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ILLEGAL DRUG TRAFFICKING

Тозова Р. Незаконний обіг наркотиків. Розглянуто проблеми протидії незаконному обігу наркотиків у Болгарії з точки зору обміну позитивним досвідом в галузі правового співробітництва.

Досліджено проблематику питання незаконного обігу наркотиків та наслідки діяльності організованої злочинності, що підривають економіку Болгарії та загрожують стабільності, безпеці та суверенності країни. З'ясовано, що транспортування наркотиків здійснюється традиційними шляхами - повітряним та морським. Це свідчить про те, що організовані злочинні групи зацікавлені у використанні приватних аеропортів та портів у Європі.

Також надано правові характеристики злочинів, пов'язаних із наркотиками, прекурсорами наркотичних засобів та психотропних речовин, обладнанням або матеріалами для виробництва наркотичних речовин, зазначеними в статтях 354a , 354b Кримінального кодексу Болгарії.

Останнім часом до Кримінального кодексу Болгарії внесено зміни щодо деталізації тлумачення поняття « Наркотичні речовини».

Розглянуто низку питань, що стосуються:

- кримінально-правового статусу осіб, обвинувачених у зберіганні, транспортуванні та передачі інкримінованих речовин як суб'єкта злочину;
- притягнення до кримінальної відповідальності згідно з Кримінальним кодексом відповідно до наявних доказів;
- необхідності боротьби з міжнародною злочинністю (контрабанда та транскордонна торгівля наркотиками);
- урегулювання різних правових інструментів, встановлених актами ЄС та міжнародними договорами, що походять від 1959 року (Європейська конвенція про взаємну допомогу в Кримінальних справах);
- створення правової бази для допомоги у кримінальних справах між державами-членами Європейського Союзу, для полегшення транскордонного розслідування, щодо будь-якої іншої держави-члена.
- Членство в ЛІТ, основні пункти в угодах між членами, діяльність членів. Зазначені методики здійснення слідчих заходів та операцій відповідно до законодавства держави-члена .

У статті порушено проблемне питання класифікації покарань за такі злочини, як: контрабанда наркотичних речовин, відмивання грошей, незаконний обіг наркотичних засобів та психотропних речовин та ін. Зазначено, що Республіка Болгарія побудувала всеосяжне, повне та суворе законодавство, спрямоване на протидію наркозлочинності.

Ключові слова: *незаконний обіг наркотиків, криміналізація, індивідуалізація кримінальної відповідальності.*

The illegal drug trafficking as one of the most dangerous international crimes is subject to continuous expansion and growth all over the world. The illegal drug trafficking and the organized crime lead to the establishment of strong connections and relations that undermine the legitimate economy and pose a real threat to the stability, security and sovereignty of the countries. The illicitly acquired funds allow the criminal organizations to infiltrate the governmental entities and to unite with the legitimate commerce and financial activity at all levels in the governmental and international institutions, by corrupting them. The illegal drug trafficking is immediate source for the laundry of the so-called "dirty money" that serves as funding for the international terrorism.

As with all crimes, committed by cross-border groups, the investigation of drug trafficking cases often gives rise to problems with the jurisdiction. We should mention here the role of Eurojust where decisions can be made in the most efficient manner on how to avoid conflicts of jurisdictions and make effective investigations. Other difficulties that arise from the failure to apply the International Legal Aid

Convention from 2000 can also be resolved under this order.

This discussion forum in the area of combat against the traffic of narcotic substances is a basis for the exchange of good practices in the area of judicial cooperation. These meetings remain an extremely useful instrument for the investigating authorities, the prosecutors and the judges from the EU countries when dealing with cases of cross-border crimes. This is the best instrument to exchange information in joint investigations, plan joint activities, anticipate normative difficulties and their timely resolution; and last, but not least, facilitate the execution of subsequent requests for international legal aid.

1. Specifics of the drug market in Bulgaria

The illegal drug trafficking is a crime that is typical example of the challenges before the authorities charged with the enforcement and the administration of law in our country. The increasing globalization of society led to the globalization of crimes. The illegal drug trafficking keeps expanding and hits more new regions.

