

ISCKMC 2022**International Scientific Congress «KNOWLEDGE, MAN AND CIVILIZATION»****OCCUPATION OF THE HIGHEST POSITION IN CRIMINAL
HIERARCHY: INTERPRETATION OF EVALUATIVE SIGNS**

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Abstract

Currently, there is not a single state in the world that has not encountered, to one degree or another, the unlawful activity of criminal communities (criminal organizations). They are characterized by a transnational character, a clear hierarchical structure that saves leaders from direct participation in the commission of crimes, a financial base, merging with the state apparatus, diversification, and widespread use of the achievements of science, technology, information telecommunication technologies. The Russian Federation, in the organized crime hierarchy, the highest position occupied by the so-called "criminal lord", who are the ideologists of a criminal pursuits and keepers of organized crime traditions. They involve young people in unlawful activities, introduce thievish concepts into their minds, and thereby prepare fertile ground for the crime reproduction. In prisons, they try to subjugate the convicts to their will, set them negatively against the correctional administrations, oppress and discredit those who have embarked on the path of correction. "Criminal lord" also perform the functions of a kind of arbitrators, resolving conflicts that periodically arise between criminal communities and their participants. Despite the criminalization of occupying the highest position in the criminal hierarchy (Article 210¹ of the Criminal Code of the Russian Federation), the legislator does not disclose the most significant features of this crime. As a result, the concepts of "criminal hierarchy" and "highest position in the criminal hierarchy" are evaluative, which leads to errors in law enforcement, negatively affects the quality of compliance with the principles of legality, equality, justice, and humanism.

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Introduction

Against the statistical background of an improvement in the general crime situation (according to the results of 2021, a decrease (–1.9 %) in the number of all reported crimes recorded), the growth (+26.5 % by 2020) of serious and very serious crimes committed by organized groups or criminal communities continues. Moreover, their share in the total number of investigated crimes also increased (+19.2 %).

One of the factors contributing to this trend is the organizational and administrative activities of persons occupying the highest position in the criminal hierarchy. Thanks to their intellectual abilities, determination, exactness, ambition, ability to motivate and other leadership qualities, criminal authorities organize and direct the unlawful activities of persons with a lower status in the criminal hierarchy, establish corrupt ties with law enforcement authorities and courts, promote their proxy holders to public and administrative authorities.

The study results of law enforcement practice allow us to state that persons occupying the highest position in the criminal hierarchy, as a rule, do not personally participate directly in the commission of crimes, as a result of which their prosecution is quite difficult. This is facilitated by the evaluative features of Article 2101 of the Criminal Code of the Russian Federation, which the Russian legislator does not give an exhaustive description.

1. Problem Statement

The negative trends associated with the strengthening of organized crime, including transnational crime (López, 2017; Lord et al., 2019; Prieto et al., 2018; Sarkisyan & Koimshidi, 2021; Smith et al., 2017), required the states to take appropriate legislative decisions to counter this phenomenon.

In Russia, to suppress the activities of organized crime leaders, the Federal Law of April 1, 2019, No. 46-FL “On Amendments to the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation in terms of fighting organized crime” was adopted. The explanatory note to the draft of this law notes that, due to their position in the criminal hierarchy, the leaders of criminal communities (criminal organizations), as a rule, evade responsibility. At the same time, criminal liability for the very fact of leadership in the criminal hierarchy, not provided for by the current legislation. With this in mind, it was proposed to supplement the Criminal Code of the Russian Federation with Art. 210¹ on liability for a person occupying a higher position in the criminal hierarchy.

The legal concept of “the highest position in the criminal hierarchy” is not new to Russian criminal legislation. Federal Law of November 3, 2009, No. 245-FL in Art. 210 of the Criminal Code of the Russian Federation supplemented by part 4, which included a particularly qualifying sign of this crime – the commission of acts provided for in parts 1, 1¹ of this article by a person occupying a higher position in the criminal hierarchy. For the entire period of this legal norm, the practice of bringing leaders of organized crime to justice under Part 4 of Art. 210 of the Criminal Code of the Russian Federation turned out to be very modest and represented by only single judgement of convictions.

