between EU Member States. However, the early experience of using joint interrogation groups established between the member States of the Union has shown that the direct implementation of such cooperation is fraught with difficulties. In the article, the author reflected on the history and current state of joint interrogation groups in the EU. Legal analysis of accumulated experience in this field. It is the activity of joint investigative groups that is today one of the developing areas of criminal justice as a modern type of cooperation in the implementation of legal assistance.

KEYWORDS

Europe, joint investigation, cooperation, convention, crime, legal aid, group, agreement.

INTRODUCTION

In the process of integration, European countries opened their borders and gave their citizens a wide range of freedoms and rights. As a consequence, "threats related to organized crime, illegal migration and terrorism began to appear in the territories of the states [1]". Cooperation between European countries regarding to the areas of politics has been expanded. However, in some circumstances certain areas have been combined between countries. Nevertheless, security policy among states has remained a sensitive area, therefore has been regulated by bilateral and multilateral treaties. So, there is a need for a new security strategy aimed at strengthening cooperation between the police and judicial authorities of the states. International Journal Of Law And Criminology (ISSN – 2771-2214) VOLUME 03 ISSUE 06 Pages: 85-94 SJIF IMPACT FACTOR (2021: 5.705) (2022: 5.705) (2023: 6.584) OCLC – 1121105677 Crossref 0 Scoole S WorldCat Mendeley

The issue of international cooperation relating to the fight against transnational crime, prevention of organized crime, and legal assistance in criminal cases Europe and the European Union could be represented as unique and versatile. During the past period, a number of documents, institutions, agreements and various forms of cooperation were created within the framework of collaboration of this field. The joint institutions such as Europol [2], common databases as the Schengen [3] information system, cooperation based on mutual recognition, such as traditional cooperation through inquiries based on the principle of mutual assistance, and joint active cooperation between states, such as "establishment of joint investigation teams" could be the great example of these collaborations. This is one of the tools of cooperation that can be used between law enforcement officers in the fight against crime.

These days, the use of joint investigation teams as a mutual legal assistance in combating transnational and organized crimes, as well as sentencing the perpetrators, has developed and advanced in the EU countries. One of the first interrogation groups formed in the Union was built between France and Spain in September 2004 to combat terrorism by ETA (ETA, Euskadi Ta Askatasuna - Basque Country and Freedom) [4]. However, a few months later, in January 2005, the Netherlands and Great Britain announced the formation of the first joint investigation team [5].

MATERIALS AND METHODS

In the course of the research, an attempt was made to analyse detailed information about international legal basis of the cooperation between the states in the creation of joint interrogation groups as a type of legal assistance in criminal cases in the European Union countries. During the analysis, the author's position





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was developed regarding a number of important features of the implementation of this type of legal assistance. This article focuses on conceptual, theoretical and practical understanding of foreign common methods. Moreover, analysis, generalization, comparative-legal, historical-legal, systematicstructural, formal-legal study methods of scientific knowledge were used in the research.

RESULTS OF THE RESEARCH AND ANALYSIS

The concept of joint interrogation groups, in the European Union first appeared in 1994, that is, through the activities of the working group on the revision and renewal of the Naples Convention "On mutual assistance and cooperation between customs administrations" adopted in 1967. This proposal was put forward by the German delegation [6]. The German delegation suggested the establishment of these groups based on the experience of the "Gemeinsame Ermittelungsgruppen", which established cooperation between the federal police agencies of the German police [7]. Thus, the idea of creating joint investigation teams was widely discussed in the draft of the Naples II Convention in 1994 and two years later in 1996 in the process of drafting the Convention of the European Union States "On Mutual Assistance in Criminal Matters".

Subsequently, Germany's proposal to create joint interrogation groups has opened a new stage of cooperation between EU countries in the fight against crime.

