

MECHANISMS FOR CRIME INVESTIGATION IN COOPERATION WITH FOREIGN LAW ENFORCEMENT INSTITUTIONS

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Summary

International cooperation is a highly important process in law enforcement activities, playing a key role not only in identifying, clarifying, controlling, and preventing crimes but also in developing international relations. Over the last decade, both European Union (EU) states and other countries declared they are carrying out international cooperation in the field of law enforcement activities; however, is the cooperation efficient and in the right direction, and does it help control and prevent crime?

The Article draws from previous research and presents a brief analysis of the development of international cooperation in the criminal investigation within the EU and across the world. To assess the development of police cooperation within the EU, the author studies police cooperation on a global scale, identifying and presenting reasons that drive this cooperation and dictate the need therefore. Accordingly, by comparing global trends, the Article presents the development of police cooperation within the EU, raises issues facing law enforcement agencies and identifies possible police cooperation models. The need for law enforcement cooperation arises from transnational crimes, i. e., the cases where a crime affects two or more countries.

The Article points out that in the global context, police cooperation can only be established at one level, with the main goal being the exchange of information. At this level, the global scale of operations is regarded as a major obstacle to police cooperation. Police cooperation within the European Union has reached an unprecedented level. The existing forms and methods of police cooperation in the European Union do not suggest the existence of a single specific cooperation model. Cooperation develops at all levels and in all directions as a result of the harmonisation of legal provisions along with training and cooperation between small groups or forces.

The Article aims to identify the legal and organisational foundations of international cooperation cases related to crime and analyse the main issues facing states cooperating in these matters. To fulfil the objectives, the paper studied international and national legal acts regulating international legal cooperation and identified the main features of crime; furthermore, it overviewed the role of international organisations in the fight against crime.

Keywords: prosecution, organised crime, international cooperation, Europol, cooperation, police.

Introduction

Global interdependence is characteristic of the modern world. The ever-increasing criminal activity recognises no national barriers. Crimes are often committed in the context of an international network operating beyond the control of any individual nation. To properly collect evidence and ultimately arrest the criminals, criminal investigations conducted exclusively within the territory of one state are subject to the constraints of the political and legal systems of that country¹. However, crimes stretching across multiple countries pose obstacles in the fight against criminal activities.

In practice, international cooperation usually takes place via the official Europol and Interpol channels.

The purpose of the cooperation is the exchange of criminal intelligence information to initiate and carry out pre-trial investigations². Cooperation via Europol's (**Europol** – European Police Office established by the European Union member states (Council Act 95/C316/01, Europol

Convention, drawn up based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office) official channels is governed by the Europol Convention, Resolution No 633 of the Government of Lithuania of 17 June 2009³ and the Guidelines on the Cooperation Between the Lithuanian Law Enforcement and European Police Office approved by the order No 5-V-173 of Lithuanian Police Commissioner-General of 17/03/2006.

The guidelines are in place to improve the effective cooperation of competent authorities (Police Department under the Ministry of the Interior, Customs Department under the Ministry of Finance of the Republic of Lithuania, State Border Guard Service under the Ministry of the Interior, Financial Crime Investigation Service under the Ministry of the Interior, Prosecutor-General's Office of the Republic of Lithuania, State Security Department of the Republic of Lithuania, Special Investigation Service of the Republic of

¹ Nadelmann, E. A. (1990). The role of the United States in the International Enforcement of criminal law. *Harvard International Law Journal*. 31, 37-44.

² More information on cooperation via Interpol channels is available at <http://www.interpol.int/Public/THB/default.asp>

³ Guidelines for the Information Exchange Between the Law Enforcement Authorities of the Republic of Lithuania and the Law Enforcement Authorities of other European Union Member States approved by the Resolution.

Lithuania) with Europol, prevent various types of crimes and promote the fight against them, including human trafficking. It must be noted that crimes investigated by Europol include the aforementioned activities only in cases where there are factual indications that the crimes involve an organised criminal structure and may affect two or more Member States so much that the scale, significance, and consequences of the crimes in question call for joint action by the Member States⁴.

