

## APPLICATION OF THE METHOD OF SWOT-ANALYSIS AS A MEANS OF STRATEGIC PLANNING DURING THE INVESTIGATION OF CRIMINAL CASES IN THE FIELD OF ECONOMICS IN BORDERS

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**Abstract.** A cooperation between states in criminal cases is carried out in order to achieve the goals of justice and may exist at the stage of pre-trial investigation, trial, as well as after the entry into force of a court decision (sentence, ruling). Forms of international cooperation in the investigation of criminal cases are quite diverse. The main ones are: providing legal assistance, which consists in carrying out procedural actions, because during the investigation and trial of criminal cases there is often a need to gather evidence abroad by questioning defendants, victims, witnesses, experts, conducting searches, examinations, court inspections, seizure and transfer of items, delivery, and forwarding of documents, etc.; extradition of persons for criminal prosecution or for the execution of a court sentence; arrest, search and confiscation of proceeds of crime (states undertake to cooperate in the investigation of money laundering; assist in the investigation and take appropriate measures: to freeze bank accounts, seize property to prevent its concealment; confiscate proceeds of crime or property, value of which corresponds to the value of income, etc.). The normative basis for the international cooperation in the investigation of criminal cases is the European Convention on Mutual Assistance in Criminal Matters dated April 20, 1959; the Criminal procedural code of Ukraine; Methodical recommendations of the General Prosecutor's Office of Ukraine; Order No. 223 "On the organization of the work of the Prosecutor's Office of Ukraine in the field of international legal cooperation" dated September 18, 2015. The legal basis for international cooperation in criminal matters is the current bilateral and multilateral international treaties of Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Among the multilateral international agreements, there should be noted the European conventions on criminal justice: the European Convention on the Extradition with two additional protocols to it, the European Convention on Mutual Assistance in Criminal Matters with an additional protocol to it, the European Convention on the Transfer of Proceedings in Criminal Matters, The Convention on the Transfer of Sentenced Persons with an additional protocol, The European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, the Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and the European Convention on the International Validity of Criminal Judgements. In addition, the Commonwealth of Independent States has the 1993 Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters and its 1997 Protocol; within the framework of the United Nations, there is the Convention on Transnational Crime of 2000, together with two Protocols thereto.

These multilateral international agreements establish a uniform sphere of cooperation between law enforcement and judicial authorities in relation to all European countries.

Today, the most effective is the method of "SWOT-analysis", which is currently recognized in the scientific community as one of the most popular tools in strategic planning of social processes, including in the investigation of criminal cases. Although the type of analysis is still considered by most scientists as Bohomolova Ye., (2004) a method of marketing research of enterprises in the market in the context of business practice, the object of "SWOT-analysis" can

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be as legislation, the practice of its application and prospects of their improvement, and materials of criminal cases.

*Methodology.* Achieving the purpose of this publication is ensured by the use of cognitive philosophical, general scientific and special methods, among which the main are analysis and synthesis, comparative law method, which allow to identify prospects for the use in criminal cases of the method of "SWOT-analysis", which is currently recognized in the scientific community as one of the most popular tools in strategic planning of social processes. Methods of grammatical review and interpretation of legal norms have helped to identify gaps in the legislation governing the investigation of criminal cases, in particular in the field of economics, and to develop proposals for its improvement.

*Practical importance.* International cooperation in criminal proceedings is an organizationally complex process, which requires the use of effective and efficient methods to perform the tasks of criminal proceedings, respect for the rights and freedoms of all participants in the process, including not violating a reasonable time in the investigation. To date, science has developed many methods of analyzing the law, the practice of their application, and identifying ways to improve legislation, taking into account the results of forecasting the prospects for society and the state. To ensure a high level of quality of criminal investigations in the framework of international cooperation, it is necessary to choose the one that will give the most effective results and allow to formulate the most optimal proposals in a particular criminal case and the practice of their application. An attempt to solve this problem is presented in this study.

**Key words:** criminal investigation; international cooperation during the investigation, application of the SWOT-analysis method; means of strategic planning during the investigation; legal regulation of international cooperation.

**JEL Classification:** K14, K33

## 1. Introduction

For bilateral international agreements, these include agreements on legal assistance in criminal matters (which include the full range of issues related to the cooperation of competent authorities in criminal matters). Such agreements have mostly been concluded since time immemorial Soviet Union, some of them remain in force today. At the same time, the practice of concluding international agreements today is based on their conclusion on certain types of legal assistance: on legal assistance in criminal cases, on the extradition of offenders, on the transfer of convicted persons. Today, the general base of current international treaties of Ukraine is 18 multilateral and 37 bilateral treaties in the field of criminal justice.