The Amsterdam Treaty of 1997 introduced the term "joint team" as a concept of cooperation between the police of the member states of the European Union in the interrogation of crimes [8]. The concept of the Joint Investigation Team was envisioned as a International Journal Of Law And Criminology (ISSN - 2771-2214) VOLUME 03 ISSUE 06 Pages: 85-94 SJIF IMPACT FACTOR (2021: 5. 705) (2022: 5. 705) (2023: 6. 584) OCLC - 1121105677

promising strategy, since it would allow officers from different jurisdictions and law enforcement agencies to work together as a team to investigate organized crime and share information, as well as evidence effectively.

The establishment of joint interrogation groups was included in the strategic and political documents of the European Union. In 1997, after the Action Plan to Combat Organized Crime was developed, "a general provision for Europol's participation in "joint teams" was formally included in the Treaty of Amsterdam [9]". This provision was later inserted into the Article 43 (1)(b) of the 1998 Vienna Programme of Action [10] as "to develop an appropriate legal act expanding Europol's powers and directing Europol's work to operational cooperation within the scope of the activities". An important issue in the document, which should be developed according to the established norm, was the mutual cooperation between the justice system of the countries and Europol[11].

A year later, in 1999, at the Conference of the Council of Europe on the creation of an area of freedom, security and justice in Tampere and Finland, was held and the decision of the Council of Europe to adopt the "Tempera Program" was adopted. And so this is the first legal act on the use of joint interrogation groups. According to the program, it was concluded that the states should be obliged to immediately establish the joint interrogation groups provided for in the Treaty of Amsterdam [12].

After this conference, the legal basis of joint interrogation groups provoked for the adoption of the European Convention on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union, which was adopted in 2000.



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The conditions, tasks and the procedure for the execution of joint investigation teams were defined in Article 13 of the European Convention on Mutual Legal Assistance in Criminal Matters [13] (hereinafter in the text - the European Convention) that was adopted in 2000. Article 13 (1) states that "By mutual agreement, the competent authorities of two or more member states may establish a joint interrogation group for a specific purpose and for an unlimited period, further which may be extended by mutual agreement to conduct criminal investigations in one or more member states. The composition of the group should be specified in the contract". Also, in this part, two circumstances were defined in which it is possible to form direct interrogation groups: i.e., It was noted that a) if the investigation conducted by a member state requires a complex investigation with the participation of other states; b) to conduct an investigation, if the circumstances of the case require coordinated action with the member states, the creation of interrogation groups will be allowed.

In accordance with the agreement between the relevant competent authorities of the member states, the interrogation group is specifically assigned to investigate crimes committed in one or more participating states [14]. In addition, the group acts for a specific period, which can be extended by mutual agreement. Moreover, the agreement clearly defines the members of the group, and although most of these persons may be law enforcement officers, in many cases, prosecutors and judges can also be observed among them. If an agreement is reached between Member States, the panel will normally be established in the Member State where the main part of the investigation is expected to take place. In the agreement, the member states must take into account the costs, including the daily wages of the members of

the group [15].

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Article 13(3) defines the general conditions for conducting activities in the territory of the member states when forming joint interrogation groups. According to it, a) the head of the group should be a representative of the authorized body engaged in investigation of the member state where the group operates. The head of the group acts in accordance with national legislation within the scope of his powers; b) the group carries out its activities in accordance with the laws of the member state in which it operates. The members of the group perform their tasks under the leadership of the group leader, taking into account the conditions set within the scope of their authority specified in the agreement on the formation of the group; c) the country where the group operates must take necessary measures for this.

Furthermore, Article 13(10) of the European Convention specifies the conditions for the use of the information legally obtained by a member of a joint team, according to which this information can be used for the following purposes: a) for the purposes for which the group was established; b) to identify, investigate and prosecute other criminal offenses with the prior consent of the state where the information is taken This may be refused in cases where the use of the data could jeopardize criminal investigations in the Member State concerned or where that Member State may refuse mutual assistance; c) in order to prevent direct serious threats to public safety without deviating from the norms specified in paragraph (b) if a criminal case is subsequently initiated; d) in order to implement other goals in accordance with the agreement between the countries that formed the group.