Lithuanian Europol Unit of Board of International Relations at the Lithuanian Criminal Police Bureau (hereinafter – Europol National Unit of Lithuania) is a national contact centre for communication between Europol and foreign authorities, i. e., the unit for communication (exclusively via this unit) in the investigation of human trafficking crimes between Europol and Lithuanian authorities (Prosecutor-General's Office of the Republic of Lithuania, State Border Guard Service under the Ministry of the Interior, State Security Department of the Republic of Lithuania, etc.). It should be noted that the cooperation with foreign partners covers not only the investigation of a crime but also the actions related thereto, i. e., acts aimed at obtaining funds to commit crimes (e. g., human trafficking), as well as acts aimed at creating conditions for the commission of the crime (not limited to the crimes under investigation), etc.

Investigation of crimes stretching across several countries relies on exchanging information via liaison officers delegated by Lithuanian institutions who constitute the Bureau of Lithuanian Liaison Officers at Europol. Pursuant to the aforementioned Order of the Commissioner-General, liaison officers help exchange information between their respective authorities and Europol via the National Unit of Lithuania. More precisely, the liaison officers provide Europol with information from the competent authorities, send information from Europol to the competent authorities, cooperate with Europol officials by providing information and advising on the analysis of information related to Lithuania, and perform other actions necessary for performing the assigned tasks⁵. Europol National Unit of Lithuania informs the competent authorities in writing about the previously or newly initiated Europol's analysis work files (hereinafter – analysis work files) and the aims and objectives thereof, and the competent authority (e. g., the Police Department under the Ministry of Interior), having assessed the expediency and upon considering the possibility of joining a previously or newly initiated analysis work file, informs the Europol National Unit of Lithuania in writing of the request to take part in a specific analysis work file.

When investigating a possible version of the crime or carrying out the task commissioned by a competent authority (as with any other crime), liaison officers can check the Europol Index System to see whether Europol has data on persons or events of interest to the competent authorities.

It should be noted that Europol Index System only provides general information, i. e., that Europol does have data on a person or even but does not provide for making links or drawing further conclusions about the content of the information. Upon receiving the information of interest, this circumstance forces officials (conducting a criminal investigation) to figure out the time and place for making use of the said information and further procedural or inter institutional cooperation actions to be taken to achieve the desired result in the case.

To promptly receive (exchange) available information, the Bureau of Lithuanian Liaison Officers at Europol has direct access to the national databases used for carrying out the activities of the Police Department under the Ministry of Interior and other aforementioned institutions registered in state or normative registers.

Lithuanian competent authorities can only exchange information with Europol via the Europol National Unit of Lithuania⁶. Territorial police institutions contact Europol National Unit of Lithuania police officers via authorise police officers appointed by the Lithuanian Police Commissioner-General at higher-level police commissariats (Vilnius, Kaunas, Klaipėda, Šiauliai, and Panevėžys chief police commissariats or Alytus, Marijampolė, Utena, Tauragė, and Telšiai police commissariats)⁷. Competent Lithuanian authorities (in this case, higher-level police commissariats) submitting information to the Europol National Unit of Lithuania notify the purpose for providing information and the restrictions on the use, removal, or destruction of the information.

The situation we are interested in is significant in finding out what needs to be done if, throughout the criminal investigation, information from Europol is received in Lithuania. The rules detail the situations of use of the received information. The Police Department under the Ministry of the Interior, upon receiving an inquiry, checks the information in accordance with its competence and informs the Europol National Unit of Lithuania about the results of the check. Established procedures prohibit the competent authority from transferring data to third parties (institutions) after receiving information from abroad, i. e., the information is intended only for that institution and only for its purposes. For example, if the Police Department under the Ministry of the Interior investigating human trafficking cases between Lithuania and the Netherlands receives certain information from the Netherlands, it is prohibited to transfer that information to the Lithuanian Prosecutor-General's Office if it has not officially applied to Europol. It must be noted that all data required for investigating a crime are submitted and received exclusively via the Europol National Unit of Lithuania or liaison officers.

