

Research Journal of Pharmaceutical, Biological and Chemical Sciences

The International Approaches in Struggle against Organized Crime in the Sphere of Economy, Including To Pseudo-Business.

B.O. Beremkulov*.

Academy of financial police, St. Koshi, Amolinskaya area, the Republic of Kazakhstan

ABSTRACT

In article the international approaches to organized crime in the sphere of economy, in general, and to pseudo-business in particular, are considered. And it is allowed to the author: to define the substantial party of economic crime, to designate the major factors influencing: on economic crime in general in the Republic of Kazakhstan, in particular, on merge of organized and economic crime, the basic theoretical provisions on formation and development of the general and private methods of investigation of crimes in the sphere of economic activity with participation of an organized criminal group are opened, including pseudo-businesses and it is designated the main problems of the organization of investigation of pseudo-business with participation of an organized criminal group, and there are offered the separate ways of their permission, for the purpose of increase of efficiency of counteraction of crime by law enforcement agencies in this sphere.

Keywords: pseudo-business, an organized criminal group, economic crime, organized crime, economy sector, the financial and credit sphere, trade intermediary firm, tax avoidance, an entrepreneurial activity, etc.

**Corresponding author*

INTRODUCTION

Problems of struggle against crimes in the sphere of economy with participation of organized criminal groups are object of multilateral scientific researches of the leading scientists of the Republic of Kazakhstan and other States of the world. An essential contribution to studying of various aspects of research of pseudo-business and its legal nature, are carried out generally by representatives of economic, civil law branches of science. Some problems of the criminal and legal characteristic of pseudo-business, the criminological characteristic, and also measures for its prevention are investigated by A.N. Agybayev, A.K. Aykimbayeva, I.Sh. Borchashvili, T.V. Dosyukova, N. Sh. Zhempiisov, E.A. Ongarbayev, S. M. Rakhmetov and others.

In Kazakhstan the complex researches, devoted to organizational and tactical problems of struggle against pseudo-business with participation of an organized criminal group so far were not carried out. To the conducted research regarding definition of essence and the maintenance of economic crime scientific works of foreign and domestic scientists and practitioners have a particular interest. Now it is no doubt that economic crime including pseudo-business as one of its forms, it is closely connected with organized crime, which gets into all life-supporting spheres.

METHODOLOGY

Studying of foreign and domestic literature of the Soviet and Post-Soviet periods, data of the Interpol allows to say, that organized criminal structures were formed for years and exist in many countries [1, p. 118-133].

If not to be going into particulars of the polemic, concerning definition of organized crime in general, that it is not a subject of our consideration, we can only emphasize that T.K. Akimzhanov's opinion were shared by us, that the western scientists define the organized crime as process of rational reorganization of a criminal world by analogy with a lawful entrepreneurial activity in the lawful markets. Such criminal entrepreneurial activity, pursuing the aims, takes part in such not lawful types of activity as transactions with illegal goods and services, monopolization of the market, use of corruption and intimidation. According to the western scientists, the phenomenon of organization concerns commission of concrete acts rather formation of its criminal formation, its existence and its criminal activity. Commission of identical or different crimes are rather common cause, organized among themselves subjects (groups), each of which has the functional features, "the rights and authorities".

The above-named definitions of economic crime presented by a number of authors allow to allocate the main positions of a ratio with it to organized crime.

MAIN PART

First, it concerns their general object of encroachment, i.e. it is economy (from Greek *oikonomike*) – an art of management. As it is stated above, in educational literature this term is used as synonym of the word "economy".

Secondly, the ratio of concepts economic and economic crime it is defined that the economic crime is basic concept for organized crime.

It is deserved attention the position on this aspect of the Russian criminologist G.F. Khokhryakov who emphasized that organized crime is a way of monopolization of the market. For this reason, it provides excess profits. Continuing the thought, G.F. Khokhryakov specifies that "organized crime was not only way of monopolization of the shadow market; but it is become a bow between a hidden economy and common-criminal crime" [2, P.15.4].