It should be noted that the legislation of Ukraine defines two central bodies for the implementation of the above European conventions in the field of criminal justice: the General Prosecutor's Office of Ukraine – at the stage of pre-trial investigation and the Ministry of Justice of Ukraine – at the stage of criminal proceedings. In addition, the Ministry of Justice of Ukraine acts as the central body for the implementation of the European Convention on the International Validity of Criminal Sentences, the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, and the Convention on the Transfer of Sentenced Persons and its Protocol.

The term SWOT was proposed in 1963 by professor Kenneth Andrews. In this concept, he included knowledge about the existing situation and trends in its development (SWOT-analiz, 2020).

The essence of the method "SWOT-analysis" in criminal cases in the framework of international cooperation can

be defined as strategic planning (strategy design) of the investigation, which consists in identifying factors of the internal and external environment of criminal cases and dividing these factors into four categories: strengths; weaknesses; opportunities; threats.

The application of the "SWOT-analysis" method will be expedient and logical in the investigation of criminal cases within the framework of international cooperation, which contains a lot of information. This list includes categories of cases relating to crimes against the foundations of national security (Articles 109-114 of the Criminal Code of Ukraine), crimes in the sphere of economic activity (Articles 199-233 of the Criminal Code of Ukraine), crimes against public safety (Articles 255-270 of the Criminal Code of Ukraine), crimes in the sphere of official activity (Articles 364-370 of the Criminal Code of Ukraine), crimes against peace, the security of humanity and international law and order (Articles 436-447 of the Criminal Code of Ukraine).

The method of "SWOT-analysis" aims to identify the strengths and weaknesses of internal and external factors in order to get a clear idea of the main directions of the investigation of a criminal case in the framework of international cooperation.

It should be noted that "SWOT-analysis" is the most common method of situational analysis and can be carried out both for the investigation of certain types of crimes and for the development of methods for a specific criminal case. Its results are further used to develop general action plans for the investigation of criminal cases in the framework of international cooperation, and for each criminal case in particular. If "SWOT-analysis" is used to develop general plans of investigative measures, it is a matter of choosing an investigation strategy based on this method. If a specific

criminal case is taken into account, then on the basis of the “SWOT-analysis”, specific measures are developed to achieve the goal of criminal proceedings. At the same time, even the strategic plans of the investigation may contain measures designed for a fairly short period of time. Therefore, when applying the “SWOT-analysis” to its implementation, it is necessary to establish a planning limit, for which opportunities and threats are identified. Strengths and weaknesses, in any case, are identified by performance over the previous period (for example, a year).

## 2. Conditions for the use of “SWOT-analysis” in the investigation of criminal cases

Ismailov K. (2017) offers to take into account “SWOT-analysis” in the investigation of criminal cases. Let us consider each of them in more detail.

1. Before applying the method, it is necessary to gather as much information as possible about the criminal case. Information can be collected open and cover methods from various sources in the territory of the states where the criminal case is being investigated within the framework of international cooperation. Sources of data collection may be persons who have direct access to information that may be relevant to the resolution of a criminal case; penetration of fictitious persons into criminal groups in order to obtain data on their illegal activities; data from previous investigation materials; application of legal instruments to persons who do not wish to cooperate with the investigation; use of evidence that has already been collected and stored in the criminal case file; secret surveillance of a person’s activities with the use of technical means; information from the media, etc.

2. The number of participants in the “SWOT-analysis” must be at least four. This stage is carried out on the basis of the same rules that are used in solving other problems using expert methods. Participants in the internal analysis of a criminal case, in addition to intuitive, can use a variety of methods to analyze the strengths and weaknesses of the case, identify opportunities and potential threats. The group of participants can involve not only investigators but also operatives, experts (specialists), and even analysts.

3. It is necessary to prepare visual material (board, stickers, visualization tools, etc.). This material will be useful to properly assess the data collected, including the reliability of the source of information, the reliability and veracity of its content; to organize information to ensure prompt and accurate access to it; describe the data and analyze the relationships between the subjects of the criminal case; draw up a visual sequence of actions to illustrate the chronological relationship between interrelated events (possibly in different countries).

4. All subjects involved in the SWOT-analysis should be well acquainted with the materials of the criminal

case and take an active part in the application of the method. After separation of all components of the method, it is necessary to make a logical justification of all its provisions. It is a mental process for extracting specific data from existing facts. In this case, the analysis should not be limited to the available facts. It is allowed to build several hypotheses for solving a criminal case in order to further test each of them and find the truth. The logical conclusion of the “SWOT-analysis” will be the formation of conclusions and forecasts in order to achieve the goal in a criminal case.