The Lithuanian institution that applies for assistance in investigating a crime is responsible for selecting the appropriate classification of information provided to Europol.

The departmental normative acts extensively detail the

4 Order No 5-V-173 of Lithuanian Police Commissioner-General of 17/03/2006 (amended).

5 Under p. 14 of the Guidelines, a Liaison Officer is available round the clock, i. e., twenty-four hours a day, seven days a week.

6 Extraordinary cases where a contact officer at Europol National Unit of Lithuania is unavailable or in a case of extreme urgency allow for direct exchange of information between the competent authority and Europol via liaison officers; however, this cooperation must be reported to Europol National Unit of Lithuania within 24 hours.

7 By the Order No 5-V-191 of the Lithuanian Police Commissioner-General of 14 March 2005 On the Appointment of Authorised Officers.

actions that must be performed while solving a crime. Chapter VII of the Guidelines provides that the Europol National Unit of Lithuania informs the concerned Lithuanian authorities in writing of previously or newly initiated Europol's analysis work files (hereinafter – analysis work files), including previously or newly initiated human trafficking work files, the aims and objectives thereof. The authority, having assessed the expediency and upon considering the possibility of joining a previously or newly initiated analysis work file, informs the Europol National Unit of Lithuania in writing of the request to take part in a specific analysis work file. Europol National Unit for Lithuania informs Europol of the request to join a specific analysis work file. Upon receiving Europol's approval, the Europol National Unit of Lithuania informs the competent authority in writing, and the competent authority, by the order of the head of thereof, confirms the authority's participation in a specific analysis work file. Europol National Unit of Lithuania appoints a contact officer, responsible for

Case investigation scenarios involving joint international pre-trial investigation working groups

In the course of pre-trial investigations and judicial inquiries that require collecting data about persons suspected of or having committed a crime and other information relevant to the investigation of crimes, cooperation between institutions of different states is carried out by submitting requests for legal assistance and forming Joint Investigation Teams.

Joint Investigation Teams are formed in two cases:

1) A complex, time-consuming, and effort-intensive pre-trial investigation of criminal offences carried out in the Republic of Lithuania is related to other states that require coordinated pre-trial investigation actions;

2) several states are conducting a criminal investigation, the circumstances of which require coordinated joint actions, and the states, the Eurojust panel, or the National Member for Lithuania at Eurojust submits a request to conclude an agreement on forming a group.

If a pre-trial investigation into human trafficking is initiated in Lithuania but some of the suspects live in a foreign country, or vice versa, the suspected persons (organisers of the crime) are in Lithuania, but their victims or facilitators live in a foreign country, as a rule, the group will be formed in Lithuania. Under the general procedure, the group is formed in the state where the main steps of the pre-trial investigation are to be carried out.

If during the pre-trial investigation it becomes clear that there are grounds provided for in the recommendations, the prosecutor conducting the pre-trial investigation or leading it, pursuant to Article 66 of the Code of Criminal Procedure of the Republic of Lithuania, prepares a reasoned request for the formation of a group, which is then submitted to the Prosecutor-General of the Republic of Lithuania by the senior prosecutor. In the process of preparing this request, the National Member for Lithuania at Eurojust can be contacted for the necessary information (p. 7). The request shall include reasons and motives for submitting the request; the date of initiating the pre-trial investigation in Lithuania, criminal case number, the officer conducting the pre-trial investigation;

exchanging information within a specific analysis work file. The competent authority taking part in a specific analysis file, on its own initiative, provides data to Europol, checks inquiries received from Europol, attends expert meetings regarding analysis work cases held by Europol, and takes part in the activities of joint investigation groups (p. 35;36;37;38).

