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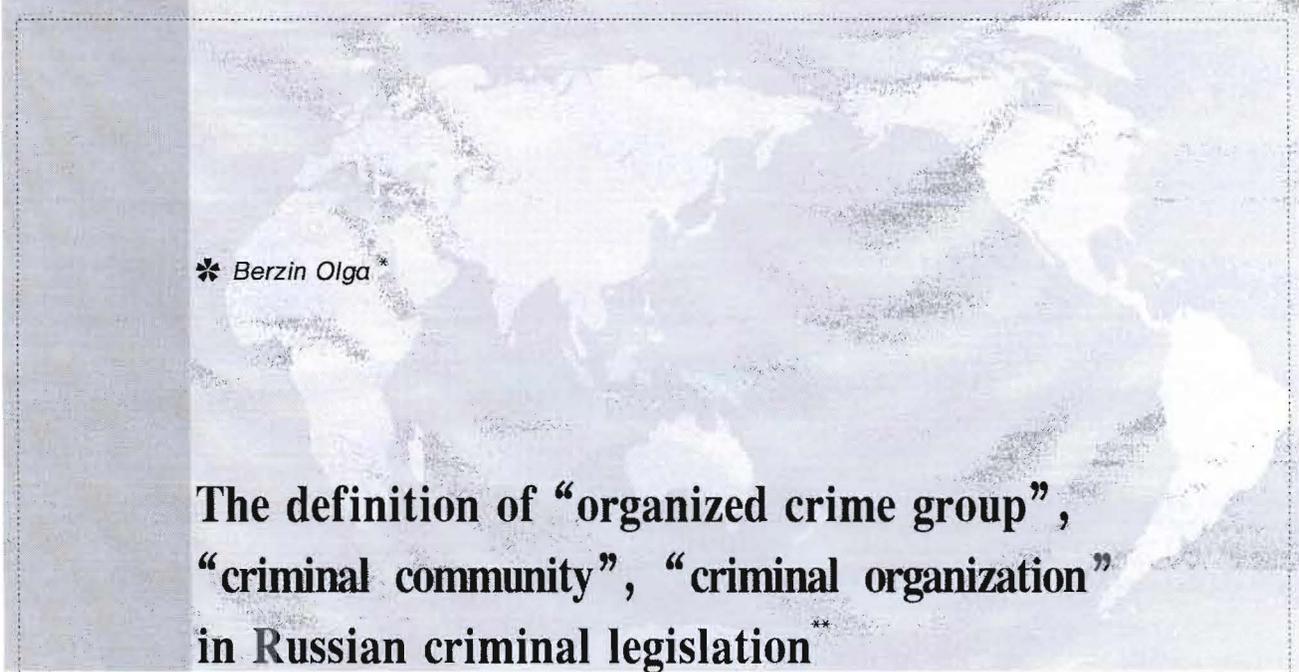


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* Berzin Olga *

The definition of “organized crime group”, “criminal community”, “criminal organization” in Russian criminal legislation**

Abstract: Organized Crime Activity is the definition, which is known all over the world. However, in each state organized crime activity is represented by notions, which are captured in national criminal legislation. Moreover, experts not always know about these definitions and about their differences between each other. Information exchange on this matter can be very useful for the national legislation improvement and its unification with international norms and for scientific research development. The results of conducted research where issues are connected with identification such definitions as “organized crime group”, “criminal community”, “criminal organization” in Criminal Code of Russia are represented in the article from different positions (legislative, scientific and practical). Besides law-enforcement authority, practice of crime investigation committed in organized forms was analyzed. On this basis, existed problems and contradictions are emphasized and analyzed. Also established traditions of

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** The article is one of the results of researching program “Legal aspects of doing Russian-Chinese business - Comparative Analysis” hold by professor Olga Berzin (doctor of law within the scientific club : Russian-Chinese Law Club) and carried out by her and students of the National Research University Higher School of Economics (Nizhny Novgorod).



organized crime research by Russian criminal science (criminal law, criminology, criminalistics) are mentioned in the article. The research of definitions, which are connected with organized crime and used in different legal systems, is the first step to further study of organized crime phenomenon. The development of international unified legislation and methodological recommendations of crime investigation, which are committed in organized forms, will be investigated in future.