Today, joint investigation teams in the European Union are financed directly by Eurojust. Eurojust supported 10, 105 cross-border criminal investigations in



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cooperation with the states [16]. Furthermore, the establishment and support of joint interrogation groups is growing year by year in Eurojust. In particular, on March 23, 2021, Eurojust published its 2020 annual report [17]. So, according to it, in 2020, Eurojust provided legal and financial support to 262 joint investigation teams. However, 74 of them were formed in 2020, and 188 teams were established in previous years that was the process continued still. The 74 newly created teams have investigated crimes of fraud (20), drug trafficking (16), money laundering (14), human trafficking (11), cybercrime (9), migrant smuggling (3), environmental crimes (3), terrorism (2) and corruption (1). At this point, it should be noted that Article 13 of the Convention "On Mutual Legal Assistance in Criminal Matters in the European Union" adopted in 2000 does not address the issue of group financing, but the explanatory commentary to this Convention (analysed above) states that financial relations are included in the agreement between the states. But above, in the statistical information, we noted that the financing of the joint interrogation groups formed in 2020 was carried out by Eurojust, which means that Eurojust can finance the teams in order to comprehensively develop the activities of the joint investigation teams [18].

Concerning the European Convention on the activities of joint investigation teams in the European Union, adopted in 2000, the text of the second additional protocol to the European Convention on Mutual Assistance in Criminal Matters adopted in 1959 was approved on September 19, 2001 at the 765th meeting of the European Committee of Ministers, and in 2001 was accepted for signature at the 109th session of the Council in Strasbourg on November 8[19].

In the official commentary to this second additional protocol, the authors explain that the goal of this legal

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act can be achieved by modernizing the existing rules regulating mutual legal assistance, expanding the range of situations in which mutual assistance can be inquired, facilitating assistance and increasing its efficiency and flexibility [20]. Looking at the review of the second protocol, it was obvious that the purpose of this protocol is to strengthen the capacity of member states and partner countries to fight against crime.

Many of the provisions of the second additional protocol are closely related to the Convention on Mutual Assistance of the Member States of the European Union in Criminal Matters adopted on May 29, 2000, while other provisions correspond to the Convention of June 14, 1990 "On the Implementation of the Schengen Agreement of June 14, 1985". For example, the text of Article 20 of the Second Additional Protocol completely repeats the text of Article 13 of the European Union Convention adopted in 2000.

However, the strengthening of the activities of joint teams in the European Convention, adopted on May 29, 2000, arises questions about their activities among the member states and led to a very slow process of ratification of the Convention by the states. The reason for this was the existence of problems related to the implementation of the norms of the convention into national legislation by the EU countries and the jurisdictional immunity of the countries. Furthermore, it is related to the Council of Europe's Joint Investigation Teams in order to speed up the ratification process necessary for the entry into force of the 2000 Convention on Mutual Assistance in Criminal Matters by the European Commission due to the terrorist threats of 11 September 2001 Hadley offered to make a decision. At an extraordinary meeting of the Council held in September 2001, member states were invited to "immediately establish



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one or more joint interrogation groups" [21]. After that, on the joint initiative of Belgium, France, Spain and Great Britain, the text of the framework decision on the joint investigation teams was submitted to the European Council [22]. According to Verena Murschetz, this Judicial Decision on Joint Investigation Teams should allow member states to directly "establish interrogation groups based on this Decision" instead of waiting for the ratification of the Convention on Mutual Assistance in Criminal Matters [23].

Furthermore, political discussion on this issue no more took place, but soon after, on 13 June 2002, Council Decision 2002/465/JHA on joint investigation teams was adopted. In the preamble of this framework decision, "One of the goals of the Union is to ensure human rights and basic freedoms, security of citizens, in compliance with the principle of rule of common law to the member states of the Union, and this goal is achieved through close cooperation between the police forces of the states, customs authorities and other law enforcement agencies. can be achieved [24]". In addition, the preamble stated that "The Council considers it appropriate to adopt a specific instrument with legal force on joint investigation teams for Union-wide investigations to combat international crime (human and drug trafficking, terrorism) [25]".