During the last year the original destination of heroin continues to be Iran and other countries from the Near east due to the low cost and the vicinity to the location of the production /Afghanistan and Pakistan/. Turkey is also a country of reference for this drug to Europe; while the so-called “northern route” is more often used for the transportation of heroin through the Caspian republics to Ukraine and Western Europe, as well as to the Black Sea and the Mediterranean region. The use of this itinerary by the organized crime groups is due to the increased border control of the land borders of the countries in the region and the possibilities to avoid crossing multiple border checkpoints.

The cocaine traffic continues to be carried out by means of the traditional methods-by air and sea-because of the geographical location of the countries producing this type of narcotic. There is interest by the organized crime groups to using private airports and ports in Europe where the packages control is considerably reduced.

In 2016 was observed active import of precursors and synthetic narcotics /acetic anhydride / from Serbia, Holland and Belgium to Bulgaria and Turkey, including a few attempts for synthetic narcotics trafficking towards Turkey.

The traffic of marihuana from Macedonia and Albania through Bulgaria and Greece towards Turkey gets more intensive with the use of trucks and companies with the participation of Bulgarian and foreign citizens.

According to the data, the production of cannabis in open air becomes more unprofitable due to the increased competition by the Albanian crime groups. Thus the in-doors production continues in small rooms in apartments and houses.

It could be said that there is no uniform market in Bulgaria. After the decline of the major drug bosses of the past, various groups attempt gaining over the market by using their own supply channels and trading the narcotics with their own means. In order to gain a larger market share, those groups distribute good quality drugs.

Similarly to the European drug market, the Bulgarian illegal market offers all traditional narcotics. Cannabis has the lion’s market share, followed by the amphetamine and the /pico/methamphetamine. It is observed a decrease in the use of heroine, and the main reason is the fact that the addicted users moved to methadone programs, the low purity of the offered doses and the orientation towards marihuana. The use of cocaine is under the average level of the European Union because of its high price on the Bulgarian drug market. Its use has seasoned character /mainly on the seaside and in winter resorts/. The so-called “ice” cocaine, mixed with other synthetic narcotics /a dose cost is 180-200 leva / is a hit among the wealthy users. The highest market share belongs to the cannabis due to its affordable price and the possibility for a closed production cycle within the country-from the planting to the distribution. The

methadone and amphetamines-laced marihuana is offered more and more often. The new psycho-active substances known as "designer drugs" that are relatively new drugs for Bulgaria create considerable problems. The supply is provided mainly through postal parcels from China, India or through Internet sites.

During the last year the most often confiscated drug in Bulgaria is the marihuana /637 kilograms / with 21 prevented attempts of drug smuggling. At the same time there is 40% increase of the confiscated heroine. There was an interesting case from 5 July 2016 at the Lesovo customs checkpoint where 755 kg heroine were found smuggled in legitimate merchandise with tomato puree cans, in a truck with Iranian registration number. There is another intriguing case from 2015 at the port of Bourgas because of the hiding place of the drug /42 kg heroine / and the itinerary used by the smugglers. After a joint investigation between Bulgaria and Germany and a joint operation between the Bulgarian Customs authorities, Bourgas City customs and Chief directorate for the Fight against Organized Crime a checkup is performed on a tugboat with temporary German registration number that arrived at the Port of Bourgas on the Druzhba ferryboat following the itinerary Bourgas-Batumi-Novorosijsk-Bourgas. The tugboat is driven by a Turkish citizen who had travelled overland through Bulgaria and Turkey to Iran, where most likely the heroine was loaded. Afterwards the vehicle retuned to Europe through Georgia with a ferryboat. The heroine in bulk was discovered with the assistance of X-ray in the 10 running tyres. A new trend in the Bulgarian drug smuggling is the traffic of dried leaves of the plant Khat. In Bulgaria, the dry Khat arrives with postal and air cargo-parcels, declared as "tea" from Kenya and Ethiopia. It was intended to reach the drug markets of Belgium and Holland. During the last two years over 40 attempts for smuggling dried leaves of the plant Khat were prevented and 900 kg. of the plant were confiscated.

