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# INTERNATIONAL LEGAL ASPECTS OF COOPERATION IN THE FIELD OF STRUGGLE AGAINST CRIMES IN THE SPHERE OF COMPUTER INFORMATION

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## ABSTRACT

*In this article we have tried to analyze the international legal means of struggle against crimes in the field of information. The basic method was the method of comparative legal analysis of the norms of international law. As a result, it became clear that the Convention's methods of fighting are optional value, which complicates the process of preventing and combating crimes in the field of information.*

*Based on these studies, we concluded that only through joint efforts at the international level, will be able to counter this transnational crime.*

**Keywords:** *information, crime, international cooperation, the fight, the convention, cybercrime.*

## АННОТАЦИЯ

*В настоящей статье мы попытались проанализировать международно-правовые способы борьбы с преступлениями в сфере информатизации. Основным методом стал метод сравнительно-правового анализа нормы международного права. В результате чего стало очевидно, что конвенционные способы борьбы имеют факультативное значение, что осложняет процесс профилактики и борьбы с преступлениями в сфере информатизации.*

*На основе проведенных исследований, мы пришли к выводу, что только совместными усилиями на международном уровне, сможем противодействовать данному транснациональному преступлению.*

**Ключевые слова:** *информация, преступления, международное сотрудничество, борьба, конвенция, киберпреступления.*

The accelerated development of science and computer technology has led to a change in the mechanism of the commission of certain crimes. This was made possible by the proliferation of computer technology in all spheres of modern society. A feature of such offenses is that the person committing computer crimes can be in one state and the consequences come in the other.

Thus, computer information is included into the category, which is necessary to be protected, not only at national but also at international level.

As Mr. Rolf Hegel, the head of the cybercrime prevention department of Europol, notes "... cybercrime has become so widespread that we have already lost the battle before we started fighting seriously against this evil" [6].

The international community represented by the most advanced in technological and economic terms states made numerous attempts to develop methods to counter this growing threat, such as cybercrime.

National borders of the states, being completely transparent for the information and communication networks, cannot resist the crimes in the sphere of computer technologies and thus restrain the activities of law enforcement agencies in this area, in view of the territorial jurisdiction. In this regard, issues of international cooperation have become increasingly important.

As A.G.Volevodz points, "... in current existing form international cooperation mechanisms are not conducive to the full and rapid receipt from a foreign state of evidence in the form of computer data" [1, p.219].

As rightly been noted by E.I. Panfilova and A.N. Popov, "... the difference in the definitions of component elements of a crime of various offenses in different countries is significant. It allows to persons, committing crimes

in the sphere of computer information, select for the communication sessions those countries where similar acts do not entail criminal responsibility" [7, p.40].

In the 80s of the last century, most states have realized that the legal protection of computer information by the general provisions of national criminal law will not have proper influence, respectively, concerted international action is required in the field of cooperation in the fight against computer crime.

Thus, the UN General Assembly in September 1991, noted that "... the growth of crime in combination with the process of acquisition by it of transnational nature endangers the internal security of states, infringes on a person's freedom to live without fear, and could undermine the international relations. All of this requires effective international mechanisms, and closer cooperation between states" [5, s.555].

For the a complete development of international standards and methods of combating cybercrime, a unified approach to terminology, understanding the problem, development of a common purpose and universal principles is required.

As we noted above, nowadays problems of struggle against crimes in the field of information are complicated by the lack of a unified approach to the definition of what actions fall under the term of "computer crime" and what should be the legal definition of each.

Such unification is needed to overcome the different approaches to the concept and formulations of computer crimes, complicating the process of detection, investigation and prevention of researched crimes in the states of commission of the crime and of the states where consequences are ensued.

Therefore, only by means of international legal

mechanisms, it is possible to achieve the unification of national criminal laws of different states in this field, including the development of common concepts relating to cybercrime.

Especially since almost all the crimes committed in the field of information using the global information and communication networks, which once again confirms the importance of the development of international cooperation among states in combating crimes of this type.