The Europol National Unit of Lithuania exchanges information with liaison officers and Europol via Europol's secure (coded) electronic communication channel. Authorities and the Europol National Unit of Lithuania are responsible for implementing the aforementioned channel. In the absence of a secure (coded) channel, competent authorities and the Europol National Unit of Lithuania exchange information using the regular methods (email, fax, facsimile, phone, etc.), while classified information is exchanged in writing, in accordance with the requirements provided for in the Law on State Secrets and Official Secrets of the Republic of Lithuania (Chapter XI).

matters of fact, and data on the person suspected of committing the criminal act (name, surname, personal identification number, place of birth, place of residence, citizenship, and other data relevant to the case) and other significant information. The request must describe the goals of the group in as much detail as possible and the necessary steps to be taken in each involved state, as well as proposals for the composition of the group, indicating the names, surnames, and positions of the officials from the Republic of Lithuania and the involved state or states, the reasons for their participation in the group.

The Prosecutor-General of the Republic of Lithuania, upon receiving the request and the draft agreement, if there is a basis, instructs the Department of International Relations and Legal Assistance to prepare requests to foreign countries for the formation of a group. In cases where there is a lack of information necessary for preparing the request or the draft agreement is not prepared properly, the prosecutor who submitted the request is instructed to provide the missing data or prepare the draft agreement properly within the set deadline. If there are no grounds for forming a group, the request is returned to the prosecutor who submitted it. In the process of preparing a draft agreement and request, the National Member for Lithuania at Eurojust can be contacted for the necessary information.

The draft agreement on the joint investigation group must take into consideration the state's statements and reservations under the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000, the Protocol thereto of 16 October 2001, the Council Framework Decision of 13 June 2002 on joint investigation teams, the Decision 2002/187/TVR of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, the European Convention on Mutual Assistance in Criminal Matters of 1959, and other international normative acts. Requests to foreign countries and proposals to European Union institutions regarding the formation of a group and the draft agreement are sent to the

competent institutions of foreign countries and the heads of EU institutions, also including the proposed deadlines and methods (during the meeting, by mail, fax, or electronic means of communication) for harmonising the stipulated conditions.

It should be noted that in cases where the pre-trial investigation actions in the involved countries are coordinated or initiated by Eurojust or Eurojust's coordination activities are necessary to achieve the goals of the criminal procedure, requests to member states for the formation of a group are only sent via the National Member for Lithuania at Eurojust.

The agreement on the formation of the group is signed by the Prosecutor-General or Deputy Prosecutor-General of the Republic of Lithuania.

Upon concluding the agreement, by the order of the Prosecutor-General of the Republic of Lithuania (deputy) or Chief Prosecutor (deputy) at the Prosecutor-General's Office or the Chief Prosecutor (deputy) at a territorial prosecutor's office, several officers and/or prosecutors from one or several pre-trial investigation institutions are assigned to the investigation group and tasked with conducting a pre-trial investigation in to achieve the goals stipulated in the agreement. The head of the group is appointed by the same order.

The criminal investigation group is headed by a prosecutor of the Prosecutor's Office of the Republic of Lithuania, who, organising and leading the pre-trial investigation, instructs the members of the group to perform procedural actions when investigating individual episodes of the crime. The seconded group members perform tasks in accordance with the agreement. If a group formed and operating in the Republic of Lithuania needs data from other states that are not involved in the group's activities, the group applies for legal assistance in accordance with the procedure established by the international treaties of the Republic of Lithuania and the Code of Criminal Procedure; decides on the participation of the seconded group members in pre-trial investigation actions; tasks the seconded member of the group with performing certain pre-trial investigation actions upon receiving the approval of the Prosecutor-General (deputy) of the Republic of Lithuania and the competent institution of the seconding state, etc.

Seconded group members perform tasks in accordance with the agreement. They have the right to 1) take part in the procedures carried out by the officials of the Republic of Lithuania, except in cases where the head of the group, following the laws of the Republic of Lithuania, decides that the participation of the seconded group members in the process actions is not possible; 2) if the group needs pre-trial investigation actions to be carried out in one of the states involved in the group, to carry them out themselves or apply to the competent authorities of their own state regarding the implementation of the said actions.

