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SCIENTIFIC DISPUTES REGARDING THE CIRCUMSTANCES SUBJECT TO ESTABLISHMENT DURING THE INVESTIGATION OF CRIMES COMMITTED BY TRANSNATIONAL ORGANIZED CRIMINAL GROUPS

Abstract. Purpose. The purpose of the article is to analyse the circumstances that are subject to establishment during the investigation of crimes committed by transnational organized criminal groups. **Results.** The scholarly article examines several aspects of investigating crimes perpetrated by transnational organized criminal groups. Based on domestic and foreign academic literature, it analyses the circumstances that must be established during the investigation of this category of unlawful acts. The author emphasizes that the circumstances to be established in the course of investigating criminal offences have long been the subject of research by a number of domestic scholars in the fields of criminalistics and criminal procedure, particularly in the context of developing specific investigative methodologies for various categories of unlawful acts. This is understandable, since the entire process of investigating a given criminal offence is structured with regard to this legal category. In this regard, the investigation of crimes committed by transnational organized criminal groups does not differ from investigations of other unlawful acts. **Conclusions.** It is established that the legislator cannot define in a single provision all the circumstances that must be established during the investigation of different categories of unlawful acts. The circumstances formulated by the legislator serve as general guidelines for researchers, who must adapt them according to the subject of their own scientific inquiry. Based on the analysis of criminal proceedings and the positions of scholars, the following key circumstances to be established in the investigation of the studied category of crimes have been identified: the fact of the commission of a crime by transnational organized criminal groups (time and place); the source of information regarding the unlawful acts under investigation; the method of direct commission of crimes by transnational organized criminal groups; the methods of preparation and concealment of the unlawful acts; information on the structure and hierarchy of the transnational organized criminal group; the causes and conditions that facilitated the commission of the crimes; and the existence of corrupt connections within the transnational organized criminal group.

Key words: transnational organized criminal group, crime, circumstances subject to establishment, investigation, investigative (search) actions, investigation planning.

1. Introduction

The circumstances that are subject to establishment during the investigation of criminal offences have long been, and continue to be, the focus of attention for a number of domestic scholars in the fields of criminalistics and criminal procedure, particularly within the development of specific investigative methodologies for various categories of unlawful acts. This is understandable, since the entire process of investigating a particular criminal offence is structured around this legal category. The investigation of crimes committed by transnational organized criminal groups does not, in this respect, differ from the investigation of other unlawful acts. Therefore, the examination of this issue is essential for a comprehensive

disclosure of the methodology of investigating crimes committed by transnational organized criminal groups.

Among domestic scholars who have contributed to the development of the set of circumstances subject to establishment during the investigation of criminal offences, the following should be noted: O.A. Antoniuk, V.P. Bakhin, O.A. Banchuk, P.D. Bilenchuk, H.P. Zharovska, M.M. Yefimov, N.S. Karpov, O.L. Kobylanskyi, V.V. Korolchuk, A.V. Kofanov, R.O. Kuibida, V.K. Lysychenko, B.Ye. Lukianchykov, Ye.D. Lukianchykov, S.Yu. Petriaev, S.M. Stakhivskyi, K.O. Chaplynskyi, Yu.M. Chornous, M.I. Khavroniuk, V.Yu. Shepitko, R.M. Shekhavtsov, among others. At the same time, the present study is

characterized by a comprehensive approach to analysing this category in the context of its transnational nature, as well as with regard to contemporary international practice and current global developments.

The purpose of the article is to analyse the circumstances that are subject to establishment during the investigation of crimes committed by transnational organized criminal groups.

2. The content of the correct criminal law qualification

We consider M.M. Yefimov's observation to be quite accurate. He emphasized the variety of the set of circumstances that must be established during the investigation of different categories of unlawful acts (Yefimov, 2011). S.M. Stakhivskiy further noted that the purpose of criminal procedural proof is the establishment of objective truth, and achieving it is possible only when all facts and circumstances relevant to the proper resolution of a criminal proceeding are established with sufficient completeness and reliability. Consequently, the researcher concluded that the totality of such facts and circumstances constitutes the subject of proof in a criminal case (Stakhivskiy, 2005).

