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Signs of organized crime according to the Criminal code of the Republic of Kazakhstan and foreign countries

In article criminal activity of organized groups, in particular economic relations of mercenary and mercenary-violent character which define a subject of criminal interest and accordingly encroachment are considered.

Key words: organized criminal group, organized prostitution, attack, planning criminal activities.

An organized group is a stable organization with a hierarchical structure and its own rules of conduct, formed in order to obtain material benefits of crime.

Features of an organized criminal group:

1. Stability. This feature characterizes the degree of development of the same organized criminal group in the process of crime and improve their action against her revelations [1; 130].

2. Hierarchically organized structure. This means that a certain orderliness organizing a criminal group in terms of the relationship between the parties, as well as the relationship of leadership and subordination. In the course of the criminal activities of the group for the individual participants are fixed constant functions related to the direct fulfillment of crimes (performing unit); the governance of the group (organizational and managerial); ensuring the existence and functioning of the group (providing organizational unit). Analysis of the functional role of the members of an organized group allows you to identify the place and role of each participant in the implementation of criminal activity and specific crimes. When this becomes essential characteristic of action for the implementation of a function, i.e. decision on exactly what has been done and how.

However, in an organized criminal group, the place and role of each participant can be understand only in relation to its actions with other members. Therefore, the establishment of such links is required in the investigation of organized crime. In addition, the destruction of an organized criminal group — is, first of all, the destruction of relationships within the group. It can be identified due to the formation and development of the group communication and interaction management.

The important role in the investigation of organized criminal activity has linkages management, which are fundamental and are divided into vertical and horizontal. Pyramidal character of the structure of an organized criminal group for expression vertical linkages — in the form of subordination relations, when performers (lower unit) are subject to the organizer group (high unit), and horizontal — in the form of coordination between members of the same level. Moreover, the conditions for the existence of large groups (organizations, communities) dictate the need to comply with strict secrecy, so the members of such an organization can know only a limited number of participants in the group. However, the whole group act as a single mechanism, and all the participants are connected with each other, interact to solve any specific criminal purposes. For example, if the group begins to increase its sphere of influence and affect the interests of other organized group, in this confrontation involve all members of the group. Therefore, the establishment and analysis of the relationships of interaction within the group reveals all the participants of the criminal community.

3. The presence of informal norms of behavior and responsibility. They contain more or less elaborate system of sanctions and rewards. More often than not — it is a mixture of the laws of the criminal world «criminals» with the rules of criminal activity and the shadow economy.

4. Existence of financial insurance fund («common fund»).

5. Relation with other organized groups. It can be on the following basis: neutral relationship; relationship of subordination-domination; a state of war. Most organized crime groups tend to expand their activities. At the same time, stronger and larger groups tend to subdue the weak. Relationship of subordination-domination are of two types. In the first case, an organized group of transferring part of their received by criminal means of income (from 10 to 50 %) the leadership of the other group, while continuing to independently carry out their criminal activities (criminal association) [2; 13]. In the second case, the group is

included in the structure of the other group as a slave, a relatively independent education and begins to carry out criminal activities on the instructions of the organizers of this association (criminal organization). However, self-organized groups are not always ready to unite with others.

Classification of organized criminal groups can be made on various grounds. Thus, the formation distinguishes from ordinary orientation, operating in the field of economic relations, mixed. In turn, the first is divided into the formation of the traditional type, operating without a hard power pressure (for example, dealing with drug trafficking), and the formation of a gangster type that focuses on military methods (banditry and so forth.).

Formation of economic orientation are divided into groups of closed and open-ended. The first did not go beyond that criminal activity; they are in one or two of economic or financial structures. The second uses every opportunity to expand their criminal influence.

With regard to the relationship with corrupt individuals are divided into groups having such communication and do not have.

Depending on the area covered by distinguished local (operating in the same region), inter-regional and international organized crime groups.

Modus operandi by organized groups are very diverse. The structure of their criminal activity contains several elements: the base — the main direction of its criminal objectives; auxiliary — the crimes that are associated with the preparation for the basic activities (e.g. software group for smuggling weapons); side — a crime that complements the core activities (e.g., carrying and possession of a weapon during robbery); atypical — crimes that are not provided the basic intent group and its members are committed under the influence of any particular circumstances (hooliganism, rape, and so on) [3; 170]. Naturally, for criminological characteristics of organized criminal activity are important basic offense. In this regard, it is necessary to consider the main activities of organized criminal groups. These include:

1. Drug industry (selling drugs, illegal manufacture of drugs; drugs smuggling).
2. Illicit trafficking in weapons
3. The theft and smuggling of vehicles.
4. Organized criminal attack on goods.
5. Organized forms of illegal migration.
6. Organized prostitution.
7. Organised criminal attacks on cultural objects or works of art.
8. Computer crime (illegal receipt of funds with the use of computers; unauthorized access to electronic information, which can serve as a source for crime, theft of computer software, the distribution of software viruses).
9. Illegal wildlife trade (according to the article about poaching — harvesting bear bile, reindeer antlers, skins of wild animals, snake venom, and so on).
10. The criminal attacks on strategic commodities (control exports of raw materials and energy resources, the most favorable import goods; smuggling of energy, metals, ores, rare metals, forests, as well as the theft of non-ferrous metals).
11. The criminal attacks in the fuel and energy complex (the pressure to choose from exporters strategically important raw materials, the formation of sales prices, sales volumes, distribution of currency and ruble funds derived from exports).
12. The smuggling of hazardous waste.
13. The criminal assault on the consumer market.
14. The penetration of criminal structures in the financial system (theft, bribery, currency transactions, theft of precious metals and stones from the field of mining, processing and trading with them, smuggling, production and sale of counterfeit money, state securities and foreign currency).

Considering the mechanism of organized crime, it must be assumed that this activity goes through several stages:

- Collection, analysis and evaluation of information on the relevant area of social or economic life of society with a view to possible application of criminal intentions;
- Development of technology crime;
- Preparation for the implementation of criminal activities and measures for its protection;
- The implementation of criminal activity;
- The adoption of measures to conceal the criminal activity and its traces.

At the heart of the criminal activities of organized groups laying the economic relations that are greedy-selfish and violent nature that determine the subject of interest and criminal assault, respectively. A typical subject of a criminal assault are money, securities, jewelry, valuable industrial products and raw materials, antiques, advanced technology and production equipment scarce, expensive items of mass consumption, and so forth.

Thus, valuable properties are the main subject of the criminal interest of modern criminal activity. For these properties, criminal groups go to extreme measures, committing murder, terrorist acts and other grave offenses. At the same time, they are arrogantly, insolently. For example, during a raid of six members of an organized criminal group in the office of the company «Makkonen» criminals opened to avoid the use of firearms. As a result of firing from both sides were killed one person and wounded four.

In the sphere of interests of organized criminal groups are gradually coming and intellectual values. Abduction of intellectual activity, computer software, computer information is increasingly becoming a source of income.

In addition, recently the subject of criminal interests of organized groups are positions of high authority in the government, management, law enforcement system. These interests are realized either in the form of the establishment of appropriate links of corruption (such bonds have more than a third of organized criminal groups) or by «push» for these positions his henchmen.

Since the beginning of the democratization process of socio-economic relations in the country and the weakening of trade barriers among the subjects of a criminal interest in organized groups began to meet those who have not had a broad criminal trafficking. For example, increasingly began to appear land, buildings and structures; means of production; jewelry with artistic and historical value; documents which are equivalent to the value of money, criminal services.

Taking into account provisions of the Criminal Law Plenum of the Supreme Court adopted a resolution «On the practice of courts of law on liability for OCG» (1997). «On some issues of application of legislation on liability for OCG and other crimes committed in complicity» (2001) that should be followed by law enforcement in their activities.

In the Special Part of the Criminal Code of Republic of Kazakhstan in the chapter «Criminal offenses against public safety and public order», in Article 263 describes the concept of crimes that are considered as «organized crime groups».

Art. 263 states: «Create a guide criminal association, as well as the creation of union leaders or other members of organized groups (criminal organization) or coordination of existing criminal acts independently organized groups (criminal organizations) in order to commit one or more offenses — are punishable by imprisonment for a term of twelve to fifteen years with confiscation of property» [4].

Public danger of an organized criminal group (community) is that actions infringe on the basic provisions of the civil security on the system of public administration, as well as to life and property.

The attack — one of the essential characteristics of an organized criminal group (community) directly specified in the law.

In criminal law, the attack is an aggressive wrongful act committed by any criminal purpose and create a real and present danger of immediate use of violence as a means of achieving this goal. Attack in OCG can be expressed in a variety of forms and perform a variety of purposes, and is usually accompanied by either violence or threat of violence, most often — physical violence. The attack is characterized by a length of time.

In the OCG's attack can be used not only physical but also psychological violence in the form of threats of violence to the victim immediate physical violence. In this case, there is still an attack of mental abuse victims, even if the victim did not have the physical violence on them.

The object of an organized criminal group (community) in the criminal law is usually called a basis of public safety. Despite some differences in terminology that is used at most authors defines the object of an organized criminal group (community) as a set of social relations that provide safe existence and freedom of legitimate activities of government, public enterprises, institutions, organizations and individuals. However, this is the whole concept of social security.

The legislator has designed this criminal law that in p. 1, 2, 3 of the Art. 263 Criminal Code has provided independent penal offense.