It should be noted that both the Prosecutor's Office of the Republic of Lithuania and pre-trial investigation institu-

tions, in this case, the Police Department under the Ministry of Interior or its structural units, must provide the necessary organisational conditions for the group's activities, i.e., provide foreign officers (experts) with offices, supplies for work, working tools, a vehicle, if needed. The host country covers all the expenses.

In cases where representatives of the Republic of Lithuania are seconded to a foreign country to participate in a joint investigation group, the situation is analogous. Prosecutors of the Prosecutor's Office of the Republic of Lithuania are seconded to groups formed in other states by the Prosecutor-General of the Republic of Lithuania (deputy), and officers of the pre-trial investigation institutions of the Republic of Lithuania are sent by the heads (deputies) of these institutions on the recommendation of the Prosecutor-General of the Republic of Lithuania (deputy). Seconded members of the group from the Republic of Lithuania taking part in the activities of the group perform procedural steps in the territory of foreign countries in accordance with the national law of those countries. The results of the pre-trial investigation carried out in foreign countries can be directly transferred to the head of the group and used in the criminal proceedings regarding the criminal acts investigated by the group.

Seconded group members from the Republic of Lithuania, on the instructions of the head of the group, carry out the necessary pre-trial investigation actions on the territory of the Republic of Lithuania themselves according to their competence or submit requests regarding the implementation of the said actions to the competent authorities of the Republic of Lithuania. The results of these pre-trial investigation actions (documents, objects, information) can be directly transferred to the head of the group and used in the criminal proceedings regarding the criminal acts investigated by the group. The members of the group seconded by the Republic of Lithuania, according to their competence, can also provide the group with the information necessary for the clarification of the criminal act under investigation, which they have the right to obtain and use in accordance with the procedure established by the laws of the Republic of Lithuania.

The information that seconded members of the group from the Republic of Lithuania legally obtain by participating in the group's activities and that is not available to the competent authorities of the relevant state can be used for the following purposes:

1. to fulfil the objectives that brought together the investigation group;
2. to investigate other criminal acts, as well as to carry out criminal prosecution, given that they have obtained permission from the state where the information was received.

The permission is only denied in the cases where the use of the information would hinder the criminal investigation in the state or where it could lead the country to refuse mutual assistance.⁸

The existing forms and methods of police cooperation in

the European Union do not suggest the existence of a single specific cooperation model. Cooperation develops at all levels and in all directions as a result of the harmonisation of legal provisions along with training and cooperation between small groups or forces.

Potential legal issues remain unresolved, one of them being the exchange of information related to human rights protection. Although the Europol Convention provides for the possibility of transferring personal data to non-EU countries, it remains unclear how these individuals could address potential human rights violations related to the use of personal data if they do not have the right to apply to the Court of Human Rights.

Conclusions

Summing up the ideas presented in the article, one might say the law enforcement authorities are forced to cooperate to catch persons committing criminal acts. Crimes stretching across multiple countries pose obstacles to the successful fight against crimes – institutions from multiple states fail to communicate, thus hindering quick response to crime and giving grounds for potential legal tensions when dealing with issues such as the balance between citizens' rights and various

Another potential problem has to do with the Schengen system. As for the data stored in the system, it is not entirely clear which legal body has jurisdiction over disputes related to the entry or use of such data.

The legal provisions on cooperation currently in force still do not provide sufficient legal clarity in their application. Let us use the issue related to the deletion of data from the Europol data system as an example. If, for example, the information about a person has not been confirmed, the said data should be deleted; however, the Europol Convention does not allow for the deletion of all data but only the information related to a certain decision.

bodies' access to information sovereignty disputes, conflicts of legal systems, and the like.