2. Legal characteristics of the crimes related to drugs-related crimes, analogue drugs, precursors, equipments or materials for the production of narcotic substances or analogues /art. 354a-354в from the Criminal Code/

Pursuant to the international commitments undertook by the Republic of Bulgaria in compliance with the signed conventions and protocols, the changes in the judicial reform and the combat against organized crime, legislative decrees were adopted to establish specialized criminal court and prosecution office related hereto, charged with the examination of organized crime related-cases.

The Criminal Code lacks legal definition of the term "narcotic substance" and it is used by the legislator in the Narcotic Substances and Precursors Control Act.

"Narcotic substances" mean all anesthetic and psychotropic substances – highly risky and risky, according to the Narcotic Substances and Precursors Control Act. The amendments to the Act also added "any other natural or synthetic substance" that can provoke dependence and exercise a stimulating or depressive effect on the central nervous system, provoke hallucinations or harm the movements, the ability to think, behavior, perceptions and mood, as well as any other harmful impacts on human body. The Law translates the definition of "analogue", which can be any substance, not included in the Narcotic Substances and Precursors Control Act, but bears similar chemical structure with some narcotic substance and provokes analogical effect in the human body.

Serious issues were raised with the latest amendment of art. 354a Criminal Code /2006/, with which were simultaneously decriminalized certain forms of criminal actions, the quantum of evidence was amended and the level of punishment of all crimes of this type was alleviated. The first group of issues refers to the penal and legal status of persons, accused for the storage, transportation and transfer of incriminated substances as subject to crime perpetration under art. 354a /Criminal

Code/. Its resolution depends on whether the criminal responsibility of such persons is involved only for the performance of one or more of the decriminalized forms of crime perpetration, or, for some of the incriminated ones as well. The transfer of narcotic substances /according to the Act/ is an activity, performed on the territory of the country or through its borders, using vehicles, animal traction, human efforts or parcel. Both forms of crime perpetration and the transfer and transportation as type of transfer, are carried out either via action, or via action and/or lack of action. However, in all the cases, the carrying out of the perpetration is possible only if the perpetrator exercises factual control over the item, subject to the crime, and this completes the meaning of the term "possession". The most difficult hypothesis to resolve is the one, in which the defendant is under investigation for the distribution of narcotic substances and for some of the other forms of crime perpetration under art. 354a, Criminal Code /repealed/. The difficulty originates from the raising of additional *Mens rea* under art. 1 from the current redaction and from the fact that the Act foresees different boundaries of the crime "acquisition and holding of narcotic substances", depending on the presence or the lack of the designated statutory goal in art. 354a /1/ and /3/, Criminal Code. The only possible solution in this case would be that the perpetrator is sentenced for the distribution of the incriminated substances pursuant to art. 354a /1/, Criminal Code, while the carrying of the additional non-statutory crime perpetration on them as per the same article, is reported as aggravating circumstances for his responsibility in the process of individualization of his criminal responsibility.

The second group topical issues on the application of art. 354a from the Criminal Code is related to the modification in the quantum of evidence under paragraph 2 of the same article. For the first time it is envisioned that an aggravated criminal responsibility is applied in the case where the object of the perpetration are narcotic substances or their analogues of substantially large amounts, or where the crime was committed by a person, following the instructions or upon a decision by an organize crime group, or by any functionary, during or with regards to the performance of his functions or under the conditions of dangerous recidivism. The acquisition and holding of narcotic substances in a public location has been raised to quantum of evidence only in the presence of special statutory goal.

It is a widely spread hypothesis in which the perpetrator exercises real power over the incriminated substances, placing them in different places in the space and they are gradually determined in the course of the investigation. The practice shows that in these cases a few independent accusations are raised under art. 354a from the Criminal Code, according to the number of places, in which the incriminated substances have been found. It is extremely important here to thoroughly examine the subjective psychological status of the perpetrator with relation to the perpetration and the degree of social danger and its consequences /whether the storage in different places has been made based on a single or multiple decisions/, because in the first case the perpetrator should be held responsible for one uniform crime, while in the other one – for continuous criminal activity, but not for several independent crimes under art. 354a from the Criminal Code. Certain difficulties are also contained in the hypothesis, where the perpetrator has been found in possession of two or more different types of narcotic substances, their analogues, precursors, equipment or materials for the production thereof. In these cases, if the different types of substances, on which the perpetrator influences in a negative way, don't bring differences within the scope of the punishment as envisioned in the law /for example, it refers only to highly risky narcotic substances/, then he should bear responsibility for one uniform crime.