The objective side p. 1 of the Art.263 Criminal Code characterized by the following steps:

a) the establishment of an organized criminal group;

b) management of an organized criminal group. Actus reus is in p.2 of the Art. 263 of the Criminal Code, is to create a criminal community (criminal organization); guide criminal community (organization) or

its structural subdivisions; the creation of an association of organizers, leaders or other representatives of organized criminal groups.

The objective side of p. 3 of the Art. 263 of the Criminal Code provides for participation in a criminal association (criminal organization) or in an association of organizers, leaders and other representatives of organized criminal groups.

Creation as an organized criminal group, as well as a criminal association and these criminal organizations involves activity directed at their organization (recruiting people, the acquisition of weapons, the development of criminal purposes, etc.).

Manual of criminal groups specified in the Criminal Code st.263 suggest activities such as developing plans for criminal activity, allocation of responsibilities, funds the organization of security.

The creation of an association of organizers, leaders or other representatives of criminal groups suggests their union, the distribution of spheres of influence, the development of plans of joint activities. This represents an increased danger to the public, as it creates a criminal group with the highest degree of organization.

Participation in a criminal association (criminal organization), an association of organizers, leaders or other representatives of organized criminal groups is to produce and specific crimes related to serious or very serious crimes, participation in gatherings, assignments, assignments leaders of a criminal organization.

The notion of an organized criminal group, the criminal community (criminal organization) is given by the legislator in p.3 of the Art.31 Criminal Code.

Composition of the crime is formal. The crime is considered as a finished from the inception of an organized criminal group, criminal association or union organizers, leaders or other representatives of organized criminal groups.

Public Safety as an object of an organized criminal group (community), as a kind of collective term includes various components: life, health, property, the normal operation of enterprises, institutions and organizations, etc. Because of the legal nature of OCG has a complex object, not reducible to any of its constituent elements. In this context of the thesis criticizes the view expressed in the literature that the object of an organized criminal group (community) is a property.

Thus, the main object of an organized criminal group (community) is a public safety as a system of social relations that ensure safe living conditions of institutions, enterprises, organizations and individuals [5; 63].

As the additional objects of specific offenses of this kind can serve individual relationships or group of related relations of the system.

On the objective side, OCG is a complicity in the crime, possessing all its features.

Based on the meaning of the law, a gang is defined as a stable armed groups or organized armed groups of two or more persons who had previously united to commit one or several armed attacks on individuals or organizations.

OCG acts as a stable criminal organization that is different from other kinds of participatory qualitative characteristics. Under the criminal organization should be understood persistent association that organized to commit crimes, having managers and subordinates, where the distribution of responsibilities carefully thought out.

Thus, OCG as a form of group crime, characterized by multiple participants, the direct participation of each of them in enforcement actions which constitute the objective side of the same elements of a crime; implementation of malice joint participation of all persons united in the OCG to perform intelligent functions to the application of direct physical effort [6; 90].

OCG is a variety of crimes committed in complicity it characterized by:

- Planning criminal activities;
- The distribution of roles between the partners in the process of committing a crime;
- Stability of the composition of the group — and the coordination of their actions;
- Constancy of the forms and methods of criminal activity;
- Duration, and the number of crimes committed.

These signs indicate that the stability as a quality to which provides guidance in the legal characterization of an organized group.

Definition of organized crime was given in the US Department of Justice and the FBI in 1975 for use in special programs to combat with it. According to this definition, «organized crime is an activity of any group of persons whose main occupations involve a violation of criminal laws in order to obtain illegal income, as well as the opportunity to engage in racketeering and, where necessary, complex financial manipulations.» It

should be noted that organized crime in many US states define differently, but the bottom line is reduced to one — to the existence of the organization(s) established subculture in it and to engage in criminal business. At the same time, definitions often contain elements that characterize not organized crime as a social phenomenon, but penal signs, causing the concept of organized crime. In particular, the State of California under the organized crime means an act committed by two or more persons for a long time. A similar crime occurs in Italy and Japan. In other countries, it is not expressed in the form of the Mafia. For example, the specialists of Germany, noting the exceptional public danger of organized crime, describe it as a stable organized groups engaged in various kinds of selfish and violent crimes [7].

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Қ.З.Тоқыбаев

Қазақстан Республикасының және шетелдердің Қылмыстық кодекстері бойынша ұйымдасқан қылмыстың белгілері

Мақалада ұйымдасқан топтардың криминалдық қызметі қарастырылған, атап айтқанда, криминалдық мүдде пәнін және соған тиісті қол сұғушылықтың пәнін анықтайтын, пайдакүнемдік және пайдакүнемдік-күштеу сипатындағы экономикалық қатынастар жан-жақты талданған.

К.З.Токубаев

Признаки организованной преступности по Уголовному кодексу Республики Казахстан и зарубежных стран

В статье рассмотрена криминальная деятельность организованных групп, в частности, экономические отношения корыстного и корыстно-насильственного характера, определяющие предмет криминального интереса и соответственно посягательства.

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