The concepts of “criminal hierarchy” and “highest position in the criminal hierarchy” are evaluative, since they are not disclosed in the current Russian legislation, which significantly complicates

the evidentiary activity in bringing organized crime leaders to justice for committing crimes under Part 4 of Art. 210 and Art. 210¹ of the Criminal Code of the Russian Federation. Both of these concepts are of criminological origin and, according to researchers, the signs of the subject of a crime must be determined by criminologists, and this concept can be based on signs that characterize criminal lords (Grishko, 2016; Leverso & Matsueda, 2019).

In the works of criminologists, the criminal hierarchy, understood as a kind of table of ranks for persons professing a criminal ideology and adhering to the "thieves' common code of law". The highest level in the criminal hierarchy occupied by "criminal lord", who can delegate their powers to proxy holders, are "mafia enforcers" and "alpha dogs". In addition to criminal lords, the crime subject under Art. 210¹ of the Criminal Code of the Russian Federation, it is also proposed to count "mafia enforcers", "alpha dogs", holders of the "common fund" and "trusties" (Bychkov, 2019). Among the persons occupying the highest position in the criminal hierarchy, one should also include the leaders of criminal groups and communities, criminal oligarchs (Shalagin, 2016).

In the criminal hierarchy, criminal lords occupy the highest position. At a lower level are the "mafia enforcers" and "alpha dogs". A "mafia enforcer" is a criminal authority appointed by a "criminal lord" to exercise control over a certain territory or object (correctional colony, pre-trial detention center, etc.) on his behalf. He is entitled to carry out organizational and administrative actions that regulate the internal life of the criminal environment. The "mafia enforcer" organizes and controls the collection of funds for the "thieves' treasury", appoints "alpha dogs", resolves conflicts that the lower-level "alpha dogs" cannot resolve.

Being imprisoned, for example, in a pre-trial detention center, the "mafia enforcer" appoints "alpha dogs" for the buildings, separate cells, a punishment cell, a medical hospital. In correctional colonies and prisons, there is also a whole system of "alpha dogs" for detachments of convicts, a punishment cell, cell-type premises, an industrial zone, a medical unit, a quarantine department, etc. "Alpha dogs" who are at large organize the delivery of food, money and prohibited items (mobile phones, alcohol, drugs, etc.) to pre-trial detention centers and correctional institutions.

In the criminal hierarchy, the "mafia enforcer" is the "alpha dog" of the highest level. All his activities subordinated to one strategic goal – to prove his loyalty to the criminal community and demonstrate managerial abilities to be accepted into the "thieves' family" in the future and take the highest position in the criminal hierarchy. "Alpha dogs" for places of detention (correctional centers and colonies, prisons, pre-trial detention centers), considering the significance of these objects for the underworld, are appointed directly by "criminal lords".

The slang terms "trusties", "black", "brothers circle", "boys", "strivers" are synonymous. So, in places of deprivation of liberty they call persons who adhere to "thieves' concepts", are negatively disposed towards the administration of correctional institutions, and, as a rule, are malicious violators of the sentence serving regime. From among the most authoritative "trusties" in places of detention, "mafia enforcer" and "alpha dogs" are appointed.

The appearance in the Criminal Code of the Russian Federation of Article 210¹ on liability for a person occupying a higher position in the criminal hierarchy caused justified criticism from a significant number of authors of scientific publications. The essence of the claims is that the status of a person in the

criminal world cannot be the basis for criminal liability. In accordance with Art. 8 of the Criminal Code of the Russian Federation, the basis of liability is the commission of an act containing all the signs of a crime. In part 1 of Art. 14 of the Criminal Code of the Russian Federation also enshrines another fundamental provision, according to which a guilty socially dangerous act, christened by the Criminal Code under the punishment threat, is recognized as a crime.

In this regard, it should be noted that relates the crime composition under Art. 210¹ of the Criminal Code of the Russian Federation, the basis of responsibility is not the very status of a person in the criminal hierarchy, but socially dangerous management activities based on his authority in the criminal environment, aimed at ensuring the functioning of organized crime. To achieve this, it is necessary to establish that the person has influence on persons with a lower status in the criminal hierarchy and is active in organizational and administrative activities aimed at supporting organized crime.

