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CRIMINAL COMMUNITY (CRIMINAL ORGANIZATION):
CONCEPT AND CRIMINAL LAW SIGNS

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Abstract

One of the main threats to security and stability, hindering the socio-economic, political, and cultural development of the state, continues to be the activity of criminal organizations and groups. The importance of the problem under study is substantiated by the data of official statistics on the state of crime over the past five years and the results of the fight against crimes committed with complicity. The increase in crimes committed by organized groups and criminal communities (criminal organizations) is especially important, especially those related to drug trafficking, economic orientation, and fraud. Combating organized crime, considering its transnational nature, is one of the world problems that require the consolidation of efforts of all states and the application of a set of international legal norms and norms of national legislation, as well as preventive measures, including measures of a criminal law nature. Particular attention is paid to the explanations of the Plenums of the Supreme Court of the Russian Federation on the selected issues. The importance of theoretical understanding of the main categories, concepts, definitions, their specifics are substantiated, which contributes to their uniform understanding and application in practice; eliminates problems arising in the process of qualifying crimes, eliminates latency, increases the effectiveness of criminal law measures to combat crime. The author's position is proposed, according to which it is advisable to differentiate the criminal-legal characteristics of a criminal community (criminal organization) into two groups: mandatory and optional, which will allow solving several problems in the area under consideration.

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Keywords: Criminal community, criminal organization, concept, criminal law measures, organized crime, signs



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1. Introduction

According to the National Security Strategy of the Russian Federation (Decree of the President of the Russian Federation of December 31, 2015, No. 683 “On the National Security Strategy of the Russian Federation”), the activities of criminal organizations and groups are classified as the main threats to state and public security.

The most significant indicators of the criminal activity of organized groups are cruelty, audacity and cynicism, criminalization of the banking, tax, and environmental spheres, corruption, widespread use of modern achievements of science, technology, information and telecommunication technologies, close connection with the illegal circulation of weapons and drugs, illegal migration, trafficking, terrorism, and extremism; the desire to establish control over the city and budget-forming objects of the economy, the fuel and energy, and defense-industrial complexes.

The illegal activities of criminal organizations are characterized by a stable antisocial orientation, the desire to penetrate the power structures of the state, the seizure of the most profitable spheres, transnational character, diversification, high latency, and an increased degree of public danger.

As a result, counteraction to organized crime, including measures of a criminal law nature, continues to be one of the priority areas of activity of law enforcement agencies not only in the Russian Federation but also in other states.

2. Problem Statement

In the criminal legislation of the Russian Federation, the concepts of “criminal community” and “criminal organization” are identical. In the domestic science of criminal law, the criminal community (criminal organization) is recognized as the most dangerous form of complicity.

In accordance with the socio-psychological criterion – the degree of consistency (organization) of the actions of accomplices, four forms of complicity in a crime are distinguished. This is the commission of a crime:

- by a group of persons without prior conspiracy;
- by a group of persons by prior agreement;
- by an organized group;
- a criminal community (criminal organization).

Complicity in a crime increases the social danger of acts. The combination of intellectual and physical efforts makes it easier for the accomplices to commit the intended crime. They feel more confident when acting in a group. Their behavior, as a rule, is characterized by special audacity and unmotivated cruelty towards victims, which is mainly due to the group nature of the crime and is aimed at strengthening the authority in the criminal community, rallying, and in some cases, intimidating its members.

Realizing a criminal intent, combining their efforts, and acting in concert, accomplices can cause much more significant harm to public relations protected by criminal law than in cases where the crime is committed by one person.

In accordance with clause “c” part 1 of Art. 63 of the Criminal Code of the Russian Federation, the commission of a crime as part of a group of persons, a group of persons by prior conspiracy, an organized group or a criminal community (criminal organization) is provided as an aggravating circumstance. It should be borne in mind that if an aggravating circumstance is provided for by the relevant article of the Special Part of the Criminal Code of the Russian Federation as constructive, qualifying or especially qualifying signs of a crime, then it cannot be considered again when sentencing.

The most dangerous form of complicity is the commission of a crime by a criminal community (criminal organization). This concept is disclosed in Part 4 of Art. 35 of the Criminal Code of the Russian Federation, in accordance with which a crime is recognized as a committed criminal community (criminal organization) if it is committed by a structured organized group or an association of organized groups acting under a single leadership, whose members are united to commit one or more grave or especially grave crimes to obtain directly or indirectly financial or other material benefits.

