UDC 343.1
DOI https://doi.org/10.32849/2663-5313/2024.3.19

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Luhovyi, Viktor (2024). The essence and features of transnational organised criminal groups: theoretical and practical aspects. *Entrepreneurship, Economy and Law*, 3, 109–113, doi https://doi.org/10.32849/2663-5313/2024.3.19

THE ESSENCE AND FEATURES OF TRANSNATIONAL ORGANISED CRIMINAL GROUPS: THEORETICAL AND PRACTICAL ASPECTS

Abstract. ***Purpose.*** The purpose of the article is to define the essence and features of transnational organised criminal groups. ***Results.*** The article studies some aspects of investigation of crimes committed by transnational organised criminal groups. On the basis of domestic and foreign scientific literature, as well as the study of legislation, the concept and features of a 'transnational organised criminal group' are formulated. The author emphasises that the issue of transnational crime, namely, the definition of its concept and features, has always been a subject of lively debate among scholars and practitioners over the past decades both in Ukraine and abroad. The solution to these problems requires a thorough study and analysis of domestic and foreign scientific literature, as well as a comprehensive study of judicial and investigative practice. The concept of a transnational organised criminal group is formulated as a stable transnational association of five or more persons united by a single plan of illegal activities and distribution of functions among its members with an existing leader (leaders), and which commits illegal activities (possibly disguised as legal) with the aim of maximising illegal proceeds. ***Conclusions.*** The following features have been identified: it operates on the territory of more than one state; it commits unlawful acts in one state, but a significant part of its preparation, planning and management takes place in another state; it commits unlawful acts in one state, but its significant consequences take place in another state; it consists of five or more persons; it has a preliminary conspiracy; it is stable; the association is hierarchical; its goal is to commit serious or especially serious crimes; it manages and coordinates the illegal activities of these persons; it has a high level of secrecy of criminal activity; it has a mercenary motive; it may have corrupt ties in government, administration, and law enforcement agencies; organised criminal activity may be politicised.

Key words: transnational organised criminal group, criminal offences, leader, investigation, investigative (search) actions, planning.

1. Introduction

The issue of transnational crime, namely, the definition of its concept and features, has always been a subject of lively debate among scholars and practitioners over the past decades both in Ukraine and abroad. The solution to these problems requires a thorough study and analysis of domestic and foreign scientific literature, as well as a comprehensive study of judicial and investigative practice. Therefore, this publication will be aimed at addressing a specific issue: defining the essence and features of transnational organised criminal groups.

The following national and foreign scholars who have focused their research on the study of the essence and features of organised criminal groups should be noted: V.P. Bakhin, P.D. Bilenchuk, M. H. Verbenskyi, V.O. Hlushkov, A. Castle, E. Karamucho, N.S. Karpov, O.L. Kobylianskyi, V.V. Korolchuk, A.V. Kofanov, A.M. Lazebnyi, B.S. Levytskyi, K. B. Marysiuk, Ye.K. Paniotov, V.S. Polianska, Ye.D. Skulysh, K.O. Chaplynskyi, and others. In addition, our study is based on a comprehensive approach to formulating the scientific category, considering international practice and current trends.

The purpose of the article is to define the essence and features of transnational organised criminal groups.

2. Areas of combating transnational organised crime

To begin with, we consider it necessary to cite V.V. Korolchuk's thesis, stating that transnational organised crime is the result of the development of organised crime, its transformation, expansion of its borders by going beyond the borders of one state. The author argues that this phenomenon is becoming global in nature and threatens the development of any state, so transnational organised crime is one of the highest levels of criminal evolution, which is almost impossible to eradicate, but it is quite possible to reduce its negative impact on the modern world community and politics (as well as the economy and politics of individual states). The researcher concludes that among the urgent measures aimed at solving a large number of problems related to the prevention and overcoming of organised crime and its transnational forms, the legislative complex of legal measures should be in the first place along with the measures of organisational nature, with due regard for foreign experience of such legal prevention, as well as consistency with international law. In other words, according to V.V. Korolchuk, Ukraine needs to coordinate the forms and methods of combating organised crime in accordance with the approaches of the EU and the CoE, recognise the procedures for combating organised crime generally accepted in European countries, and for this purpose it is necessary to make appropriate changes to legislation, as well as to adopt new laws, participate in joint activities of the EU countries in the fight against organised groups and criminal organisations, including transnational ones, introduce a mechanism for implementing legislation on transplantation (Korolchuk, 2013). In support of all of the above, we emphasise that the regulatory framework should, in our opinion, be based on international law.