It should be borne in mind that organizational and administrative activities, which consist in creating a criminal community or leading it, coordinating the actions of organized gangs, creating stable ties between them, developing plans and creating conditions for the commission of crimes by organized gangs, dividing the spheres of criminal influence and (or) criminal proceeds, constitutes a crime under Art. 210 of the Criminal Code of the Russian Federation. The commission of these actions by a person occupying the highest position in the criminal hierarchy must be qualified under Part 4 of Art. 210 of the Criminal Code of the Russian Federation. Thus, in accordance with Art. 210¹ of the Criminal Code of the Russian Federation, a person can only be charged with those actions that are not covered by the crime components under Art. 210 of the Criminal Code of the Russian Federation (Novikov & Shiyan, 2021).

The question of the basis of responsibility for a person occupying a higher position in the criminal hierarchy, correctly resolved in the Criminal Code of Ukraine. By Law No. 611-IX of June 4, 2020, it was supplemented by Art. Art. 255¹, 255², 255³. In particular, Art. 255¹ provides for liability for the commission of socially dangerous acts, consisting in establishing or spreading criminal influence in society. In accordance with note 1 of Art. 255 of the Criminal Code of Ukraine, criminal influence understood as the actions of a person who, thanks to his authority, other personal qualities, promote, induce, coordinate or otherwise influence criminal activity, as well as actions consisting in the distribution of funds, property or other assets (income from them) with the purpose of such activities.

In note 2, Art. 255 of the Criminal Code of Ukraine also says that the subject of this crime is a person with increased criminal influence, including having the criminal lord status.

As an adoption result of certain legislative decisions aimed at combating organized crime, law enforcement agencies of the Republic of Georgia managed to achieve positive results in the fight against criminal lords. On December 20, 2005, the Law on Organized Crime and Racketeering adopted by the Parliament of Georgia. One of the advantages of this regulatory legal act is that it defines the basic concepts necessary for the implementation of the fight against organized crime (thieves' community, the activities of the thieves' community, a member of the thieves' community, criminal lord, a thieves' showdown, a thieves' gathering). In accordance with Art. 3 of this law, a "criminal lord" is a person who in any form manages and organizes a "thieves' community" or a certain group of persons using the activity methods of a "thieves' community". The public danger of being in the status of a "criminal lord" is associated with his managerial and organizational activities in criminal communities. Such a concept

interpretation of “criminal lord” is quite consistent with Art. 7 of the Criminal Code of Georgia, which states that the criminal liability basis is an illegal and guilty act.

By the Law of April 28, 2006, Art. 223¹, providing for liability for membership in the thieves' community (part 1) and being in the position of “criminal lord” (part 2). For being in the position of a “criminal lord”, a punishment established in the form of imprisonment for a term of 7 to 10 years with a fine, which, in accordance with Part 3 of Art. 12 of the Criminal Code of Georgia corresponds to the category of a serious crime.

A distinctive feature of the Georgian legislation on combating organized crime is that it is focused exclusively on combating criminal lords. In Russian criminal law, to characterize the crime subject under Art. 210¹ of the Criminal Code of the Russian Federation, a broader concept used, a person occupying the highest position in the criminal hierarchy.

The concept of “criminal lord” is conditional. Criminal authorities who have received this status simply refer to themselves as “thieves” or “tramps”. In pre-revolutionary Russia, they were called “Ivan”. In Soviet times, they began to be called “gangland boss”. The terminology used to refer to persons in this category are not of great importance. It is possible that the practice of applying Art. 210¹ of the Criminal Code of the Russian Federation over time will lead to the fact that such concepts as “criminal lord”, “mafia enforcer” and “alpha dog” will completely go out of circulation or will be replaced by other words.

As already noted, in the criminal hierarchy, organizational and administrative powers mainly exercised by three categories of criminal authorities: “criminal lords”, “mafia enforcers” and “alpha dogs”. These persons should be considered as a special subject of the crime under Art. 210¹ of the Criminal Code of the Russian Federation, with some clarifications that relate to “alpha dogs” in liberty deprivation places.