In 1983-85 on the basis of Organization for Economic Cooperation and Development (OECD) a special committee was set up, whose task was to discuss issues relating to the harmonization of the criminal laws of different states in the sphere of responsibility for crimes in the field of computer technology. A result of work of this committee, the OECD has made a number of recommendations concerning the definition of the following acts as illegal:

"1) introduction, modification, deletion and/or suppression of computer data and / or computer programs, committed intentionally with the intention to carry out an illegal transfer of funds or other assets;

2) the introduction, modification, deletion and/or suppression of computer data and / or computer programs, committed intentionally with the intention of making a forgery;

3) introduction, modification, deletion and /or suppression of computer data and / or computer programs, or other manipulations with other computer systems, committed intentionally with the intention of preventing the operation of a computer and / or telecommunications systems;

4) violation of the exclusive rights of the owner of the copyrighted computer program with the intention to use the program for commercial purposes and realize it on the market;

5) access to the computer and /or telecommunications systems and interception of information provided by the computer and / or telecommunications system, which has been obtained as a result of deliberate action without the authorization of the person responsible for the operation of the system, by violating the protective measures, or other dishonest or malicious act".

However, it should be recognized that these recommendations were only optional and are not mandatory for execution.

In this regard, the international community realized the need for another document that would fix a common approach to some of the problematic definitions in the field of cybercrime, and obliged the state to recognize the need to combat such phenomena. And this document was the Recommendation №R89(9) of the Committee of Ministers of the countries - members of the Council of Europe on crimes related to the computer, adopted September 13, 1989 [9, p.3-5]. In the document definition of the phenomenon as "an offense involving the use of computer technology" has been fixed and contained a list of acts recommended for mandatory inclusion in the national criminal law.

Recommendation № R89(9) of the Committee of Ministers of the countries - members of the Council of Europe on crimes related to the computer included a list of crimes, recommended for mandatory inclusion in the national criminal legislation of the European states, and included the following types of offenses: "Computer fraud;

Computer forgery; Damage to computer data or computer programs; Computer sabotage; Unauthorized access; Unauthorized interception; Unauthorized reproduction of copyrighted computer software; Unauthorized reproduction of chip" [10].

In addition, the same document contains a list of offenses committed by means of computer technology, but by the degree of criminalization of which the parties have not reached unanimity on the importance of their inclusion into states' criminal law.

Thus, the following was recognized as disputed composition of crimes:

"A) Changing the computer data or computer programs.

b) Computer espionage.

c) Unauthorized use of a computer.

d) Unauthorized use of a computer program protected by the law" [10].

Illegal use of a computer program protected by the law, which is reproduced without the presence of corresponding right, in order to obtain material gain for himself or for another person and / or cause any damage to the holder of the right.

Considered Recommendation №R89(9) provided for the need to bring the wording of the provisions of the criminal law to the content of the exact description of the criminal offense. This principle of clarity is quite important, however, not all countries follow it.

At the same time, the Recommendation does not contain a clear statement of the definition of "an offense involving the use of computer technology" it follows from the enumeration of the acts referred to in Recommendation № R 89 (9), and giving an idea of these illegal acts.

In this regard, this document can be fully known as a reference point for many European countries in the improvement of national criminal law and their rapprochement to resolve existing differences. But, nevertheless, it should be noted that the analyzed document is only advisory in nature, is not capable of, in spite of all the positive aspects, fully impact on the fundamental issues of cooperation. Also, the lack of acts of criminal procedure is a disadvantage.

The next important step in the development of international cooperation in combating the cybercrime has become the development in the early 90s of the last century of a codifier of computer crime, carried out by the working group of the International Criminal Police Organization (Interpol).

Designed codificator formed the basis of an automated information retrieval system, and is used for sending queries and reports on cybercrime through a network of the ICPO Interpol.

In accordance with the codifier, the following classification of computer crimes was proposed [3, p.127-129]:

"1.QA - *Unauthorized access and interception*: computer grappling (hacking), unauthorized access to computer information or network, interception of information and others.

2.QD - *Change of computer data*: a logic bomb, Trojan horse, "worm" computer virus and others.

3.QF - *Computer fraud*: fraud with ATMs, with slot machines, with means of payment, telephone fraud and others.

4.QR - *Illegal copying*: copying of computer games, software, topographies of semiconductor devices and others.

5.QS - *Computer sabotage*: malfunction of electronic data processing machine, destruction, blocking information and others.

6.QZ - *Other computer-related crime*: theft of the information which constitutes a trade secret (computer espionage), use of computer bulletin boards for criminal activities and others" [3, p. 127-129].