Due to the similarity of the analogue with the narcotic substance, the Criminal Code envisions the possibility that the analogue itself is also is a subject matter of

crime under art. 354a para 1 of the Criminal Code. As a general rule, a large part of the narcotic substances can be created from different types of plants. In the course of the production cycle are used chemical substances, which, when examined by themselves, are not narcotic substances, but a narcotic substance cannot be created without them. The substance that is used for the production of narcotic substance and can be traced in its structure during an examination is called “precursor". Until 2007 the legal definition of precursor in the General Provisions of the Narcotic Substances and Precursors Control Act contained a reference to the Substances Act in a separate attached list of the substances that are precursors. With the amendments from 2007, the precursor is defined as substance, included in the list pursuant to art.2 b "a" from Regulation 273/2004 and art.2 b "a" from regulation 111/2005"/. /Regulation /European Community/ №273/2004 of the European Parliament and the Council regarding the precursors of narcotic substances, Regulation /European Community/ №111/2005 of the Council regarding the determination of monitoring rules for the commerce between the European Community and third countries in the area of precursors/. Thus, in order to determine whether there is a precursor as an independent possible alternative of the subject matter of the crime under art. 354 a para.1 from the Criminal Code, the designated Regulations shall be applied directly as part of the European Union secondary legislation.

In addition to the criminalized incitement of another person to use narcotics, a new quantum of evidence has been added – assistance in the use of narcotic substances and their analogues. The next quantum of evidence refers to a medical doctor who consciously prescribes to another person narcotic substances, analogues thereof, or medicines containing such substances /art. 354b /5/, Criminal Code/

The amendments made in the legislation from 1975 till now – the latest date from 2010, and the envisioned quantum of evidence in the Criminal Code for the illegal drugs traffic designate the indisputable efforts of Bulgaria to comply with the international conventions for a comprehensive and differentiated regulation of these crimes, for their dangerous character for the society and the international community, and to envision severe punishments for them. Maybe the question should be raised with regards to the punishments, envisioned for these crimes according to the character and the danger of other crimes of similar character, such as qualified smuggling of narcotic substances /art. 242 /2-4/, Criminal Code/ and money laundering under art. 253 from the Criminal Code. In any case, based on the three conventions, /Single Convention on Narcotic Drugs /1961/; Convention on Psychotropic Substances /1971/ and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances /1988, ratified 1992/, laws and other normative acts, we can state that the Republic of Bulgaria built a comprehensive, complete and severe legal regime with regards to the activities with narcotic substances, the precursors, analogues and patent medicines, including the control over them. In this sense, the statistical data below are more than eloquent:

In 2016, the inspectors from the Drugs Department of the “National Police” State Directorate, the structural units of the Municipal Directorate of Internal Affairs and the Regional Directorate of Internal Affairs conducted a totality of 2978 specialized police actions on the territory of Bulgaria; during which were detained 5201 persons committing crimes, related to narcotic substances. 7609 drug venues, bars and amusement places were cleared out. A totality of 6646 schoolyards was inspected and sanctions were imposed by the National Revenue Agency’s inspectors.

In 2016, 3474 files were submitted with the request to initiate pre-trial proceedings against persons, using and/or trading with narcotic substances. The proceedings monitored by a prosecutor for crimes, related to narcotics and smuggling of narcotic substances /under art.354a-354c of the Criminal code and art. 242, para 2-4

and 9 from the Criminal code, are 9141, while the newly instituted ones are 6950. The investigation phase was completed for 6684 pre-trial proceedings. At the end of 2016, 2195 pre-trial proceedings remained unfinished and 3147 were terminated. The specialized prosecution monitored 45 pre-trial proceedings for smuggling of narcotics, related to organized crime, of which 14 were newly instituted. 22 prosecutorial acts were submitted to the court against 78 persons. 38 persons were convicted and the judicial acts entered into force. The prevailing part of the cases in the specialized prosecution under art. 354a and 354c of the Criminal Code are for drug dealing on the territory of the country. The disclosure of organized crime groups, dealing with such crimes, continues to be hindered by their transnational activity.