It should be noted that the concepts of “criminal community” and “criminal organization” in the Criminal Code of the Russian Federation are identical. Therefore, the use in Art. Art. 33, 35, 63, 104¹, 205¹, 210 of the Criminal Code of the Russian Federation, which completely coincide in the meaning of the concepts, seems to us excessive.

In criminology and criminal law, these concepts are different. According to Malinin and Shimanovich (2008), the criminological concept of “criminal organization” is characterized by the following features: a) the criminal nature of joint activities; b) the implementation of criminal activity on an ongoing basis, that is, its stability; c) generating income by carrying out criminal activities; d) the presence of an internal structure with a pronounced hierarchy; e) creation of a system of protection from social control (for example, by law enforcement agencies); f) the desire to exercise control over the selected type and (or) sphere (region) of activity.

Dolgova defines a criminal community as an association of persons committing crimes to consolidate the criminal environment; maintaining its norms and customs; exercising control over different groups of persons, objects, spheres of activity and territories; development of relationships in the criminal environment, including among convicts serving sentences in correctional institutions; ensuring illegal interests in state and local government bodies, organizations of any form of ownership (Dolgova, 2017).

Based on the definition of the concept, this is given in Part 4 of Art. 35 of the Criminal Code of the Russian Federation, the following mandatory criminal law signs of a criminal community can be distinguished:

- Organizationally, a criminal community is a “structured organized group” or “an association of organized groups”;
- criminal community carries out illegal activities under a single leadership;
- members of a criminal community are united for the joint commission of one or more grave or especially grave crimes;
- purpose of committing one or several grave or especially grave crimes is the receipt by members of the criminal community, directly or indirectly, of financial or other material benefits.

According to the just remark of Popov, such an interpretation by the legislator of the signs of a criminal community (criminal organization) does not clarify the practice (Popov, 2016).

According to Part 4 of Art. 35 of the Criminal Code of the Russian Federation and to its organizational structure, a criminal community can function in the form of:

- structured organized group;
- associations of organized groups.

The main structural element of a criminal organization is an organized group. In the first case, the criminal organization may consist of one, but structured, organized group. The second type of criminal organization is an amalgamation of two or more organized groups, which may or may not have an internal structure.

The concept of “organized group” is disclosed in Part 3 of Art. 35 of the Criminal Code of the Russian Federation. An organized group is understood as a stable group of persons who have united in advance to commit one or more crimes.

An organized group, being the primary element of a criminal organization, is characterized by the following mandatory features:

- it is an association consisting of two or more persons capable of bearing criminal responsibility for committed socially dangerous acts;
- it has group stability;
- its purpose lies in uniting persons is to jointly commit one or more deliberate crimes.

According to the general rule, all members of an organized group must be sane at the time of committing a joint crime (Article 21 of the Criminal Code of the Russian Federation) and reach the age of criminal responsibility (Article 20 of the Criminal Code of the Russian Federation). For example, for organizing or participating in a criminal community (Article 210 of the Criminal Code of the Russian Federation), creating or participating in a gang (Article 209 of the Criminal Code of the Russian Federation), the age of criminal liability is 16 years. According to part 2 of article 20 of the Criminal Code of the Russian Federation a 14 year old person is responsible for the robbery, committed by an organized group, according to item “a” of part 4 of article 162 of the Criminal Code.

The sign of the stability of an organized group is evaluative and requires correct interpretation. The stability of an organized group should be understood as its stable existence for a sufficiently long time. In such groups, as a rule, there is one-man management, internal contradictions between its members are absent or timely resolved, discipline and conspiracy are observed, which allows such an association for some time, which in some cases can be calculated in years, to engage in criminal activity, avoiding criminal liability for committed crimes.

The Plenum of the Supreme Court of the Russian Federation in paragraph 15 of the resolution of December 27, 2002 No. 29 “On judicial practice in cases of theft, robbery and robbery” explained to the courts that an organized group is characterized by stability, the presence of an organizer (leader) in its composition and in advance the developed plan of joint criminal activity, the distribution of functions between the members of the group in preparation for the commission of a crime and the implementation of criminal intent.

The stability of an organized group can be evidenced not only by the long time period of its existence, the repeated commission of crimes by the members of the group, but also by their technical equipment, the duration of the preparation of even one crime, as well as other circumstances (for example, special training of the members of the organized group to penetrate a depository for withdrawal of money (currency) or other material valuables).

There is an opinion in the academic community, which states that the stability of an association of criminals should also be understood as its ability to actively counter measures of law enforcement and other state bodies to suppress criminal activity or prevent the commission of new crimes (Lizogub, 2008).