According to Article 34(2)(b) of the Treaty of the European Union, the framework Decision is similar in nature to the Directive referred to in Article 249 (1) of the Treaty on the European Communities [26]. Because according to Article 249 (3), the directive is binding on the member states with regard to the result to be achieved, but the member states are free to choose the form and measures to achieve the result. This freedom is formulated in the same way for directives

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and restrictive decisions, and the option granted to directives applies equally to restrictive decisions. This freedom means that member states have the discretionary power to decide what measures to take to achieve the result, but their measures do not give them the power to change the content of the decision [27].

The main difference between decisions and directives is that Article 34(2)(b) of the EU Treaty directly prohibits the direct effect of directives. This means that individuals cannot directly appeal to national courts regarding the provisions set out in the framework decisions. European Council Decision 2002/465/JHA registered as framework is considered to have lost its force today.

The implementation of the provisions of the Convention on Mutual Legal Assistance of the Member States of the European Union in Criminal Matters and the framework Decision on Joint Investigation Teams, adopted in 2000, has been implemented differently among those countries. That is, the countries did not directly implement the two documents into national legislation. Some member states, for example, Sweden, have incorporated only the general idea of joint investigation teams into national law, leaving the enforcement of the provisions of the Convention and the Resolution to the discretion of the executive [28]. The Netherlands, however, incorporated Article 13 of the Convention into its criminal procedural law by its Act of 18 March 2004, which entered into force on 1 July 2004, creating broad and detailed rules for the prosecution and the police to follow regarding the formation and participation in joint investigation teams [29]. In Belgium, a special implementing law entered into force on 23 January 2005, however in Germany on 8 August 2005, a special statute on joint interrogation groups entered into the force. In 2002, the United

Kingdom adopted certain rules and principles which indicated that joint investigation teams could be formed based on the 2002's decision. Bulgaria, which is not a member of the European Union, ratified the Convention and the second additional protocol, and in September 2002 the provisions on joint interrogation groups were implemented into national law. Later, other members of the European Union implemented provisions related to interrogation groups or based on the Framework Decisions.

Further efforts to establish joint investigation teams were included in the 2003 EU-US Mutual Assistance Agreement on the Establishment of Joint Investigation Teams, the 2005 Hague Program on Strengthening Freedom, Security and Justice in the European Union [30], the 2010 Citizens A serving, protective, open and secure Europe was developed in the Stockholm Program [31] and in the activities of Europol, Eurojust.

Furthermore, we can also cite the agreement "On mutual legal assistance between the European Union and the United States of America" [32] signed on June 25, 2003. Although this agreement usually belongs to the category of bilateral agreements concluded between two countries, the significance of the agreement is that the other side of the agreement with respect to the United States is not a single country, but a group of countries, which currently consists of twenty-seven countries.

This agreement serves as an important document in the implementation of mutual cooperation in criminal matters between the two countries of the region. It is the result of the effective activity of the bodies fighting against crime with the internal legislation of the states.

The activities of the European Union countries related to the creation of joint investigation teams were not International Journal Of Law And Criminology (ISSN - 2771-2214) VOLUME 03 ISSUE 06 Pages: 85-94 SJIF IMPACT FACTOR (2021: 5. 705) (2022: 5. 705) (2023: 6. 584) OCLC - 1121105677

limited to the above-mentioned documents. The fight against crime and the development of mutual assistance in criminal matters were also developed in South-Eastern European countries. In 2006, "Police Cooperation Convention for Southeast Europe Secretariat" was adopted for the countries of the region in order to more widely and effectively solve the problems of organized and transnational crime affecting the region of South-Eastern Europe.