If you allow me, I would like to conclude with a quote, which became part of the American folklore and reminds us that when we step over a problem, we should not forget the obvious. Legend has it that Whitney Sutton, a famous US bank robber, when asked, "Why do you rob banks?" uttered, "Because that's where the money is." Like Sutton, most figures in the world of organized crime sell narcotics, commit bank frauds, develop business with human trafficking, kill and blackmail, because "that's where the money is". However, once acquired, the money from illicit activity somehow should be incorporated into the legal financial system, in order to be useful for the criminal. This fact converts the money not only in major stimulus for the organized crime, but also in one of its principal weaknesses.

Let's take as an example a middle-sized organization for drug trafficking. If it wants to sell heroine amounting to 1 million dollars, it should produce, transport and distribute only 11 kg of heroine. After the sale of the narcotics, however, the trafficking organization should collect 120 kg of banknotes and coins from the clients. This is ten times more than the weight of the drugs sold. In the case of large trafficking organizations the effect is multiplied. The drug dealers, who sell cocaine amounting to 1 billion dollars, should collect 120 000 kg of illegal money. If we make the assumption that the income from the illegal drugs sale for one year equals the "modest" amount of 50 billion dollars, then the "dirty money" from these sales weight approximately 7 million kilograms. This is a huge burden for the organized crime and a great opportunity for the human rights protection authorities.

3. Joint Investigation Teams-General Legal Framework

The need for tackling international crime (drug smuggling and cross-border THB in that matter) has called to life various legal tools, established by acts of the EU and international treaties, dating back as far as 1959 when the *European Convention on Mutual Assistance in Criminal Matters* was introduced by The Council of Europe. What first began as a formal procedure for MLA between sovereign countries later evolved into the possibility for direct gathering and exchange of information and evidence between officials from different states. One of the means through which the latter was made possible is the JIT.

On October 15th and 16th, 1999 The European Council held a special meeting in Tampere, Finland, calling for JITs to be set up *"…as a first step, to combat trafficking in drugs and human beings…"*. It wasn't long before *Council Framework Decision* of 13 June 2002 on joint investigation teams (hereinafter referred to as the "**Framework Decision**") was adopted. After the Framework Decision, on 29 May 2000 *The Convention on Mutual Assistance in Criminal Matters* between the Member States of the European Union (hereinafter referred to as "**Convention 2000**") was signed in Brussels and entered into force on 23 August 2005. With the Framework Decision and the signing and entering into force of Convention 2000 (Art. 13, 15 and 16 in particular) Member States have legal basis for easily setting-up JITs as means to ease cross-border THB investigation related to any other Member State.

Although this report focuses on JITs between Member States the former are

not something known only in the EU as ways for combating THB. There are several international treaties establishing the possibility for joint investigations between non-Member States and Member States[9]. JITs can also be set-up pursuant to bilateral agreements between states.

4.) What is a JIT?

The legal definition of a JIT is given in Art. 13, it. 1 of Convention 2000. The latter reads – "*By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team. The composition of the team shall be set out in the agreement.*". Regarding the above, the JIT itself can be defined as a team of judicial and law enforcement officials from two or more Member States which conducts criminal investigation within the borders of one or more of the involved Member States. The team is established by a written agreement between the participating Member States (hereinafter referred to as "**establishing agreement**") for a limited duration and has a specific purpose – to carry out criminal investigation in a complicated case involving cross-border criminal activity (especially cross-border THB and drug smuggling for sexual exploitation). As a legal tool it enables close coordination between the Member States, direct gathering and exchange of information and evidence, immediate participation of domestic and foreign officials in the process of investigation and other advantages.

5.) When is the JIT an appropriate legal solution?

JITs are used in cross-border criminal cases of legal and factual complexity or as stated in Art. 13, it. 1, letters (a) and (b) of Convention 2000, a JIT may, in particular, be set up where *"a Member State's investigations into criminal offences require difficult and demanding investigations having links with other Member States"* and where *"a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordination, concerted actions in the Member States involved"*. These are usually cases in which the authorities of one Member State face a necessity to gather information and evidence outside of their jurisdiction, resulting in the need for MLA and a number of investigative measures to be undertaken abroad.

