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PREVENTION OF CRIMINAL CORPORATE RAIDING

I. Milova (a)*

*Corresponding author

(a) Samara State University of Economics, 443090, Soviet Army Str., 141, Samara, Russia, irina.milova@ro.ru

Abstract

The relevance of the study is determined by the fact that countering criminal raiding is an important vector of modern state criminal law policy. For the Russian economy, this phenomenon is one of the previously unknown ones, since it is associated with the transition to a market model of economic management. The first mention of such cases in our country we find in the media at the end of the XX century. At the same time, entrepreneurs began to receive official appeals to law enforcement agencies with reasonable demands: to create normal conditions for them to do business and provide guarantees for their personal and property security. Representatives of power structures periodically claim that the problem of raiding in Russia is a thing of the past and has been successfully solved. However, the analysis of statistical indicators shows the opposite picture. It is alarming that there is a trend towards a steady increase in the corresponding illegal manifestations. We believe that the real situation is even more serious, since the digital indicators set for accounting are based only on data on registered crimes of this type. At the same time, the latter have a high level of latency, which, of course, affects the results of their detection.

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1. Introduction

For a long period of time, raiding was perceived as a phenomenon alien to the domestic economy. A little later, it was believed that this is a by-product of the formation of market mechanisms, which has a negative nature, but in principle is quite tolerated by both the government and business. Initially, business seizures were often accompanied by physical violence, with the removal of management, and the seizure of documentation and equipment. Subsequently, raider schemes have become more veiled, often masquerading as legal activities and even accompanied by judicial acts.

The redistribution of property in our country was first noted in the era of Gorbachev's perestroika, but at this time it was expressed in separate episodes, without forming a systemic illegal activity. Distortions in the privatization process have made such seizures massive, leading to the creation of a financial and industrial oligarchy. Simultaneously with the extortionate withdrawal of vouchers from the population, racketeering against entrepreneurs developed. A distinctive feature of the Russian reality was the participation of some law enforcement officers, who essentially on a corrupt basis were engaged in "protecting" the raiders, providing them with assistance, both in forcible seizures, and in initiating criminal cases against persons who did not want to voluntarily give up their business. Actively used methods such as merging power structures with crime, procedures for "eroding" the authorized capital, parallel management, duplication of corporatization, which were of a custom nature.

The next stage was the "war of compromising materials" and information attacks, when an unwanted entrepreneur created a negative image with the help of the media and the use of Internet space, which facilitated the process of capturing his business by interested parties. Professional raiders effectively used bankruptcy procedures, distorting the goals of this regulatory innovation. As a result, it was not the civil turnover that was cleared of insolvent enterprises, but the crime with the help of this mechanism, selected the finished business, which was then resold, continuing to make a profit, without any additional investment.

Raiding today has an attractive external shell, for example, in the form of a consulting group in contact with government agencies, the support of security forces is used only slightly. The vast majority of seizures are related to enterprises located in the capital, large cities where the most profitable companies are concentrated. Schemes related to deliberate and fictitious bankruptcy are used very actively to get extra profit. In the first case, the company is deliberately ruined by its owner, in the second it is quite solvent, and the signs of insolvency are simulated. As a result of such criminal activity, an industry was formed that focused on the rapid absorption of other people's property. It uses not only legal knowledge, but also knowledge in the field of management, marketing, accounting and logistics. As a result, the legalization of proceeds from crime is widespread. The country's leadership, having announced a course for breakthrough economic development, clearly understands that its successful implementation is impossible without eliminating manifestations of extremism in economic processes, including raider manifestations as its most visualized form.

It should be noted that these problems, especially in recent years, arouse a steady interest of researchers, not only domestic but also foreign. Due to the multi-aspect nature of the identified topic, narrow-specific issues are usually analyzed, which, on the one hand, contributes to the depth of the study, and, on the other hand, hinders the volume consideration. It seems to us that counteraction to raiding should

be included in the General system of measures to combat economic extremism, since for the stable development of market relations, it is necessary to create comfortable conditions for business. Deviation from these principles creates a real threat to sustained economic development.

2. Problem Statement

The objectives of the study are focused on retrospective analysis of issues related to the seizure of enterprises, with the study of the features of this process in the modern period, with the prediction of the main directions of effective counteraction to such criminal manifestations. The author found it interesting to combine the disclosure of these points with the educational opportunities of the Samara state University of Economics (Yavorskiy, Milova, & Bolgova, 2020). It is obvious that the issues of methods and tactics of combating raiding can become part of the basic courses and disciplines of choice, within the framework of the criminal law block. At the same time, it is very promising to use the opportunities of the regional youth movement "boiling Point". This location allows you to take into account the request of the business community for research in the field of countering crime in business. Different variations of student volunteering can significantly optimize this process.

3. Research Questions

It should be noted that in recent years, criminal raiding refers to destructive economic activity, most often of a group nature, which is accompanied by openly provocative acts, with the use of force (very rarely), and the use of information, legal, financial and accounting technologies to seize property. In General, this undermines the economic stability of the state, distracting the attention of the authorities from solving urgent social issues, discrediting the domestic manufacturer, reducing the level of its competitiveness.