The purpose of an organized group is to commit one or more crimes. Moreover, in part 3 of Art. 35 of the Criminal Code of the Russian Federation does not specify the categories of crimes. Therefore, it can be assumed that these can be crimes of any gravity. A criminal community, unlike an organized group, is created to commit only grave or especially grave crimes (parts 4, 5, article 15 of the Criminal Code of the Russian Federation). This is the purpose of the creation and operation of a criminal community, but this does not mean that its individual members cannot commit crimes of small or medium gravity.

An organized group can transform into a criminal community – a more dangerous form of complicity in a crime. To do this, it must become structured. The sign of structuredness means that within an organized group, formations are created that have a specific purpose (for example, territorial “units” or “brigades”, units that ensure security, financial and logistical support for the activities of a criminal community (supply of weapons, vehicles, communications, etc.)).

In accordance with Art. 2 of the UN Convention against Transnational Organized Crime (concluded in New York on November 15, 2000), a structured group should be understood as an organized criminal group that consists of three or more persons, has a developed structure and was not accidentally formed for immediate committing a crime.

The Plenum of the Supreme Court of the Russian Federation in clause 3 of the Resolution of June 10, 2010 No. 12 “On the judicial practice of considering criminal cases on the organization of a criminal community (criminal organization) or participation in it (her)” (hereinafter – Resolution No. 12) explained to the courts, that a structured organized group should be understood as a group of persons who have united in advance to commit one or several grave or especially grave crimes, consisting of subdivisions (subgroups, links, etc.) characterized by stability of composition and coordination of actions. A structured organized group, in addition to a single leadership, is characterized by the interaction of its various divisions in order to implement common criminal intentions, the distribution of functions between them, the presence of possible specialization in the performance of specific actions when committing crimes and other forms of ensuring the activities of the criminal community.

A structural subdivision of a criminal community is understood as a functionally and (or) geographically a separate group, consisting of two or more persons (including the leader of this group), which carries out activities following the goals of the criminal community. Such structural units, united to solve the common tasks of the criminal community, can not only commit individual crimes (bribe-giving, forgery of documents, etc.) but also perform other tasks aimed at ensuring the functioning of the criminal community (paragraph 4 of Resolution No. 12).

The need for structuring may occur due to various reasons; for example, an increase in the number of members of an organized group, when effective management of a large criminal association is possible only by structuring it. In all cases, the result of structuring is the emergence of middle managers responsible for the activities of individual departments (leaders, authorities, “foremen”). At the same time, structural divisions can be of two types: territorial and functional.

Territorial structural divisions carry out criminal activity in a certain territory, for example, in a specific settlement. Functional structural units specialize in certain types of criminal activity, which is not limited to a certain territory (illegal manufacture, purchase or sale of narcotic drugs, psychotropic substances, firearms and ammunition for them, organization of prostitution, fraud using electronic means of payment, organization of illegal migration, etc. others) (Mameli, 2002).

The functional structural subdivisions of an organized group also include subdivisions whose members may not be directly involved in the commission of joint crimes. These include units that ensure the security and stable operation of the grouping (intelligence, counterintelligence, units responsible for financing, weapons, logistics, etc.) (Albanese, 2015; Gilinskiy, 2012).

Another constructive feature of a criminal community is the presence of a unified leadership in it. Leadership is understood as a sole or collegial activity in managing a community, which may consist in planning crimes, coordinating the activities of structural units, distributing responsibilities between participants, issuing binding instructions, monitoring their execution, applying punishments to guilty persons, distributing proceeds from criminal activity.

In cases of arrest and imprisonment, murder or death of a leader from other reasons, the criminal community may be left without leadership. If the leadership does not pass to another person, then such an association can no longer be considered a criminal community. It transforms into a less dangerous form of complicity – an organized group.

In accordance with Part 4 of Art. 35 of the Criminal Code of the Russian Federation, a criminal community is created for the implementation of special purposes – obtaining, directly or indirectly, financial or other material benefits through the commission of grave or especially grave crimes.

The concepts of grave and especially grave crimes are given in parts 4, 5 Art. 15 of the Criminal Code of the Russian Federation. It should be borne in mind that the Federal Law of June 17, 2019 No. 146-FZ “On Amendments to the Criminal Code of the Russian Federation” in Part 4 of Art. 15 of the Criminal Code of the Russian Federation were amended. If earlier only intentional acts were considered grave, then this law supplemented the category of grave crimes with acts committed by negligence, the maximum punishment for which is provided in the range of 10 to 15 years in prison.