Because there are more than one Member States affected by the same criminal activity it is common that parallel investigations are ongoing. The identification of such parallel investigations is good grounds for beginning negotiations and eventually setting-up a JIT. By doing so the parties combine forces in tackling the same crime through joint investigative effort, have a wider view of the whole criminal activity and *ne bis in idem* is respected.

Taking into account the criminal nature of cross-border THB and drug smuggling for sexual exploitation JITs are a convenient way of conducting a thorough and meticulous investigation. The usage of this legal tool is sometimes a necessity due to the fact that this type of crime: 1) is in most cases committed by organized crime groups whose members are highly mobile; 2) there are more than one place where the criminal activity occurs; 3) there is an unknown and constantly changing number of victims involved; 4) the victims are usually moved from one Member State to another in short periods of time; 5) the lucrative nature of this crime provide the perpetrators with good resources; 6) if coordinated and/or simultaneous actions in different

[9]the Agreement on Mutual Legal Assistance between the European Union and the United States of America; the Police Cooperation Convention for South-East Europe; the Second Additional Protocol to the European Convention on Mutual Legal Assistance; United Nations Convention against Transnational Organized Crime; United Nations Convention against Corruption; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, etc.

Member States are not undertaken this could serve as a warning to the rest of the criminal group and thus jeopardizing future investigation against them.

6.) The establishing agreement

As cited above, the general legal frame regulating JITs in the EU is set out in the Framework Decision and Art. 13, 15 and 16 of Convention 2000. They provide the basic conditions under which a JIT is established and operates. However, the specific terms and conditions regarding a JIT are negotiated by Member States for the purposes of a particular case and are laid down in an establishing agreement which is then signed by authorized representatives of the future parties. Since the general legal framework provides broad freedom in regard to the content of the agreement the parties are able to include what they deem appropriate for the current case at hand.

In order to facilitate the creation of JITs a model agreement has been developed by The Network of National Experts on Join Investigation Teams. It is a non-binding baseline which can be tailor-fit to each individual case. The model agreement includes clauses which are somewhat standard for any legal agreement – parties, duration, entry into force, the possibility for amendment and supplementation, it also contains special arrangements arising from the nature of the JIT – purpose of the JIT, criminal activity subject to investigation, place where the JIT will operate, JIT members, participation of Eurojust, gathering and access to information and evidence, exchange of evidence gathered prior to setting up the JIT, communication with the media, coordination and execution of certain investigative measures. The specific arrangements can also cover issues reaching beyond the process of investigation, for example the parties can negotiate a trial venue, determining the Member State which will hold the future defendants accountable for their crimes. All this provides the necessary flexibility for adapting the JIT to each particular case of cross-border THB and drug smuggling.

The establishing agreement, as any other voluntarily concluded agreement, can be amended and/or supplemented according to the situation, making the JIT a preferable legal solution to problems that may occur during the process of investigation. Changes can refer to various aspects of the JIT – extension of its duration, composition of the JIT, adding or removing a Member State as a party, etc.

It is also worth noting that clauses of the establishing agreement should not violate or bypass national law of the party Member States. If otherwise, those clauses shall be deemed overruled by the national legislation. For example, in Bulgaria when search and seizure is conducted two controlling members of the public should be present. If the establishing agreement states that during such investigative activities only members of JIT can be present and the search and seizure is conducted in Bulgaria without the presence of two controlling members of the public evidence would be gathered in violation of Bulgarian law and therefore will be inadmissible before the court.

7.) Identification, assessment and negotiation

The negotiations and signing of the establishing agreement are preceded by a stage in which the future parties identify a common interest to cooperate through a JIT. This usually happens when law enforcement authorities of the Member States exchange information or by direct contact between judicial authorities. Let's say, for example, A. is being investigated in a Member State and in the course of the investigation information leading to ties with crimes committed by B. (in another Member State) are discovered. The first Member State would then turn to Europol, Eurojust or directly to the second Member State and ask if there are any criminal records or procedures on her territory regarding A. and B. If the answer is positive, both Member States could be leading parallel investigations regarding the same criminal offences. It is also possible, A. and B.'s doings could be part of a larger

international criminal operation. In both scenarios, a common interest for joining forces against A. and B. could be identified by the two Member States.