Keywords: organized crime group, criminal community, criminal organization, entity of the criminal activity, organized crime, criminal law, criminalistics, criminology.

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I. Introduction

Nowadays combating organized crime is one of the most urgent and important challenges, both for single countries and for the international community. The main core of organized crime, which allows implementing its vast schemes, includes various associations of criminals, which are described by different terms, most of them legislated. At the same time different formulations can be encountered in various legal acts. For example, one of the main international legal instruments to fight organized crime, i.e. the UN Convention against Transnational Organized Crime of 15 November 2000 (hereinafter, Convention), has fixed such concepts as “Organized criminal group” and “Structured group”. The Criminal Code of the Russian Federation (hereinafter, CC RF) includes concepts such as “Organized group”, “Criminal community”, “Criminal organization”, “Extremist community”, and “Gang”. The Criminal Code of the People’s Republic of China (hereinafter, CC PRC) contains terms such as “Criminal group” and

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“Criminal organization”.

Such a wealth of terms related to criminal organizations emphasizes on the one hand the complexity and inconsistency of such type of social formations, and on the other hand presents some problems in their study. In particular, it keeps law enforcement authorities from obtaining full information on organized crime. It also impedes researches in this area, as well as developing unified and competent methodic recommendations for solving crimes committed in organized forms. In this regard, it is worthwhile pooling the experience in the study of criminal groups in different countries, as well as exploring different approaches to the formation of concepts, describing different types of criminal structures.

In particular, the Russian organized crime as a real phenomenon actually became an object of regard in the late 80-ies, when law enforcement agencies started increasingly to deal with hard criminal cases involving crimes committed in organized forms (Nikolaev 1988; Antonian 1989). It is commonly supposed that the Russian government recognized the existence of the organized crime in the country in 1989, when at the II Congress of People’s Deputies of the USSR a resolution “On strengthening fight against organized crime” was adopted. Since then, the fight against organized crime has become one of the government’s priorities.

The legal science quickly responded to the needs of the government, and since the late 1980s, began to form the methodological foundations of the organized crime theory (A.I. Gurov 1995; V.S. Ovchinskii VS 1993; A. I. Dolgova 1996; Konstantinov, 1997; Y. M. Antonian, Pahomov V. D. 1989; A.I. Gurov 1990; V.V. Lunev 2000, 2005 and others.). From this point on, this theory was enriched by researches in various areas of legal science. Thus we can say that the Russian legal science developed its own traditions in the study of organized crime. At the same time, organized crime is studied by such legal sciences, as criminal law, criminology, and criminalistics.

Each of these disciplines implies its own aspects of the organized crime studies.

In particular, the criminal legal science investigates the elements



essential to the organized criminal offences, expressed through the body of the crime formulation in order to establish the crime existence or otherwise.

Criminology performs studies to develop preventive measures, contents, structure, and types of organized crime, causes and conditions contributing to its development.

As for criminalistics, when studying organized crime it explores the “uniqueness of its structural elements related not to normative, but to active, victimologic, personal- psychological and other aspects, the law of their development, the nature of the relationship between these elements in order to isolate significant features that will allow to use the corresponding knowledge in order to solve crimes ”[32: 44].

It should be noted that Russian criminalistics formed an independent special theory of organized criminal activity. Fundamentals of the theory were laid in the mid 90-ies (V.I. Kulikov 1994; V.S. Ovchinskii 1993; V.E. Eminov, V. S. Ovchinskii, N. P. Yablokov 1996; N. P. Yablokov 2002). Hereafter many scientists contributed to the development of this theory: Byikov V.M. 1986, 1991; A.F. Lubin 1997; A.F. Volynskii 2005; O. A. Berzin 2008 and others. This theory was enriched and expanded by study of individual aspects of organized criminal activity, mainly in relation to its individual types.

Thus, the Russian legal science studied many aspects of organized crime, organized crime activities, and structures embodying them. However, despite a significant amount of researches in this field no uniform, perfectly logical, science-based approaches to determine the terms for various forms of criminal associations and characteristics of each of these forms has been yet developed.

It seems that the development of common approaches to the term definition, as well as understanding of various types of collective offenders who commit crimes in organized forms, would not only contribute to the deepening and extension of the organized crime theory, but in the end, would ultimately increase efficiency in combating this dangerous phenomenon.