In relation to the criminal community, serious crimes should be understood only as intentional acts, for the commission of which the maximum punishment provided for by the Articles of the Special Part of the Criminal Code of the Russian Federation does not exceed 10 years in prison. This conclusion follows from Art. 32 of the Criminal Code of the Russian Federation, according to which the intentional joint participation of two or more persons in the commission of an intentional crime is recognized as complicity in a crime.

The goal in the form of direct, as well as indirect, financial or other material benefits is borrowed to characterize the criminal community from the UN Convention against Transnational Organized Crime

(paragraph “a” of Art. 2). It should be noted that in the Convention this feature is indicated in relation to an organized criminal group and, according to the fair comment of Oreshkina (2010), it cannot be considered successful. This additional goal is alien to the domestic criminal legislation and does not fit into its system. In the Criminal Code of the Russian Federation, a selfish goal is traditional, with which this new goal competes because of the identity of their content.

3. Research Questions

The subject of the article is the most dangerous form of complicity – a criminal community (criminal organization), including its concept and characteristics, criminal law characteristics, international legal norms, and norms of domestic criminal legislation governing counteraction to the criminal activity of criminal communities (criminal organizations), and judicial practice.

- The study of the criminal community (criminal organization) as a form of complicity, provided for an in-depth study of measures of a criminal-legal nature aimed at countering organized crime.
- The study of judicial practice consists of an in-depth study of the explanations of the Supreme Court of the Russian Federation in the area under consideration.

4. Purpose of the Study

The purpose of the study is to provide a solid methodological basis for law enforcement practice, which will ensure the correct qualification of crimes committed with complicity. It is based on studying the totality of international legal norms and norms of domestic criminal legislation, the provisions of the science of criminal law, materials of judicial practice.

5. Research Methods

When carrying out the research, the study used a set of general scientific and specific scientific methods. The relevance of the research topic is confirmed by the data of the official statistical reporting of the Federal State Institution “GIAC of the Ministry of Internal Affairs of Russia” (statistical forms No. 494 “On the state of crime and the results of crime investigation”, No. 582 “On the results of the fight against organized crime” for the period from 2016 to 2020). So, at the end of 2020, compared with 2016, the number of crimes committed by organized groups and criminal communities (criminal organizations) (hereinafter – OG and CC (CO)) increased: in 2016 – 12570, 2017 – 13267, 2018 – 15647, 2019 – 16331, 2020 – 17742 (an increase to 2016 was 41.1 %); the number of crimes committed by OG and CC (CO), formed according to ethnicity: in 2016 – 1316, 2017 – 1497, 2018 – 1344, 2019 – 1332, 2020 – 1623 (an increase to 2016 was 23.3 %). Against the background of a general decrease in the number of persons identified for committing crimes, the number of persons who committed crimes as part of OG and CC (CO) increased: in 2016 – 9341, 2017 – 9286, 2018 – 9722, 2019 – 9612, 2020 – 9793 (an increase in 2016 was 4.8 %). As negative trends, one should also note the growth of female persons committing crimes as part of OG and CC (CO), and a high proportion of women among participants in OG and CC (CO) – 20.9 %.

Compared to 2016, in 2020 there is an increase in grave and especially grave crimes committed by a criminal community (criminal organization) into two groups: mandatory and optional. OG and CC (CO) (+40.5 %), fraud (+46.0 %), economic crimes (+60.7 %) and related to drug trafficking (+73.5 %).

6. Findings

The results of the study made it possible to differentiate the criminal-legal characteristics of a criminal community (criminal organization) into two groups: mandatory and optional.

The main characteristics are stability, presence of an internal hierarchical structure, unified leadership, criminal nature of joint activities.

Optional characteristics are obtaining, financial or other material benefits (directly or indirectly); availability of a system of protection against measures to counter crime, technical equipment, special training of members of a criminal community (criminal organization).

7. Conclusion

Summarizing the above, we note that the winged dictum of the lawyers of the Roman Empire – *absoluta sententia expositorenon-indigent* – a clear meaning does not require explanation, continues to remain relevant today. Clear monosemic concepts and signs determine the formation of a solid methodological basis not only for their adaptation in the science of criminal law, but also for their use in law enforcement practice, in the field of combating organized crime, do not allow its latentization. Each mistake in the use of terminology can have significant negative consequences when qualifying crimes committed by criminal communities (criminal organizations), reduces the effectiveness of criminal law measures.

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