Etymologically, raiding comes from the English word "raider". The study of foreign sources shows that such actions in most Western countries do not belong to crimes, being considered as a typical tool for fighting monopolies seeking leadership in a particular segment of the economy. A number of studies have been devoted to the problems of "unfair takeover" and artificial mergers, including (Gaughan, 2017; Kazun, 2015; Osipian, 2018; Rochlitz, 2014; Teti, Dell'acqua, Etro, & Volpe, 2017). The author substantiates the idea of the destructive nature of raiding, focusing on the danger of this phenomenon for the domestic economy, since such acts affect the formation of a favorable investment climate, turning doing business in Russia into an exclusively risky activity (Fedoseev, 2018).

It is obvious that in the past there were mechanisms of black raiding, coupled with openly bandit methods, in the format of the organized criminal group, accompanied by actions close to terrorist, with pronounced violence, with the use of various types of easily detected corruption schemes (Starostenko & Kartashov, 2014). The analysis of practice in this category of cases shows that the above-mentioned type of enterprise takeover is atypical for Russia of the XXI century.

The most common are gray combinations, which are a combination of legal and illegal actions. For example, a court proceeding is conducted, which results in the company being declared bankrupt, in the absence of appropriate indicators for this purpose. At the same time, the business reputation of a particular

organization is undermined, which leads to the refusal of other contractors to cooperate with it. Using affiliates does not allow the bankrupt company to win bids or get a loan for development.

White raiding does not go beyond the legal framework at all, it uses the purchase of a controlling stake, with the subsequent destabilization of the company's activities, which ultimately leads to a change of ownership, the new owner receives the assets of the enterprise at a lower cost. Outwardly, all the mechanisms look legal, but in fact it is a veiled attack on a certain enterprise, paralyzing its activities. Most often, the "victim" is brought under bankruptcy procedures, and then the selected property is put up for auction, which is won by the interested person.

In General, a sign of today is considered professional criminal activity in the field of raiding, focused on the use of legal tools – to recognize the company as insolvent and recognize the auction as invalid. The current criminal law has gaps and is unable to fully protect the business community from such violations. The legislator in this direction will have to work hard to adjust the existing criminal law norms, as well as to introduce new types of crimes. The effectiveness of prevention is directly related to identifying the causes and conditions of raider attacks. The author believes that highly qualified lawyers and economists have neither legal nor professional grounds to accompany the relevant activities, on the contrary, they should maximally assist law enforcement agencies in identifying such schemes (including giving opinions by specialists and conducting various types of complex examinations).

4. Purpose of the Study

The purpose of the study is determined by the need for a comprehensive solution to the problems arising from the need for individualization and optimization of criminal prosecution for business seizures. It is important for the author to formulate a number of significant proposals for improving legislation and practical recommendations that can be used in the disclosure and investigation of criminal cases initiated on the facts of such criminal actions. Taking into account that raiding is the most dangerous form of economic extremism, the measures of criminal-legal counteraction should be quite strict. In this sense, the existing approaches do not meet modern realities and need to be radically revised. One of the goals is to build a system of propaedeutics of this type of criminal activity, since there is a special relapse and the transition of the considered segment to the professional-criminal plane.

5. Research Methods

The methodological basis of the presented research is a dialectical approach that considers the phenomenon of raiding from the standpoint of epistemology as a special object of cognitive activity. Metaphysical understanding of the selected issues is complemented by specially scientific methods related to synthetic studies of comparative analysis, creation of economic and legal models, interview and survey, method of field survey which was conducted by a random sample of criminal cases on crimes in the sphere of economic activity, the analysis of materials was carried out on the basis of specially developed program, with subsequent generalization and systematization of the results obtained.

6. Findings

In Russia, criminal legislation has been formed to protect property rights. However, there is no reason to talk about its full effectiveness, taking into account the existing statistics on the growth of crimes in the economy. A number of norms are not provided with adequate guarantees of their compliance and implementation, which makes the established prohibitions only formal.

The legal definition of the term "raiding" is not given in the regulations, however, its understanding is based on traditional General concepts and does not cause any special problems. The author believes that the legislator did not clearly distinguish administrative and legal violations in this area from actions that constitute elements of crimes. This approach does not help to ensure that the existing legal tools are applied accurately, taking into account the nature of the identified shortcomings.

Protection of property in a market economy is a priority. Every entrepreneur should feel the full support of the authorities, business should be conducted in stable and comfortable conditions that do not allow the seizure of property from its rightful owner (Teti, Dell'acqua, & Volpe, 2017).

Having a negative attitude to economic extremism in General, and raiding as its extreme expression, in particular, we believe that the state justifiably implements programs and national projects aimed at providing all possible assistance to small and medium-sized businesses. A number of significant anti-corruption measures have been developed and are being implemented in this area, including updating the regulatory framework.