In turn, a separate group of scholars identified the circumstances to be established as the factual basis for the proper criminal-law qualification of a socially dangerous act committed by an individual (or individuals), the targeted exercise of procedural powers by the parties in criminal proceedings in a specific case, the individualization of criminal punishment for the guilty persons, and the compensation of damage caused (Banchuk, Kuibida, Khavroniuk, 2013). For her part, Yu.M. Chornous emphasized that, in criminal proceedings, the activity of establishing circumstances of a specific nature is expressed through: recording the course and results of procedural, investigative (search) actions and covert investigative (search) actions; detecting, documenting, collecting, and examining traces of a crime; maintaining systems of criminal records and forensic registries; involving specialized knowledge in the conduct of procedural, investigative (search), and covert investigative (search) actions; involving experts and conducting forensic examinations, among others (Chornous, 2017). In other words, the authors stressed the importance of identifying circumstances that must be established during investigations of various categories of criminal offenses.

Another group of scholars (B.Ye. Lukianchikov, Ye.D. Lukianchikov, S.Yu. Petriaiev) argued that since the process of committing criminal offenses follows objective patterns, certain similar situations can be observed during

the investigation of particular types of unlawful acts. The authors noted that these situations are referred to as typical, which allows the development of sets of typical actions for the authorized person. Moreover, disclosing the tactical characteristics of the most common investigative (search) actions at the level of typical investigative situations—taking into account the multivariance of investigative circumstances—increases the practical value of methodological recommendations. These should reflect not an averaged approach but a solution that is as close as possible to addressing the specific tasks of the investigation (Lukianchikov, Lukianchikov, Petriaiev, 2017). Thus, the researchers analyzed this scientific category through the prism of solving specific tasks of criminal proceedings.

For his part, V.Yu. Shepitko distinguished among the circumstances requiring establishment the following: spatial and temporal connections between individual traces of the unlawful act and the circumstances of the event; identification and situational properties of the traces and their evidentiary value; reasons for the absence or presence of traces as facts that contradict the natural course of similar events (negative circumstances) (Shepitko, 2011). In other words, the researcher identified only certain groups of circumstances reflecting individual components of criminal proceedings.

A.F. Volobuiev also offered a well-grounded view that the tasks of the initial stage of the investigation correlate with the circumstances that must be established. In generalized form, the scholar included the following:

1. determining the place, time, and conditions of the unlawful act, its nature, and detecting, documenting, and seizing its traces as sources of evidence;

2. collecting evidence that with high probability points to the person suspected of committing a criminal offense;

3. identifying, locating, and apprehending the person suspected of committing the unlawful act (serving a notice of suspicion).

In addition to the primary tasks, the author noted the existence of others at this stage, such as: determining the amount of material damage caused by the crime, taking measures to ensure its compensation, among others. At the same time, the researcher emphasized that their full implementation occurs later, at the subsequent stage of the investigation (Volobuiev, Stepaniuk, Maliarova, 2018). We share A.F. Volobuiev's position that investigative tasks should be based on the relevant circumstances that must be established.

At the same time, M.M. Yefimov correctly observes that the circumstances identified by

forensic scholars, regardless of their formulation (proof, establishment), serve only as possible guidelines for law enforcement officers. Furthermore, the scholar stresses that the investigation of a specific criminal offense may have its own particularities depending on several factors: the type of unlawful act committed, the specifics of investigative (search) and covert investigative (search) actions, and typical investigative situations (Yefimov, 2020). We also fully support this view.

O.A. Antoniuk, based on the analysis of criminal case materials, identified the following circumstances that must be established in cases involving criminal offenses against public order: "...whether unlawful acts were indeed committed and what they consisted of; the time of their commission; the place of their commission; the circumstances under which they occurred; the identity of the person who committed the unlawful acts; the person's guilt in committing the offense; information characterizing the offender; motives behind the offender's behavior; circumstances influencing the degree and nature of the offender's liability; the specific manifestations of exceptional cynicism or particular audacity; whether the victims provoked the unlawful acts; causes and conditions conducive to the specific unlawful manifestation; specific consequences of the act; whether other criminal offenses were committed during the unlawful act; circumstances affecting the degree and nature of liability of the person who committed the unlawful acts; and what instruments were used to commit the unlawful acts" (Antoniuk, 2020).