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II. Methods

The solution of the specified problem requires an integrated use of various research methods, such as historical, logical, and comparative law researches. In addition, the methodology that is the basis of the research included specific techniques, which helped in the collection, analysis, and synthesis of empirical data, i.e. surveys, provided by a special program of research, interviews, expert assessment methods, literature and legislation data study and analysis, summarizing the experience of organized crime fighting.

Analysis of the research problem will be conducted in two stages: first, it is necessary to identify common abstract and necessary items, related to the cognitive activity of different types of criminal organizations based on the study of legislative formulations, and then compare them with empirical data.

Initially, the basic concepts of the CCRF were studied.

In accordance with Part. 3, Cl. 35 of CCRF the term “Organized group” means a stable group of persons united beforehand to commit one or more offenses.

In accordance with Part. 3, Cl. 35 of CCRF the “Organized Group of a Criminal Community (Criminal Organization)” is:

1) A structured organized group under a consolidated guidance whose members have united for the purpose of joint committing of one or several grave and especially grave crimes aimed at deriving direct or indirect financial or other material benefits.

2) An association of organized groups under a consolidated guidance whose members have united for the purpose of joint committing of one or several grave and especially grave crimes aimed at deriving direct or indirect financial or other material benefits.

The initial analysis of these concepts shows the following.

First, in defining the main types of organized criminal associations the legislator defines one concept relying on other one. Secondly, both listed in



the Criminal Code concepts remain underdetermined.

In accordance with the legislator's logic, the first and principal form of criminal association represents an organized group, and the second and the highest form of criminal association is a criminal association or a criminal organization. However, both of these concepts are based on the concept of "Group of persons", which means the joint participation of two or more persons in the crime commission (as per the formulation of Part 1, Cl. 35 of the Criminal Code, perpetrator).

It turns out that any kind of criminal entity is an "organization", because any social organization arises when two or more individuals are cooperating and act (function) in coordination in order to achieve a common goal to meet their needs. And despite the fact that organized groups may vary in numerical or qualitative strength, i.e. may represent small groups, associations, organizations, communities, and so on, all of them are in this case organizations. It turns out that both an organized group and a criminal association (organization) are only legally significant versions of social organizations [5: 60 - 76]. As other organizations, they may be small or large, meant for long or short-term activities etc.

Let us now discuss essential features of various forms of criminal associations. It must be emphasized here that in addition to the features mentioned in the Criminal Code, the essential elements of organized criminal structures are also indicated in the Resolution of the Plenum of the Supreme Court of June 10, 2010 No. 12 "On practice of legal investigation on establishing a criminal community (criminal organization) or participation in it".

As the main distinguishing features of an organized group of the CCRF indicates stability and a previous concert of its members to commit one or more offenses. At the same time stability is the main feature that distinguishes the concept of an organized group and that of a group of persons by previous concert (Part. 2, Cl. 33 of the Criminal Code).

As for the main distinguishing features of a criminal association, they are much more numerous. Firstly, a criminal association must have a group structure, i.e. if an organized group is structured, that is within the meaning

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of the law, if other features are on hand, it becomes a criminal association. However, it follows from the explanation of the Supreme Court that both an organized group and a criminal association can be structured. In particular, in one of its recent decisions, the Plenum of the Supreme Court specified that a “criminal association (criminal organization) differs from other types of criminal groups, including organized groups, by its more complex internal structure . . .”. Thus, the Supreme Court accepts that the presence of a structure can be characteristic not only for a criminal association, but also for an organized group. But in a criminal association, this structure should be “more complex”. In this context, it becomes unclear who should determine the degree of complexity of the internal structure of a criminal organization and what are the criteria?

Further this Regulation explains that a structured organized group should consist of “units (subgroups, links, etc.) characterized by stability and coherence of action”. It should be characterized with: a consolidated leadership, “interaction of its various units in order to implement their joint criminal intents, allocation of functions, possible specialization in the implementation of specific criminal actions and other forms of support of the criminal association (criminal organization)”. It follows from the meaning of these provisions that criminal associations should be consist of individual interacting units in the form of subgroups or links, and, accordingly, organized groups cannot have such units. But the structure not always implies the presence of units, and in this sense, the provisions of the Resolution are in conflict with the relevant rules of the Criminal Code.