Also, A.I. Dolgova's remark is absolutely justly, that the statement is very exact that if the usual crime attacks society, working against its institutes, including the States, organized crime in this approach tries to rely on institutes of the state and society, to use them in the purposes [3, P. 56].

It is no coincidence, questions of counteraction of economic crime are represented actual not only for the scientific CIS countries, domestic jurists, but also for the legislation and practice of distant foreign countries. The success in struggle against economic crime which is expressed in minimization of negative consequences of its activity for national economy, proves need of an integrated approach which has to include economic, social, organizational and administrative, criminal and legal (determined by the principles of the weighed criminal policy and the optimum criminal legislation), administrative and legal, operational search, ideological and international measures [4, P. 12, 16-18].

At the same time, we share the point of view of T. Akimzhanov that if in the West organized crime is, the first of all, a gangsterism, in Kazakhstan and the CIS countries there was a dense merge of economic crime (almost "white-collar") and criminal (gangster) to deep penetration into legal economy and into many spheres of policy. Organized crime is dangerous to society the social and legal phenomenon, which in comparison with the countries of the West has the roots and the features [5, P. 117].

E. Saterlend made out such conclusions after the conducted extensive researches of illegal activity of corporations (on the example of the USA). Meanwhile over time many scientists departed from this approach at the determination of the concept of economic crime owing to the further development, which led them to the following conclusion that these crimes can be committed and the persons having not absolutely high level of a social position. Thus, there was a definition of "economic crime", and the white-collar crime became its part" [6, P. 24].

Thus, on the basis of the analysis of various sources it is possible to make the following conclusions:

Special public peril of the committed crimes in the specified sphere, is caused by that;

- First, they are one of key threats to a financial system, and also economic security of the State in general;
- Secondly, merge of organized crime with economic, that leads as to monopolization of this activity, and involvement in an orbit of economic crime of various groups of people which concerns not only criminal elements, but also representatives of authorities;
- Thirdly, commission by organized group of crimes in the sphere of economy allows to strengthen the economic situation in society and on the basis of it already to counteract of carrying out democratic transformations in the state scale;
- Fourthly, organized crime in the sphere of economy entails a number of negative consequences, including: does harm to a number of the diverse public relations such as penetration into such areas as policy, culture, the moral and ideological sphere, a large-scale tampering of state apparatus at all levels of its management; generates new types of illegal enrichment; generates the whole level of parasitizing on organized crime the "elite": "lords of the underworld", "authorities", "umpires", organizers, intermediaries, security guards etc. [7, P. 539].

With regard to conditions of Kazakhstan, we consider that it is possible to designate the following factors influencing economic crime:

Increase in property differentiation of the population and growth of level of poverty that conducts to violation of the social world and a public consent;

The deformity of structure of the Kazakhstan economy is caused by such conditions, as:

- a) Process of systematic and comprehensive penetration of organized crime to the main life-supporting spheres (the oil and gas and coal industry, grain and spirit business) of the Kazakhstan society is continued and is taken more and more dangerous forms;
- b) Due to such objects of criminal encroachment as the highly rare raw materials which is exported out of country borders, housing market, prostitution and narcobusiness, organized fraud in activity of commercial banks and commercial structures there it is the criminogenic space of organized crime is increased in a geometrical progression;

- c) Insufficient competitiveness of production of primary part of the Kazakhstan enterprises, including cessation of production in important branches of processing industry;
- d) Takeover of the foreign companies of domestic market of Kazakhstan, and also acquisition of the Kazakhstan enterprises by them with the aim to oust from the market of a domestic production both with external, and from domestic market;
- e) Loosening of control from the State, including unavailability of law-enforcement system to struggle against organized crime in the sphere of economic activity;
- f) Disintegration of a number of research teams, or decrease in productivity of scientific researches and development in the considered sphere.

Passing to the consideration of such illegal act as pseudo-business, it should be noted, that the foreign States with the formed market economy have it too, but it is presented in other forms. Qua term "pseudo-business" there was not been, it is associated with such concepts as "the fraudulent organizations", "the fictitious organizations" and others. Such firms are created and engaged in the activity for the purpose of "money laundering", earned in the criminal way, and in some episodes for the purpose of tax avoidance (money transfer to the organizations which are created on a preferential basis, etc.), and also commission of various fraudulent operations [8, P. 140].