In the last decade, there has been an increase in the number of “alpha dogs” at the grassroots level in liberty deprivation places. In correctional colonies and prisons, “alpha dogs” appeared for detachments of convicts, punishment cells, cell-type rooms, single cell-type rooms, a canteen, a quarantine department, an industrial zone, a medical unit, etc. In pre-trial detention centers, the “mafia enforcers” appoint “alpha dogs” for the buildings and individual cells. It is unlikely that such “alpha dogs” can be ranked among the category of subjects occupying the highest position in the criminal hierarchy.

2. Research Questions

The article subject is the interpretation of the evaluative signs provided for in Article 210¹ of the Criminal Code of the Russian Federation (“Occupation of the highest position in the criminal hierarchy”), including their concepts and main characteristics, the norms of Russian criminal law and international law in the field under study.

The study of the evaluative features of article 210¹ of the Criminal Code of the Russian Federation contributes to the expansion of the scope of criminal law and criminological knowledge about responsibility for occupying the highest position in the criminal hierarchy.

The study of the norms of Russian criminal legislation and international legal norms in the area under study necessitates the adoption of legislative decisions aimed at improving Article 210¹ of the

Criminal Code of the Russian Federation, which will lead to an increase in the law enforcement efficiency.

3. Purpose of the Study

The work purpose: based on the study of the totality of the norms of domestic criminal legislation and international legal norms, the provisions of the science of criminal law and criminology, to provide a solid methodological basis for law enforcement practice, which will ensure the correct crime qualification provided for in Article 210¹ of the Criminal Code of the Russian Federation.

4. Research Methods

The research is based on the general scientific dialectical method of cognition. In addition, a set of research methods tested many times in criminal law and criminology used, such as analysis, synthesis, deduction, induction, system-structural (when studying the materials of judicial practice, the volume of organized crime and identifying its trends, interpreting evaluative signs), statistical (when studying the official statistical reporting of the FSI “MIAC of Ministry of Internal Affairs of Russian Federation” – statistical forms No. 494 “On the state of crime and the results of the investigation of crimes”, No. 582 “On the results of the fight against organized crime”), formal-logical (when developing basic proposals for improvement of Article 210¹ of the Criminal Code of the Russian Federation), differentiation, integration, etc., which allowed the team of authors to achieve their goal.

5. Findings

Considering that in the disposition of Article 210¹ of the Criminal Code of the Russian Federation, the legislator does not give an exhaustive description of a socially dangerous act and other crime elements, limiting himself only to indicating that a person holds a higher position in the criminal hierarchy. This article should be supplemented with two notes of the following content:

1. Criminal hierarchy is a subordinate relationship's system between persons who abide by the rules and follow the traditions that have developed in the criminal subculture, consisting in the voluntary observance and execution of collective or individual decisions, as well as orders of organized crime leaders.

2. The highest position in the criminal hierarchy is a place in the criminal hierarchy that a person occupies due to his authority, recognized by members of criminal communities, characterized by the presence of organizational and administrative powers relates to other persons with a lower status in the criminal environment.

To be liable under Art. 210¹ of the Criminal Code of the Russian Federation, the investigator, and the court should not be limited to formally establishing the position of a person in the criminal hierarchy. It is necessary to prove that the guilty person, using his criminal authority, actively carries out managerial activities in criminal communities at large and in detention places, participates in the development and adoption of policy decisions that are binding on members of organized criminal groups, as well as negatively minded convicts in correctional institutions.

6. Conclusion

In conclusion, we note that the compliance quality with the principles of legality, equality, justice and humanism, the law enforcement effectiveness largely depends on a uniform interpretation of evaluative signs.

The use of evaluative signs presents certain difficulties not only in the criminal law science, leading to different approaches in the interpretation of the concept and content of a particular sign, but also in the practice of applying the criminal law. In particular, the legislative interpretation lack of the evaluative features of Article 210¹ of the Criminal Code of the Russian Federation leads to their different understanding by law enforcement agencies, which undoubtedly leads to errors, stability lack in judicial practice when addressing issues of criminal liability for occupying a higher position in the criminal hierarchy. As a result, the rights and legitimate interests of a person and a citizen violated. In this situation, it is necessary to legally resolve the problem under study.

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