As police cooperation in the EU increases, potential legal issues remain unclear: exchange of information held by the police in the aspect of human rights protection; jurisdictional issues of infringements related to the use of Schengen Information System data; issues and aspects of Europol's democratic regulation.

NUSIKALTIMŲ TYRIMO MECHANIZMAI TAIKOMI BENDRADARBIAUJANT SU UŽSIENIO TEISĖSAUGOS INSTITUCIJOMIS

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Santrauka

Tarptautinis bendradarbiavimas yra labai svarbus teisėsaugos veiklos procesas, atliekantis pagrindinį vaidmenį ne tik nustatant, išaiškinant, kontroliuojant ir užkertant kelią nusikalstamoms veikoms, bet ir plėtojant tarptautinius santykius. Pastarąjį dešimtmetį tiek Europos Sąjungos (ES) valstybės, tiek kitos šalys deklaravo vykdančios tarptautinį bendradarbiavimą teisėsaugos veiklos srityje. Tačiau ar bendradarbiavimas veiksmingas ir vyksta tinkama linkme, ar jis padeda kontroliuoti bei užkirsti kelią nusikalstamumui?

Straipsnyje, remiantis ankstesniais tyrimais, pateikiama trumpa tarptautinio bendradarbiavimo nusikaltimų tyrimo srityje ES ir visame pasaulyje raidos analizė. Siekdamas įvertinti policijos bendradarbiavimo plėtrą ES, autorius tiria policijos bendradarbiavimą pasauliniu mastu, nustatydamas ir pateikdami priežastis, skatinančias šį bendradarbiavimą ir nulemiantį jo poreikį. Atitinkamai, lyginant pasaulines tendencijas, straipsnyje pristatoma policijos bendradarbiavimo plėtra ES, aptarimai teisėsaugos institucijoms kylantys klausimai ir nurodomi galimi policijos bendradarbiavimo modeliai. Teisėsaugos institucijų bendradarbiavimo poreikis kyla dėl tarptautinių nusikaltimų, t. y. atvejų, kai nusikalstamas pa- liečia dvi ar daugiau šalių.

Straipsnyje nurodoma, kad pasauliniame kontekste policijos bendradarbiavimas gali būti užmegztas tik vienu lygiu,

kurio pagrindinis tikslas – keistis informacija. Šiuo lygmeniu pasaulinis operacijų mastas yra laikomas pagrindine policijos bendradarbiavimo kliūtimi. Policijos bendradarbiavimas Europos Sąjungoje pasiekė precedento neturintį lygį. Esamos policijos bendradarbiavimo formos ir metodai Europos Sąjungoje nerodo vieno konkretaus bendradarbiavimo modelio egzistavimo. Bendradarbiavimas vystosi visais lygiais ir visomis kryptimis dėl teisinių nuostatų derinimo, mokymų ir mažų grupių ar pajėgų bendradarbiavimo.

Straipsnyje siekiama nustatyti tarptautinio bendradarbiavimo bylų, susijusių su nusikalstamumu, teisinius ir organizacinius pagrindus bei išanalizuoti pagrindines problemas, su kuriomis susiduria valstybės, bendradarbiaujančios šiais klausimais. Darbe išnagrinėti tarptautiniai ir nacionaliniai teisės aktai, reglamentuojantys tarptautinį teisinį bendradarbiavimą, be to, apžvelgtas tarptautinių organizacijų vaidmuo kovojant su nusikalstamumu.

Raktiniai žodžiai: prokuratūra, organizuotas nusikalstamumas, tarptautinis bendradarbiavimas, Europolas, bendradarbiavimas, policija.

8 See: Order No I-203 o of the Prosecutor-General of the Republic of Lithuania of 21 December 2004 On the Recommendations for Establishment and Activities of International Joint Investigation Groups; Articles 8, 66, 67, 164, 169, 170, 171 of the Code of Criminal Procedure of the Republic of Lithuania; Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Adopted on 8 November 2001, ratified by the law of 29 January 2004 (*Journal*, 2004, No 42-1374).