In accordance with the above list, we concluded that the crimes in the sphere of computer technologies include a fairly wide range of offenses, which, however, are perceived only in the national laws (partially in some states).

An important event in the area of international cooperation against cybercrime was held in August and September of 1990 the UN VIII Congress in Havana on the Prevention of Crime and the Treatment of Offenders, on the theme: "International cooperation in the field of crime prevention and criminal justice in the XXI century".

It was at the time of this Congress, namely, a forum adopted a resolution calling on the international community represented by the states "... to intensify its efforts in combating the computer crime" [11].

An important step, as experts note, "... was the publication of the UN Manual for the prevention of crimes involving the use of computers and combating thereof" [8].

In the field of international cooperation in combating crimes in the field of computer technology, Recommendation №R(95)13 concerning problems of criminal procedural law plays a significant role, in the part of information technology, and comprising a norm which states: "... Investigating authorities should have the power to compel persons who have at their disposal computer data, to provide all necessary information for access to computers and the data stored therein. Criminal procedure authorities shall have the authority to issue a warrant to persons who have knowledge of how computer systems are operate and how the security of the data stored therein is ensured. For operators of public and private networks, providing telecommunications services, the obligation should be imposed which ensures all the technical means for the interception of telecommunications by the investigating authorities".

However, the optional nature of the requirements of the specified documents does not contribute to the resolution of conflicts arising in practice, which confirms the feasibility of the development and adoption of full-fledged international legal instruments.

In the fight against crimes in the field of computer technology and computer information special principles of international law should also act, enshrined in the list of principles which is stipulated in Annex 1 to the UN General Assembly resolution A/YAES/46/152 "Creation of an effective United Nations' crime Prevention and Criminal Justice" dated 19 December 1991.

The next significant step in expanding cooperation in combating computer crime, was holding in April 2000 in Vienna of X United Nations Congress on the theme: "Crime and justice: Meeting the Challenges of the XXI Century", which along with other issues discussed also the problems of combating crime in the sphere of computer information.

The outcome document of X International Congress of the United Nations called on all nations of the world to "work towards enhancing of our abilities to prevent, investigate and prosecute crimes involving the use of high tech and computers".

However, we should mention that this provision is not binding and is advisory in nature. Moreover, it appears to be too broad, which creates the basis for the emergence of a broad interpretation and legal gaps.

Within the framework of "Group of Eight" (G8) was held a lot of meetings on the issue of counteraction to crimes in the sphere of computer technologies. The result of one of these meetings in July 2000 in Okinawa (Japan) was identification of the need to "develop a joint approach in the fight against crimes in the field of high technology, such as cyber-crime, which can seriously threaten the security and confidence in the global information society" [12].

This general approach is reflected in the adopted on the above-mentioned meeting of the "Okinawa Charter on Global Information Society" which points out the following: "The efforts of the international community to develop a global information society must be accompanied by concerted action to create safe cyberspace and free from crime..." [13].

The next important meeting in the field of combating computer-related crime was the conference of the "Group of Eight", which was held in October 2000 in Berlin [4].

At the mentioned conference another round of talks was being held on the subject, the relevance of which increases with each passing year - the prevention of and the fight against cybercrime which every year becomes more and more urgent. The conference was attended by both senior officials and managers of high-tech companies and experts of special services in the field of IT-technologies.

An important step towards the development of measures to combat computer-related crime was the adoption in December 2000 in Palermo (Italy) of the UN Convention "Against Transnational Organized Crime", Art. 20 of which states the following: "Special investigative techniques" which points out that "each party state shall, within its capabilities, under the conditions prescribed by the domestic law shall take the necessary measures in order to allow for the appropriate use of controlled delivery, and in those cases where it deems appropriate, use of other special investigative techniques, such as electronic surveillance and other forms of surveillance and undercover operations on its territory for the purpose of effectively combating organized crime" [2].

The trend for increased international cooperation in the fight against crimes in the sphere of computer technologies is noted in activities of other international organizations such as the Council of Europe, which is reflected in the adoption of recommendations, in which an attempt was made to identify and isolate specific types of crimes related to the use of IT-technologies.

In conclusion, it should be noted that the international cooperation of the states in combating crimes in the field of information acts as a structural element of the system created to counter all transnational cross-border and international crimes carried out primarily in accordance with the basic principles of international law.

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