In the context of the above, we believe that the position of K. Marysiuk is correct, as he points out that these provisions are clearly not sufficiently regulated at this level. In the author's opinion, it would be necessary to enshrine provisions relating to transnational organised crime at the domestic legislative level of the UN member states. After all, international and domestic legislation should include provisions that would clearly define the features of transnational organised crime and transnational criminal organisations, which would enable their clear distinction from other types of criminal manifestations and related criminal entities, and would significantly improve the fight against them (Marysiuk, 2017).

According to V.S. Polianska '... original definition of transnational organised crime in the economic sector, it is organised criminal activity in the field of legal and illegal economic activity, that is, in the field of production, exchange, distribution and consumption of material goods and services, including under the guise of legal activity, performed in two or more states, characterised by mercenary motives, planning and proper preparation of crimes, a developed structure, the presence of a special purpose of committing grave and especially grave crimes." In addition, the researcher establishes that the following will be the features of transnational economic crimes: '...multiple jurisdictions (internationality), multiple criminality, specific motive, structured and mobile actor, criminal innovation, corrupt connections as an integral element of the infrastructure' (Polianska, 2016).

According to A. Castle, the issue of transnational organised crime has been raised in security dialogues precisely on these terms. The researcher argues that in recent years, a number of authors have argued that criminal organisations are particularly well-positioned to exploit the opportunities of an opening global economy, the break-down of political barriers, and the communications revolution. Moreover, the author argues that "the combined and often cooperative activities of many of the leading criminal organizations are by nature borderless operations, running counter to and often directly threatening the interests – and the security – of states, who seem powerless to slow (much less reverse) the growth of criminal activity" (Castle, 1997).

According to foreign publicists, "...transnational organized crime encompasses virtually all serious profit-motivated criminal actions of an international nature where more than one country is involved. There are many activities that can be characterized as transnational organized crime, including drug trafficking, smuggling of migrants, human trafficking, money-laundering, trafficking in firearms, counterfeit goods, wildlife and cultural property, and even some aspects of cybercrime. It threatens peace and human security, leads to human rights being violated and undermines the economic, social, cultural, political and civil development of societies around the world. The vast sums of money involved can compromise legitimate economies and have a direct impact on governance, such as through corruption and the "buying" of elections" (Transnational Organized Crime – The Globalized Illegal Economy, 2020).

In addition, M.H. Verbenskyi defines transnational organised crime as "...a separate type of organised crime characterised by a structural system of highly organised and carefully concealed criminal groups engaged in interregional or, in some cases, international criminal activity in the form of a trade aimed at systematically obtaining the highest possible profits and super-profits, often using both state structures and civil society institutions in their interests" (Verbenskyi, 2006).

Therefore, we argue that a transnational organised criminal group is a stable transnational association of five or more persons united by a single plan of illegal activities and distribution of functions among its members with an existing leader (leaders), and which commits illegal activities (possibly disguised as legal) with the aim of maximising illegal proceeds.

Regarding the features of this scientific category, first, a reference should be made to the publication of V.V. Popko, who appropriately emphasised that the formation of transnational criminal law is one of the most important activities of the United Nations, which performs a central function in organising cooperation in the field of combating international crime on an institutional basis. In addition, the author argues that the law-making and organisational role of the Organisation is manifested in the activities of its bodies, among which the researcher identified the following: the General Assembly, the Security Council, the International Law Commission, the Economic and Social Council (ECOSOC), the Commission on Crime Prevention and Control, expert groups, the Office on Drugs and Crime, congresses on crime prevention and criminal justice, commissions and committees whose activities are aimed at drafting conventions, resolutions, declarations and other UN documents (Popko, 2019). Thus, V.V. Popko has listed in detail all possible UN bodies that can adopt specific documents to counteract the activities of transnational organised crime.