Thus, the conditions of application of “SWOT-analysis” already existing in the scientific literature have been listed and analyzed above. We propose to expand this list, namely, supplement it with the following provisions:

1. It is advisable to conduct a study of the internal side of the criminal case in terms of strengths and weaknesses. The concept of the internal side of a criminal case has several components. Each of them includes a set of indicators, the volume of which together determines the potential and the capabilities of the investigator in this criminal case. The main source of information necessary for the analysis of the internal side of the criminal case is the existing evidence base. If there are too many materials and the highlighted strengths and weaknesses of the internal side of the criminal case are chaotic, it is advisable to move on to the next stage.

2. In order to reduce the number of strengths and weaknesses that will be used in the future in the “SWOT-analysis”, it is advisable to filter them. In order to determine which of them will be dominant, it is necessary to establish the limit of minimum assessments of strengths and weaknesses at the subjective level. Establishing such a limit depends on the possibility of using the strengths in developing a plan for the investigation of a criminal case and reducing the negative manifestations of weaknesses.

3. It is necessary to identify and analyze environmental factors that may be sources of potential opportunities and threats. Opportunities and threats are identified, both those that already exist and potential ones that may arise within the procedural time limits in the criminal case, on which the “SWOT-analysis” is conducted. At this stage, if possible, it is necessary to make the most complete list of factors that will be filtered in the next stages of “SWOT-analysis”.

4. Then, the preliminary result of the “SWOT-analysis” is formed, where strategies of further investigation of the criminal case are formulated on the basis of four components. These strategies should be formulated by all participants in the analysis through collective discussion.

5. Then, there is an in-depth study of the proposed investigation strategies and the selection of the most effective from their list. As strategies can be quite general and their choice is not supported by sufficient evidence, it is necessary to provide as many facts and justifications in favor of one or another option as possible.

### 3. Basic rules of “SWOT-analysis” in the investigation of criminal cases in the framework of international cooperation

There are basic rules of “SWOT-analysis” in the investigation of criminal cases in the framework of international cooperation according to Ismailov K. (2017): any criticism of the ideas expressed is prohibited; free flight of thought and “surprise” of ideas are encouraged; it is necessary to put forward as many ideas as possible; all ideas must be recorded; identification of a rational basis in each analyzed idea.

Each of these rules is based on the above-proposed conditions for the application of “SWOT-analysis” and is quite justified. We consider it expedient and necessary to add to this list such a rule as the obligatory discussion of the participants of the “SWOT-analysis” of a criminal case within the framework of international cooperation of theses, provisions, and opinions. After all, it is during discussions that information may emerge that will be useful for making procedural decisions that may be important and decisive for a criminal case. The success of the participant of the “SWOT-analysis” in proving his or her version, a clear demonstration of the degree of probability of the conclusion, which is supported by facts and evidence, will depend on the way of presenting his or her idea, conclusion. In addition, a discussion of a specific issue that arises when using the method of “SWOT-analysis” has a number of advantages. First, it is saving time, as the person presenting their thoughts and ideas is able to share other information with other members of the group in a short period of time. Secondly, direct contact between group members provides an opportunity to ask each other questions about data sources, assess their reliability, the relationship with other similar information. Third, the discussion makes it possible to quickly change the information under discussion, which cannot be achieved through a written report (Korystin, Albul, Kholostenko, Zaiets, Ismailov, Teteriatnyk, Horbanov, 2016).

Based on the above material, we have the opportunity to describe the algorithm for applying the method of “SWOT-analysis” in criminal cases in the framework of international cooperation.

First of all, it is necessary to choose a place, namely, an office that will meet all the requirements (technical, methodological, the requirements of the regime object, if necessary) and carry out the measures we have described in the rules and conditions of “SWOT-analysis”.

The next stage is the division of the board into four parts, each of which will correspond to one of the categories of “SWOT-analysis”: strengths, weaknesses, opportunities, threats. Then, in each part of the board all the information without resorting to its evaluation should be entered.