3. The range of circumstances to be established during the investigation of crimes committed by transnational organized criminal groups

According to Article 91(1) of the Criminal Procedure Code of Ukraine, the following circumstances are subject to proof: "(1) the event of a criminal offense (the time, place, method and other circumstances of its commission); (2) the guilt of the accused in the commission of a criminal offense, the form of guilt, motive and purpose of the criminal offense; (3) the type and amount of damage caused by the criminal offense, as well as the amount of procedural costs; (4) circumstances that affect the degree of gravity of the committed criminal offense, characterize the accused, aggravate or mitigate punishment, exclude criminal liability, or constitute grounds for closing criminal proceedings; (5) circumstances that constitute grounds for exemption from criminal liability or punishment; (6) circumstances confirming that money, valuables or other property subject to special confiscation were obtained as a result of a criminal

offense and/or constitute income derived from such property, or were intended (used) to induce a person to commit a criminal offense, to finance and/or materially support the criminal offense or to reward for its commission, or are the object of a criminal offense, including those related to their illicit circulation, or were sought, manufactured, adapted or used as means or instruments of committing a criminal offense; (7) circumstances that constitute grounds for applying criminal-law measures to legal entities" (Criminal Procedure Code of Ukraine, 2012).

At the same time, it must be understood that the legislator cannot define within a single provision all circumstances that must be established during the investigation of various categories of unlawful acts. The circumstances set out in the Code serve as a general guideline for scholars, who should adapt them in accordance with the subject of their own scientific inquiry.

When addressing the category of crimes committed by transnational organized criminal groups, it is appropriate to refer to the position of a group of scholars who, drawing on the provisions of criminal procedure, criminalistics, and legal psychology, constructed an integrative model of investigation. This model includes the following elements: "the purpose (establishing the objective truth regarding the circumstances of the crime) and the tasks of the investigation (the prompt and complete solving of crimes, detection and exposure of perpetrators, and ensuring the proper application of the law so that every offender is brought to justice and no innocent person is punished; identifying and eliminating the causes and conditions that contributed to the crime; ensuring compensation for material damages); the subject matter of the activity – the circumstances subject to proof; the conditions of criminal-procedural activity, which relate to the procedural form and time limits of pre-trial proceedings as defined by the Criminal Procedure Code of Ukraine, as well as the environment in which the investigation takes place (investigative situations); the subjects of this activity (the inquiry body, investigator, head of the investigative unit, prosecutor, court) and other participants (specialists, experts, victims, witnesses, suspects (accused), defense counsel, etc.), along with their procedural status; procedural actions (investigative and other actions defined by the CPC of Ukraine) and decisions; search-and-cognitive actions and organizational measures carried out by the subjects of criminal-procedural activity that are not regulated by law (mental actions and operations related to examining information about the crime event, developing versions and planning the investigation, technical-criminalistic and tactical methods, operations (com-

binations), etc.); scientific and technical means of crime investigation. Further development of this framework, in our view, will contribute not only to deepening theoretical knowledge about the nature and content of investigative activity and its correlation with criminal activity, but may also be used to study foreign experience in legal regulation, pre-trial investigative practice, and in modelling the legal mechanism for implementing the provisions of the new criminal procedural legislation of Ukraine" (Lysychenko, Shekhavtsov, 2012).

Based on the analysis of criminal case materials and the above-mentioned scholarly positions, we identified a range of circumstances that must be established during the investigation of the examined category of crimes, namely:

- the fact of the commission of a crime by transnational organized criminal groups (time and place);
- the source of information regarding the unlawful acts under investigation;
- the method of direct commission of crimes by transnational organized criminal groups;
- the methods of preparation and concealment of the unlawful acts;
- the environment in which the crimes were committed;
- material and personal traces of the unlawful activity;
- information about the structure and hierarchy of the transnational organized criminal group;
- characteristics of persons who are part of the transnational organized criminal group;
- information regarding victims of the unlawful acts;
- the type and amount of damage caused by the crime;
- the causes and conditions that contributed to the commission of the crimes;
- evidence of corrupt ties maintained by the transnational organized criminal group.