The next distinctive feature of the criminal community is the purpose of joint committing of one or several grave and especially grave crimes aimed at deriving direct or indirect financial or other material benefits. In this connection the following should be noted.

In any joint professional activities common the goal is a factor that unites people, it is associated with the needs of groups as integral entities. And, as any organized criminal activity is a kind of a joint activity, the overall objective of this activity is the main factor that unites the individual subjects of criminal activity in an integer criminal organization. Thus,



criminals are united in criminal groups and associations to commit crimes, i. e. in this sense, they always share their objective. The distinctive features here are, firstly, their gravity, and secondly, the goal of these crimes. Commission of grave or especially grave crimes with the purpose of a direct or indirect financial or other material benefit must be characteristic for the criminal networks. Adding a financial or material profits to the list of criminal network characteristics should be regarded as a positive action, because for several years after the adoption in 1996 of the Criminal Code scholars and practitioners have repeatedly pointed out that the main objective of almost any organized criminal activity is the deriving of ultrahigh profits both in legal and illegal business. In this regard, A.F. Lubin rightly notes that “the anticipation of the result of a criminal activity in the form of some benefit, profit, property is a natural sense” [16: 117], and that mercenary motives are characteristic for many crimes committed by organized criminal groups. So, for example, all studied by us criminal records suggest that all criminal associations were established to gain profit by their participants.

However, the severity of the crimes remains in the criminal law as an essential characteristic of criminal organizations. In this regard, we come round to opinion S.V. Nazemtsev, which states that “in this case, the law allows virtually with impunity creating organized units, at first intended for the commission of crimes that are not serious or very serious, and does not contribute to the prevention of heavy organized crime” [19: 16]. Based on the results of our research, we can hardly accept the above formulation of the legislator. We regard as a very demonstrative and justified the opinion of A.I. Dolgova, which states that the social danger of criminal organizations is related not only to serious crimes (from this point of view their social danger would be evaluated to the same extent, as that of serious crimes), but first of all that such an organizational structure, able to conduct various organized criminal activities in quite different versions, depending on the motivation of the subjects of its management and external environment, exists and functions [22: 10].

Meanwhile, the majority of crimes committed by criminal organizations, are related to economic crimes, which, although not classified

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as serious, but cause considerable economic damage, and thus bring great financial or material benefits. Therefore, the establishment of criminal organizations to commit these crimes, as directly required by criminal law, cannot be qualified under Cl. 210 of the Criminal Code, which is one of the essential factors, reducing the efficiency of the criminal law when fighting them. This, according to the respondents significantly impedes the fight against organized criminal groups, and allows their leaders to escape criminal liability.

A way out of this situation seems to exclude from the content of the article the indication of the crime category as the purpose of creating criminal association, and to recognize the “high social danger of criminal associations regardless of the gravity of the crimes for which they were created, since the creation of the criminal groups is not always associated with a clear outline of the range of actions that will be performed” [19: 16].

The analysis of the criminal law leads to a conclusion that the issue of a clear distinction between the concepts of an organized group and a criminal association (criminal organization) is not completely resolved.

Since the law gives no clear distinction of the definitions not only leads to a significant reduction in the effectiveness of the fight against these criminal units, but also to a distortion of statistical reporting about the actual state of organized crime. For example, according to the statistical reporting the total amount of crime in Russia for the group was 21, 2 thousand in 2010 (or 28.4%) of the total amount, in 2011 - 16,9 thousand (20.3%), in 2012 - 17,3 thousand (22.7%), in 2013 - 16,6 thousand (18.4%), in 2014 (HCY) - 10,2 thousand (23.5%). Meanwhile, V. V. Lunev rightly notes that “statistics of organized crime in Russia is not only incomplete, but also distorted, as the most intelligent, organized, conspiratorial, corrupt, and therefore more dangerous part of mafias escapes from under the control of law enforcement agencies. Only primitive organized groups are caught who commit elementary crimes, such as theft, robbery, extortion, murder, and etc. A statistical shift in this part of the organized crime simplifies and distorts the perception of it as a whole and makes it difficult to achieve the public awareness of the real challenges of



organized crime.

The main drawback in the information obtained is the absence of a clear legal criterion of organized groups ... There was no legislative determination of this term” [18: 541 - 542].