This Convention was signed in Vienna on May 5, 2006 by the Ministers of Interior of the Republic of Albania, Bosnia and Herzegovina, Republic of North Macedonia, Republic of Moldova, Montenegro, Republic of Romania, Republic of Serbia during Austria's presidency of the Council of Europe and entered into force on October 10, 2007. In the years following the adoption of the Convention by the countries of South-Eastern Europe, the number of countries ratifying the Convention increased, that is, the Republic of Bulgaria ratified the Convention in 2008, Austria in 2011, Hungary in 2012, the Republic of Slovenia in 2012, and the Republic of Croatia in 2019. The Convention has been ratified by the parliaments of 6 EU member states and 6 non-EU member states [33].

The practice of the European Union countries in creating joint interrogation groups and regulating their activities is considered to be very well developed. We can even see that in this practice, joint investigation teams formed with EU member states and third countries are formed. For example, the first joint investigation team between EU member states and third countries was established in 2012 with the help of Eurojust between Norway and North Macedonia. After that, during the past period, the number of countries benefiting from the joint interrogation groups created with the participation of third countries has increased. Norway and Switzerland are the countries with the



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largest participation in investigation teams. In addition, countries such as Moldova, Ukraine, Serbia and Albania participated in investigation teams several times. In addition to these countries, several joint teams were formed with the participation of Bosnia and Herzegovina, Argentina, Australia, Malaysia and the United States. For example, on July 17, 2014, the Boeing 777-200ER airliner of Malaysia Airlines was shot down in the east of the Donetsk region of Ukraine while making flight MH17 on the Amsterdam-Kuala Lumpur route. So, the joint interrogation group was formed between countries to investigate the case, and the Netherlands, Malaysia, Australia, Belgium and Ukraine participated in this team [34].

CONCLUSION

In summary, it should be noted that joint interrogation groups are a new tool that is very compatible with the traditional tools that exist in the field of international mutual legal assistance in criminal matters in the European Union. Also, as a result of studying the regional documents accepted in the European Union in groups, the activities of the joint interrogation groups were fully covered. As a result of studying the activities of joint interrogation groups in the Union, the following series was revealed.

Firstly, investigations conducted within the framework of joint interrogation groups significantly reduce the risk of the disappearance of existing crime traces, while simultaneously allowing for synchronous investigative actions in the territory of member countries.

Secondly, the direct and indirect participation of countries that are not members of the group in joint interrogation groups as mutual legal assistance in criminal matters is really significant. First, it leads to stronger personal involvement of the member of the International Journal Of Law And Criminology (ISSN – 2771-2214) VOLUME 03 ISSUE 06 Pages: 85-94 SJIF IMPACT FACTOR (2021: 5. 705) (2022: 5. 705) (2023: 6. 584) OCLC – 1121105677

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interrogation group and personal responsibility for the final success of the investigation, and secondly, it allows rapid information sharing.

Third, working in joint interrogation groups promotes team spirit and builds mutual trust among team members.

Subsequently, all the above advantages lead to the optimal outcome of a particular criminal investigation. This is the main goal and advantage of every interrogation group. And in the successful fight against cross-border crime, interrogation groups formed between countries have repeatedly proven their effectiveness.

We believe that we have witnessed the rich experience of mutual legal assistance in criminal matters between countries as a unique and important aspect of the integration processes formed in the European Union. We believe that in the implementation of international cooperation on the creation of joint interrogation groups, it is necessary to develop the processes of integration of states with regional and even universal organizations. For example, despite the fact that the Republic of Uzbekistan is currently a participant in several universal and regional international legal acts that strengthen the activities of joint interrogation groups, this international cooperation in our country is not sufficient. Because the integration process of countries like the European Union has not developed in the countries of which the Republic of Uzbekistan is a member, and skills have not been formed at a sufficient level.

Furthermore, another important aspect is the financing system. As a consequence of the above analysis, we were convinced that the financing of joint interrogation groups in the European Union is not only

the responsibility of the states, but also the financing by the organizations established within the Union contributes to the further development of the effectiveness of the interrogation groups.

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