The strengths of a criminal case are determined by describing the basic objectives of the criminal case or its episode and finding out the reasons. In order to describe the strengths of a criminal investigation in the framework of international cooperation, it is necessary to answer the following questions according to Ismailov K. (2017): What powerful technologies and tools do we have in the tactics and methods of investigation? What are the benefits of our investigators? What is special about our investigative unit? What brings the best results in an investigation? What enables us to maintain positive dynamics in the investigation of a criminal case? The answers to the following questions identify the weaknesses of the investigation: What is the obstacle to a more expeditious investigation? What prevents the implementation of innovative techniques, tactics, tools, technologies? What are the disadvantages of our work? Which techniques, tactics, tools, and technologies should be improved? What are the gaps in the legislation on this issue? What mistakes do we make?

The next step is to group the results obtained during the answers to the questions and give each group a name. As mentioned above, each result obtained should be discussed and certain conclusions are drawn.

To identify threats to a criminal investigation in the framework of international cooperation, it is advisable to answer the following questions, according to Ismailov K. (2017): What are the risks arising from existing weaknesses? What could be an obstacle to the investigation? What is the position of the defense? What circumstances may adversely affect the investigation? What strategies need to be prepared to remove barriers?

The last, fourth part of the board should be filled with an element as opportunities. To identify them, maximum attention should be paid to the strengths and, as a result of their analysis, the following questions should be answered, according to Ismailov K. (2017): How can the strengths help the investigation? What if what is happening during the pre-trial investigation of a criminal case in the framework of international cooperation will allow us to achieve the main goal, which is to resolve the case on the merits? What other opportunities can be used to achieve the main goal? How can risks be transformed into opportunities?

After completing all four squares of the board, the team of professionals working on it should re-analyze and discuss the information and think about what else can be transferred from risk to opportunity; to discuss the seriousness of the risks posed by the investigation and whether it is possible to do something to minimize their negative impact on the outcome of the investigation and criminal proceedings, as well as to prepare for any negative factors that may arise in the course of their proceedings.

After performing the whole algorithm of actions of the “SWOT-analysis” method, a report must be prepared on the basis of the obtained results.

#### 4. Conclusions

Thus, having analyzed the possibilities and procedures for applying the method of “SWOT-analysis” in the investigation of a criminal case in the framework of international cooperation, we can conclude that this method has both advantages and disadvantages.

Among the positive aspects of this method, it is that due to its help the investigator can identify the internal strengths of the criminal case or as a result of discussion and advice from other experts to focus on the benefits of their own strategy and focus on this area of investigation. An important point is that the investigation using the method of “SWOT-analysis” can involve an unlimited number of specialists from different fields (mainly to have at least four), which will have an extremely important impact on the quality of criminal investigations in international cooperation. Another extremely positive aspect of the method is that it is based on data analysis, which allows participants working with it in a particular criminal case to explore the archives of similar criminal cases of previous years, to consult on this or that issue with investigators proceeding such cases, it also provides an opportunity to consult with scientific institutions that deal with the necessary issues for the investigation. All these actions will contribute to the achievement of the desired goal of criminal proceedings and will positively affect the course of the criminal investigation. Also with the help of the “SWOT-analysis” method, investigators have the opportunity to clearly see the weaknesses of the criminal case, can discuss them with specialists involved in this area, which will correct such weaknesses and try to transform them into strengths as one from the components of the method of “SWOT-analysis”. This method makes it possible to identify the most favorable tactics and methods of a criminal investigation, that is, to find the maximum

opportunities for the investigator in his or her work. Another very important advantage of the “SWOT-analysis” method is the ability of investigative bodies to know all the threats that may arise when working on a criminal case in the framework of international cooperation and be strategically ready to neutralize any threat.

However, among the significant advantages of the method of “SWOT-analysis”, there are certain disadvantages that can not be ignored. “SWOT-analysis” is only a method by which you can get systematic information, its results will not contain clear tactics of investigation or answers to questions about achieving the ultimate goal of criminal proceedings. Conclusions based on this method, their completeness, and correctness, will depend on the professional qualifications of the participants who will be part of the group working on the development of this method. Similarly, working with these findings will depend on the skills and abilities to work with information by investigators who are involved in the investigation of a particular criminal case. After all, an incorrect perception of information can lead to wrong procedural decisions.

Despite these shortcomings, the importance of the method of “SWOT-analysis” for modern science and practice in the investigation of criminal cases should not be underestimated. It would be expedient to introduce at the interstate level, namely between countries, with which bilateral and multilateral agreements on international cooperation in criminal investigations have been concluded, a program for the application of the “SWOT-analysis” method in criminal investigations. Such a program will provide an opportunity to move to a new level of a criminal investigation, which will allow the exchange of experience of investigators from different countries, which will bring only positive dynamics in the percentage of successful criminal investigations in international cooperation.

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