The lack of a clear legal definition of an organized group and a criminal association (organization) leads to the fact that a considerable part of heads and law enforcement officers have their own idea of criminal associations, is not consistent with the legislative definition and reality. They believe that this is an extremely complex formation with tiered organization, numerous participants (up to several hundred people!), a variety of controlled business entities of various forms of ownership, corrupt ties to federal and regional government bodies, and so on. According to our research, the main differences between criminal law concepts of an organized group and criminal community (organization), in practice, are determined on several grounds.

1. Numerical strength of criminal entities. A specific interest here is the solution to the question of the minimum number of partners in organized criminal structures. The legislatively defined lower limit for an organized group, amounting 2 partners, cannot be disputed. The legislator and judicial practice consistently adhere to the position, which is an illustration of the theoretical thought of N.S. Tagantsev: “Based on the subjective aspect, a gang involves the agreement of more than one person, even though the two” [28: 336]. The modern realities, however, indicate that the corresponding quantity in relation to organized criminal structures is much higher. Implicitly the legislator recognizes this fact too, constructing the definition of a criminal community and understanding it also as the union of organized groups created for the purpose of committing grave and especially grave crimes As you can see, the minimum limit of the participants in this case is 4 men. Meanwhile, the results of the study of operational and investigative practices show that the number of members of a criminal community may be less than 4 people. For example, the Investigative Committee of the Russian Interior Ministry accused in the organization of a criminal community as per Cl. 210 of the Criminal Code the main person involved in illegal supply in Russia a large batch of mobile phones in September 2006 According to

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investigators, from July 2005 to February 2006, the detainee “organized a criminal group and together with two accomplices using forged documents has supplied mobile phones and accessories to them through Sheremetyevo-2 airport into the territory of Russia” [27]. As we can be seen from the example, in practice, there are criminal groups in the amount of 3 people. But this is the exception rather than the rule, because the majority of the surveyed law enforcement officers (67%) indicated that the main feature distinguishing the organized groups and criminal organizations (associations) is the number of active participants in these units. The experts noted that organized groups can consist of two or three people - 14%; from four to six people - 28%; seven to ten people - 46%; from eleven to twenty - 11%; over twenty people - 1%. Accordingly, the number of participants in organized crime groups should exceed fifteen or twenty people (according to 73% of respondents), and criminal structures of this type with fewer than five people do not practically exist (17%). The membership of gangs, according to research by some authors, most often amounts three to five people (73%), scarcer from six to ten (18%), also sometimes there are gangs with the number of members varies from fifteen to thirty [31: 5].

According to our research of data received from the Department for Combating Organized Crime in the Volga Federal District, the number of members identified in 2009-2013 organized criminal structures varied as follows: 4 people - 15%; 5 people - 14%; 6 people - 16%; 7 people - 12%; 8 people - 11%; 10 people - 7%; from 11 to 20 people - 21%, over 20 people - 4%.

2. Individual units in criminal associations (organizations), and their absence in organized groups noted 89% of the respondents as the second main feature difference between these criminal entities.

3. Number of crimes committed. For example, only 6% of respondents believe that organized groups are created to commit a single crime. The rest of the respondents agree that organized groups are created for the commission of two or more offenses. At the same time, organized criminal communities (organizations) are formed to carry out regular criminal activities. The investigated data of investigative practices indicate that



organized units committed 1 offense - 2%; 2-5 crimes - 11%; 6-10 crimes - 28%; over 11 crimes - 59%.

III. Conclusions

The study conducted leads to the following conclusions:

1. One should strive for a unified designation of organized crime subjects both at the domestic and international levels.

1.2. The author proposes the following unified formulations:

1.2.1. Organized group is an association of two or more persons established for joint commission of one or more offenses.

1.2.2. Criminal association is an association of two or more organized groups created for regular joint criminal activities.

2. The law should not only determine the terms of collective criminal associations, but also clearly indicate the features characteristic for each of them. The most important of these characteristics should be: the number of members and organization features, i.e. stability, common goal, interaction between the members for its implementation.

3. The term “criminal organization” should not be used interchangeably with the term “criminal association” because the concept of “criminal organization” can be used to refer to any kind of criminal structures as a single conditional concept.

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