Once the common interest has been identified Art. 13, it. 2 of Convention 2000 states that a formal request[10] for cooperating through a JIT should be addressed from one Member State to another. This procedure is not always mandatory due to the fact that some national legislations do not require such formal request.

The next step for setting-up a JIT includes a series of meetings between the competent authorities of each Member State concerned (often with the help of Eurojust). During these meetings the future parties decide whether using the JIT is an adequate measure in view of the circumstances. In order to proceed with the setting-up the future parties have to evaluate the legal and factual complexity of the criminal activities subject to investigation, the degree of relation between the criminal activities in the Member States, the stages on which the national investigation are in (if such investigations exist), the legal provisions of each Member State's domestic law, the advantages which the JIT will have over the standard MLA in the current case and other questions. For example, even though a common interest for using a JIT has been found, if the timeframe for concluding an investigation provided by national law of one Member States is about to expire, the setting-up of the JIT will be undesirable. Or in another scenario, the cross-border criminal activity could be of no factual and legal complexity and standard MLA is therefore deemed more efficient for the case.

The negotiations on the establishing agreement include questions regarding the future work of the JIT – from place of operation, members and leaders, participation of Eurojust or other bodies to questions regarding simultaneous execution of investigative measure and common approach when contacting with the media, as well as other questions, as per item 4 from this Chapter.

After a decision for using a JIT has been adopted and all relevant issues have been resolved the future parties proceed with the drafting and signing of the establishing agreement.

8.) Members of the JIT

One of the main items in the establishing agreement regards the members of the JIT. The general provisions set out it Art. 13 of Convention 2000 state that a JIT consists of representatives of the Member State where the JIT operates and representatives of the other participating Member States (hereinafter referred to as "**seconded members**", as per Art. 13, it. 4 from Convention 2000).

Each JIT has a leader which is a representative of the competent authorities participating in criminal investigations form the Member State in which the JIT operates. If there is more than one states of operation, for example two, then two JIT leaders should be designated. The leader of the JIT acts within the limits of his/her competence under national law and is in charge of leading the investigation and supervising the other JIT members' activities. For example, the role of a JIT leader in Bulgaria can be performed by the prosecutor supervising the pre-trial proceedings.

The other members of the JIT perform the investigative measures and "*…shall carry out their tasks under the leadership…*" of the JIT leader. They are usually members of law-enforcement bodies or investigating magistrates.

Besides the representatives of the party Member States, the JIT may include other "*participants*" (as per the model agreement). These persons can, for example, be members of bodies of the EU, Eurojust members, Europol members, OLAF staff, members of non-government organizations.

9.) Activities of the JIT members

Once established the JIT operates within the borders of a Member State. All

[10] The request contains information provided in Art. 14 of the European Mutual Assistance Convention and Art. 37 of the Benelux Treaty, as well as a "*…proposal for the composition of the team.*"

investigative measures and operations are carried out in accordance with the law of the Member State of operation, as stated in Art. 13, it. 3 of Convention 2000. This means that JIT members from the Member State of operation conduct investigative measures in a legal manner no different that they usually do. As for the seconded members – if not otherwise decided by the JIT leader, they are entitled to be present during the investigative measures. This allows them to get an immediate impression of all facts and have a more complete view of the case. It is not mandatory for seconded members to be present during the investigation. It is an opportunity, a right, not an obligation. Furthermore, if a seconded member is not present during investigative measures this does not in any way affect the validity of the latter or the legitimacy of the evidence gathered. Seconded members can also be entrusted by the JIT leader to undertake investigative measures within the limits foreseen by the legislation of the Member State where the JIT operates where this has been negotiated in the establishing agreement.

The presence of seconded members can add value to the investigation. They can provide additional assistance to the members of the JIT entrusted with the execution of the investigative measures – for example provided expertise, share good practices, help with translation and communication with witnesses, share knowledge of certain facts, etc. By allowing seconded members to take an active role in the investigation the JIT provides them with the opportunity to personally gather evidence in a way most suitable for the needs of their domestic investigation and future trial. This is especially useful when interrogating witnesses because an answer given to a question by a witness can lead to a new question which can then be immediately asked by the seconded member. Such a situation would be hard to imagine if the interrogation was conducted through traditional MLA.