4. Conclusions

To summarize, the circumstances subject to establishment during the investigation of criminal offenses play a crucial role in shaping the methodology of investigating crimes committed by transnational organized criminal groups. It has been established that the legislator cannot determine within a single statutory provision the full range of circumstances that must be identified when investigating various categories of unlawful acts. The circumstances defined in the Criminal Procedure Code serve as general guidelines, which researchers must further specify and adapt in accordance with the focus of their scientific inquiry.

Based on an analysis of criminal proceedings and the positions of scholars, a set of cir-

cumstances has been identified that must be established during investigations involving the examined category of crimes. These include: the fact of the commission of a crime by transnational organized criminal groups (including time and place); the source of information regarding the unlawful acts under investigation; the method of direct commission of such crimes; the methods of preparation and concealment employed; information concerning the structure and internal hierarchy of the transnational organized criminal group; the causes and conditions that facilitated the commission of the crime; and the presence of corrupt ties maintained by the group.

A structured approach to determining and examining these circumstances contributes not only to the theoretical development of the methodology for investigating crimes committed by transnational organized criminal groups, but also provides a practical basis for improving the effectiveness of pre-trial investigations and enhancing the legal mechanisms for implementing the provisions of current criminal procedural legislation.

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НАУКОВІ ДИСПУТИ ЩОДО ОБСТАВИН, ЯКІ ПІДЛЯГАЮТЬ ВСТАНОВЛЕННЮ ПІД ЧАС РОЗСЛІДУВАННЯ ЗЛОЧИНІВ, УЧИНЕНИХ ТРАНСНАЦІОНАЛЬНИМИ ОРГАНІЗОВАНИМИ ЗЛОЧИННИМИ УГРУПОВАННЯМИ

Анотація. *Метою статті* є аналіз обставин, які підлягають встановленню під час розслідування злочинів, вчинених транснаціональними організованими злочинними угрупованнями.

Результати. Наукова стаття присвячена дослідженню деяких аспектів розслідування злочинів, вчинюваних транснаціональними організованими злочинними угрупованнями. На основі вітчизняної та зарубіжної наукової літератури проведено аналіз обставин, які підлягають встановленню під час розслідування досліджуваної категорії протиправних діянь. Автор акцентує увагу на тому, що обставини, які підлягають встановленню під час розслідування кримінальних правопорушень, були та є предметом дослідження ряду вітчизняних учених-криміналістів та процесуалістів в розрізі опрацювання окремих методик розслідування різних категорій протиправних діянь. І це зрозуміло, адже з огляду на вказану правову категорію проектується весь процес розслідування відповідного кримінального правопорушення. Вчинення злочинів транснаціональними організованими злочинними угрупованнями в цьому плані не відрізняється від інших протиправних діянь. **Висновки.** Визначено, що законодавець не може визначити в одній статті всі обставини, які необхідно встановити під час розслідування різних категорій протиправних діянь. Сформульовані ним обставини є своєрідним орієнтиром для різних дослідників, які повинні варіювати їх відповідно до предмету власних наукових пошуків. На основі опрацювання кримінальних проваджень та розгляду позицій науковців було з'ясовано коло обставин, які підлягають встановленню під час розслідування досліджуваної категорії злочинів, як-от: факт вчинення злочину транснаціональними організованими злочинними угрупованнями (час та місце); джерело надходження відомостей про досліджувані протиправні діяння; який був спосіб безпосереднього вчинення злочинів транснаціональними організованими злочинними угрупованнями; які способи підготовки та приховування досліджуваних протиправних дій; інформація про структуру та ієрархію транснаціонального організованого злочинного угруповання; причини та умови, які сприяли вчиненню злочинів; факт корумпованих зв'язків, наявних у транснаціонального організованого злочинного угруповання.

Ключові слова: транснаціональне організоване злочинне угруповання, злочин, обставини, які підлягають встановленню, розслідування, слідчі (розшукові) дії, планування розслідування.