We believe that the United Nations Convention against Transnational Organised Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000, is the most important among them. In addition, this international legal instrument states that an offence can be recognised as '...transnational in nature if: a) it is committed in more than one State; b) it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; c) it is committed in one State, but involves an organised criminal group that engages in criminal activities in more than one State; d) it is committed in one State but has substantial effects in another State" (United Nations Convention against Transnational Organized Crime, adopted by Resolution 55/25 of the General Assembly, 2000). Agreeing with the accuracy of the features identified, we synthesise them into the following ones, considering the issues of our study:

– A transnational organised criminal group operates on the territory of more than one state;
– A transnational organised criminal group commits offences in one state, but a significant part of its preparation, planning and management takes place in another state;
– A transnational organised criminal group commits an offence in one State, but it has substantial effects in another State.

3. Formation of signs of organised crime

In addition, at the legislative level in our country, the issue of the list of specific features has not been resolved, for example, the Law of Ukraine only provides a definition of organised crime, and the features inherent in this phenomenon are not defined (Law of Ukraine On the organizational and legal foundations of combating organized crime, 1993). Moreover, parts 3 and 4 of Article 28 of the Criminal Code of Ukraine state that '...a criminal offence shall be deemed to have been committed by an organised group if several persons (three or more) who have previously organised themselves into a stable association for the purpose of committing this and other criminal offences, united by a single plan with the distribution of functions of the group members aimed at achieving this plan, known to all group members... 4. A criminal offence shall be deemed to be committed by a criminal organisation if it is committed by a stable hierarchical association of several persons (five or more), whose members or structural parts, by prior conspiracy, have organised themselves for joint activities with the aim of directly committing serious or especially serious crimes by members of this organisation, or directing or coordinating the criminal activity of other persons, or ensuring the functioning of the criminal organisation itself and other criminal groups" (Criminal Code of Ukraine, 2001). These definitions can be used to identify the following features of a criminal group: quantitative composition, structural stability, hierarchical association, prior conspiracy, the purpose of committing grave or especially grave crimes, as well as the management and coordination of the illegal activities of these persons.

Relying on the analysis of publications by scholars and practitioners who have studied this issue, Ye.D. Skulysh and V.O. Hlushkov conclude that the definition of 'transnational organised crime' is dominated by the lucrative motive, that is, the focus of transnational criminal structures on obtaining ultra-high profits, which may be both material and non-material. The authors argue that it is not possible to establish a minimum or maximum amount of desired criminal profits in arithmetic terms, that is, the value is relative. In any case, individuals join together in a criminal organisation to generate significant profits without resorting to small, ‘petty’ transactions. In addition, scholars indicate that organised criminal activity of a lucrative nature, which is a criminal activity, at the present level of development of society is often aimed at obtaining not only material goods and financial resources, but also numerous privileges of an outwardly intangible nature. Such privileges usually consist in the real possibility of individuals to indirectly influence public policy, the direction of its socio-economic development or to participate in the management of the state or its individual institutions (Skulysh, Hlushkov, 2012). That is, another feature of a transnational organised criminal group is the lucrative motive of their activities.

In his monographic study, K.O. Chaplynskyi provides a rather extended list of features of organised crime, including the following: a negative socio-economic phenomenon (the activities of criminal groups disrupt the stability of the state and economic systems, harm individuals and competing organisations, are a major obstacle to building market relations, and impede civilised trade exchange, thus posing a serious threat to Ukraine's independence); a stable socially dangerous group with a functional and hierarchical system of structure; the presence of interdependent groups of different criminal orientation, whose members are engaged in systematic criminal activity, closely linked by mutual responsibility and criminal rules and traditions, have common goals and orientation, act in a coordinated manner according to a common plan in order to obtain the highest possible profit; the clandestine and long-term nature of criminal activity, the existence of a system of systematic neutralisation of all forms of social control using intelligence and counterintelligence, corrupt connections in government and administration, the judiciary and law enforcement agencies; the clandestine and long-term nature of organised crime helps criminal groups to survive, be legally ‘invisible’ and actively prevent undesirable legal decisions; the presence of a significant material base, which is manifested in the creation of joint monetary funds invested in various areas of criminal activity, bank accounts, real estate; large-scale interregional, state and interstate criminal nature of criminal activities with the distribution of territories and spheres of influence between criminal groups on territorial and sectoral grounds; the presence of officially registered funds, joint ventures, firms and other objects under the cover of which criminal groups operate; establishment of links with the foreign criminal world, active dissemination of anti-social ideology by leaders of criminal groups (Chaplynskyi, 2004). In addition to the previously mentioned, the criminalist identifies the following signs: a high level of conspiracy of criminal activity, the presence of officially registered funds, joint ventures, companies and other objects under the cover of which criminal groups operate, as well as the establishment of links with the foreign criminal world and the active spread of anti-social ideology by leaders of criminal groups.