Convention 2000 covers two other important issues related to the work of the JIT – the criminal and civil liability of seconded members. In accordance with Art. 15, the latter "*…shall be regarded as officials of the Member State of operation with respect of offences committed against them or by them.*" – for example, if seconded member A. commits murder in Bulgaria he/she will be liable for aggravated murder. In regard to the civil liability of seconded members Art. 16 states that where "*officials of a Member State are operating in another Member State, the first Member State shall be liable for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.*", meaning that Member State A. shall be liable for the actions of seconded member A. on the territory of Member State B in accordance with the law of the latter. As for participants in a JIT which are not Member State officials, they are not granted the rights under Art. 13 of Convention 2000 to be present during or execute investigative measures (as explicitly stated in Art. 13, it. 12, sentence last of Convention 2000). They usually add value to the JIT by facilitating coordination between its members and expertise.

10.) Evidence and information

As an international legal tool for cooperation the JIT enables direct gathering and exchange of information and evidence. Evidence gathered in accordance with the law of the Member State of operation can be directly used in future criminal trials in any of the party Member States without the need for additional legalization or other MLA, as per Art. 13, it. 10, letter "a)" of Convention 2000. For example, if evidence has been obtained through a legally executed search and seizure in Member State A. these evidence can be directly used in a criminal trial held in Member State B.

Evidence gathered within ongoing parallel investigations prior to the setting up of the JIT can be used by party Members States in a criminal trial if an explicit clause for doing so is incorporated in the establishing agreement.

If a necessity for conducting investigative measures outside of the Member State of operation occurs, the JIT has several options. If the measures should be undertaken in a Member State participating in the JIT, members seconded to the JIT by that Member State may request their own competent authorities to undertake those measures, as per Art. 13, it. 7 of Convention 2000. Evidence gathered by these national authorities is deemed gathered by the JIT and the above applies to them as well. If the investigative measures should be undertaken in a third state then members of the JIT have to use the standard procedures for MLA, as per Art. 13, it. 8 of Convention 2000. In the latter case the establishing agreement should state that evidence gathered through MLA by one party Member State can be used by the other party Member States.

Another important issue concerning evidence is their disclosure. Different national laws prescribe different disclosure regulations which should be taken into account when preparing a common investigation strategy.

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Tozova R. Illegal drug trafficking. The problems of combating illicit drug trafficking in Bulgaria from the point of view of exchange of positive experience in the field of legal cooperation are considered.

***Keywords**: drug trafficking, criminalization, individualization of criminal responsibility.*

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ЩОДО ПЕРСПЕКТИВНОЇ ПОБУДОВИ ЗАГАЛЬНОДЕРЖАВНОЇ СИСТЕМИ ПРОТИДІЇ ОРГЗЛОЧИННОСТІ

Обгрунтовано пропозицію з наповнення національного правового поля комплексною, превентивно-репресивною ідеологією протидії організованій злочинності, котра, в свою чергу, має бути реалізована в удосконаленій конструкції загальнодержавної системи протидії організованій злочинності. Незаконний обіг наркотиків розглядається у статті як форма організованої злочинності, що створює загрозу для стабільності, безпеки і суверенітету держави.

***Ключові слова:** організована злочинність, злочинні організації, незаконний обіг наркотиків, координація, взаємодія.*

Постановка проблеми. Конвенція Організації Об'єднаних Націй про боротьбу проти незаконного обігу наркотичних засобів і психотропних речовин [1] встановлює комплексний превентивно-репресивний підхід до діяльності з нейтралізації цієї загрози людству, визначаючи необхідність здійснення широкого спектру заходів із запобігання незаконному обігу наркотиків (ст. 10, 12-14, 17-19, 24 Конвенції). При цьому зазначена Конвенція відносить незаконний обіг наркотичних засобів і психотропних речовин до форм організованої злочинності, що підривають законну економіку і створюють загрозу для стабільності, безпеки і суверенітету держав. У преамбулі вказаної Конвенції також зазначається, що незаконний обіг забезпечує великі прибутки і фінансові кошти, що дає змогу транснаціональним злочинним організаціям проникати в урядові механізми, законну торговельну і фінансову діяльність і суспільство на всіх його рівнях, роз-