Pre-investigation procedures for conducting independent audits of business operations, external audits, and tax control measures could have a positive effect in countering business seizures. It is very interesting to conduct a legal analysis of the activities of a particular organization in order to identify possible corruption risks in it, with the development of preventive recommendations for their prevention. It is extremely important to take security measures for the operation of a certain company, from the point of view of preserving official and commercial secrets; special analysis can identify weaknesses in this segment that can be eliminated in a timely manner.

On the basis of the Samara state University of Economics, research works are being prepared and additional educational programs of various directions are being implemented. The author believes that the issues related to the methodology and tactics of detecting and preventing raider attacks are very popular for studying. The Department of "Organization of struggle against economic crimes" has a staff of teachers who are ready to work on the appropriate programs. In the context of R & d, the format of legal opinions is preferred, which, from a procedural point of view, represent the subjective opinion of the persons who compose them regarding the most complex issues that arise during the investigation and trial of criminal cases. Most often, as the analysis of regional practice shows, these are qualification points, as well as the assessment of individual evidence for their admissibility.

Regarding the implementation of additional education programs in this area, the most optimal format is master classes, with a demonstration of the most common investigative actions that are carried out in cases of this category, with the identification of methodological and tactical errors. It is quite acceptable to conduct business games, starting from solving problems-simulators, to conducting a training process in the case of a raider seizure, with the preparation of procedural documents accompanying the trial within the

framework of the trial. The final session can be held in the form of a round table, with discussion of the most controversial issues and presentation of useful models for countering the seizure of enterprises.

Representatives of the business community and law enforcement agencies specializing in the detection and investigation of economic crimes can participate in this event. The author believes that for educational purposes, it would be extremely useful to prepare a video clip by the participants, with an emphasis on the main causes of raider attacks, with the identification of the presence of criminal signs in this and existing counteraction measures.

Potential audience interested in participating in the above-mentioned events could be students and teachers of the SSEU; law enforcement officers; judges; lawyers; experts specializing in the preparation of economic and accounting examinations. Taking into account the orientation of the University, where both economic and legal education is given productively, the most popular training areas would be of a complex nature, combining both those and other beginnings. This approach can provide a comprehensive research picture, solve the identified practical problems, make specific proposals for improving legislation and give practical recommendations to be implemented in investigative, operational and judicial practice.

The Samara state University of Economics traditionally hosts an international scientific and practical conference "Enterprise as an economic entity", in which the section "Combating offenses in the field of Economics" is actively working. It is noteworthy that young researchers constantly choose a topic related to countering criminal raiding, which indicates that a number of significant problems are unresolved. In addition, representatives of small and medium-sized businesses act as customers of research on the assessment of corruption risks at a specific production site. Location of criminal seizures of enterprises requires a comprehensive approach to the analysis of problems that are not limited only to the material and legal component, but are associated with a number of significant procedural, criminological and tactical aspects.

The Department of "Organization of struggle against economic crimes" initiated an anti-extremist forum on the site of the SSEU. It is attended not only by students and faculty of the University, but also by representatives of the practice bases, the business community and specialized structures that are responsible for combating criminal raiding. The first experience of holding the corresponding event in 2019 proved to be extremely successful, showing the relevance of such issues and interest in the chosen form of discussion of issues of extremism in General, and economic extremism, including.

7. Conclusion

1. Criminal raiding in Russia is characterized by a trend of steady growth, which is confirmed by statistical indicators. At the same time, the nature of business capture in General has changed, and enterprises in particular have been replaced by power actions, and the use of complex schemes that combine modern economic and legal technologies, digitalization, with an element of masking legal activity.

2. Analysis of regional investigative and judicial practice shows that criminal cases of this category are qualified under articles 159, 170.1, 185.2, 185.5, 285.3 of the criminal code of the Russian Federation. At the same time, despite the existence of special rules, most often such acts belong to the General composition of fraud, without taking into account the specifics of a specific criminal orientation. As a rule,

they are committed in a group, often involving such elements of crime as deliberate and fictitious bankruptcy, production and use.

3. In connection with the inaccuracies of qualification and shortcomings of investigative work, it is advisable to clarify the forensic characteristics of raiding, in the direction of methods and tactics for the disclosure and investigation of crimes of this type.

4. Special attention should be paid to the initial stage of investigation of the relevant crimes, since there is the largest number of non-verbal investigative actions (inspections, searches, seizures), which provide a significant amount of evidence, determine the further course of the investigation (Yavorsky & Milova, 2019).

5. Expert research is very important for the investigation of criminal raiding, which is complex in nature, combining special knowledge in the field of Economics, commodity science, accounting, management, logistics, technology, and taxes.

6. The next stage of the investigation is aimed at checking the evidence collected. If defects are identified, investigative actions are carried out that eliminate them or additional, repeated procedures to previously implemented.

7. Effective counteraction to criminal raiding is possible only by implementing a systematic approach, where not only criminal legal methods are important, but also preventive measures that can be taken by educational institutions, including the Samara state University of Economics, and representatives of civil society.

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