4. Conclusions

Therefore, a transnational organised criminal group is a stable transnational association of five or more persons united by a single plan of illegal activities and distribution of functions among its members with an existing leader (leaders), and which commits illegal activities (possibly disguised as legal) with the aim of maximising illegal proceeds. The following features have been identified: it operates on the territory of more than one state; it commits unlawful acts in one state, but a significant part of its preparation, planning and management takes place in another state; it commits unlawful acts in one state, but its significant consequences take place in another state; it consists of five or more persons; it has a preliminary conspiracy; it is stable; the association is hierarchical; its goal is to commit serious or especially serious crimes; it manages and coordinates the illegal activities of these persons; it has a high level of secrecy of criminal activity; it has a mercenary motive; it may have corrupt ties in government, administration, and law enforcement agencies; organised criminal activity may be politicised.

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СУТНІСТЬ ТА ОЗНАКИ ТРАНСНАЦІОНАЛЬНИХ ОРГАНІЗОВАНИХ ЗЛОЧИННИХ УГРУПОВАНЬ: ТЕОРЕТИЧНІ ТА ПРАКТИЧНІ АСПЕКТИ

Анотація. ***Метою*** статті є визначення сутності та ознак транснаціональних організованих злочинних угруповань. ***Результати.*** Наукова стаття присвячена дослідженню деяких аспектів розслідування злочинів, вчинюваних транснаціональними організованими злочинними угрупованнями. На основі вітчизняної та зарубіжної наукової літератури, а також опрацювання законодавства формулюється поняття і ознаки «транснаціонального організованого злочинного угруповання». Автор акцентує увагу на тому, що проблематика транснаціональної злочинності, а саме визначення її поняття та ознак завжди викликали жваві дискусії серед вчених та практиків протягом минулих десятиріч як в Україні, так і за кордоном. Вирішення вказаних задач вимагає ґрунтовного опрацьовування та аналізу вітчизняної і зарубіжної наукової літератури, а також всебічного дослідження судово-слідчої практики. Сформульовано поняття транснаціонального організованого злочинного угруповання як стабільного транснаціонального об'єднання п'яти та більше осіб, що поєднане єдиним планом протиправної діяльності та розподілом функцій між його членами з наявним лідером (лідерами), а також яка вчиняє протиправну діяльність (можливо, замасковану під законну) з метою отримання максимальних протиправних доходів. ***Висновки.*** Визначено наступні його ознаки: діє на території більш, ніж однієї держави; вчиняє протиправні діяння в одній державі, але значна частка його підготовки, планування та керівництва відбувається в іншій державі; вчиняє протиправні діяння в одній державі, але його істотні наслідки мають місце в іншій державі; кількісний склад (п'ять та більше осіб); попередня змова; стійкість структури; ієрархічність об'єднання; мета – вчинення тяжких або особливо тяжких злочинів; керівництво та координація протиправної діяльності вказаних осіб; має високий рівень конспірації злочинної діяльності; корисливий мотив діяльності; можливі корупційні зв'язки в органах влади, управління, а також у правоохоронних органах; можлива політизація організованої злочинної діяльності.

Ключові слова: транснаціональне організоване злочинне угруповання, кримінальні правопорушення, лідер, розслідування, слідчі (розшукові) дії, планування.

The article was submitted 13.11.2024
The article was revised 04.12.2024
The article was accepted 24.12.2024