The next illegal acts: "monopolistic crimes; fraud of the organizations; bribery, breach of confidence; deception of buyers; digital frauds; fictitious organizations; falsification of accounting documents; violation of economic requirements and standards; deliberate inaccuracy in the description of goods; unfair competition; financial violations; tax avoidance on social needs; customs violations; currency frauds; exchange and bank violations; the violations doing harm to environment; various ways of money laundering" were referred to the economic crimes by the group of experts of the Council of Europe.

From this list of economic crimes, "the fictitious organizations" and "fraud of the organizations", regarding to the level of social danger, are similar to domestic pseudo-business.

The comparative analysis of the criminal and legal legislation of the USA, England, France, Germany, Sweden, Japan is shown that in specified countries there is no the special norm providing responsibility for pseudo-business. Criminal responsibility for this sort of a crime is provided in a number of the delicts, regulating punishability for fraud and breach of confidence. As we know, the criminal legislation of some foreign countries is not codified. In these cases, equivalent criminal precepts of law can be found in the acts regulating, for example, the economic legislation [9, P.5].

The foreign legislation regulating economic activity rather extensively indicates existence of corporate law in the USA; economic, economic penal law in Japan, the economic law in France, law of associations in Great Britain and Germany. According to the specified legislation, it is carried out the registration and the subsequent licensing of activity of the persons and the organizations, conducting an entrepreneurial activity and the responsibility for violation, regulated by it, norms is established. In the foreign legislation, regulating the sphere of economic activity, "closely intertwined among themselves the norms of civil, trade, penal, administrative law, provided by different types of the regulations, adopted by various bodies and providing a wide range of the measures of legal responsibility" [10, P.772].

The Criminal code adopted on May 24, 1996 in the Russian Federation, is provided responsibility for pseudo-business in Art. 173 in the point "Crimes in the sphere of economic activity" the chapter of VIII "Of a crime in the sphere of economy". The Russian criminal law gave definition to pseudo-business as "creation of the commercial organization without intention to carry out entrepreneurial or bank activity, the aiming receiving the credits, the immunity from taxation, extraction other property benefit or cover of the forbidden activity which was caused large damage to citizens, the organizations or the State" [11, P. 78]. As it was shown the analysis of law-enforcement practice, the article 173 "Pseudo-business" of the criminal code of Russian Federation, it is practically not applied. N.A. Deulenko believes that it is inexpediently to have in Special part of the criminal code of Russian Federation, the Independent criminal precept of law which provides responsibility for pseudo-business, whereas it would be necessary to provide it in the station of Art. 159, 176, 199 of the criminal code of Russian Federation, as the qualifying sign "with use of officially registered legal entity". It is connected with uncertainty of its formulation, and also that the acts, provided in it, are covered by other structures of crimes, and in this connection, this article was excluded by the Federal law of the Russian

Federation of July 13, 2010 No. 15-P. Thus, criminal liability for such criminal actions by the criminal legislation of the Russian Federation comes under such articles of the Criminal Code of the Russian Federation as tax avoidance, legalization of the criminal income, fraud, etc.

CONCLUSION

On the basis of stated, we can do a conclusion that pseudo-business is inherent also in foreign legislations and even to other legal systems. In the criminal legislation of foreign countries and some CIS countries, this criminal action exists in various modifications. In confirmation of the above-stated, of B.M. Nurgaliyev asserts "there are reasons to believe, that our criminal structures already started mastering the specified types of frauds" [8, P. 140]. Because the domestic crime develops, and studies and successfully makes use of experience of foreign swindlers, so we need to adopt the best practices of foreign countries for crime control, including with pseudo-business.

REFERENCES

- [1] A.S. Nikiforov, 1996, p.586, Bases of struggle against organized crime. - M.: INFRA-M; What we have to do with organized crime.//Organized crime-3. – M.: Criminological association.
- [2] G.F. Hokhryakova, 2010, p.155, About new theoretical approaches and practice of counteraction of organized economic crime.//Actual problems of struggle against organized crime in the sphere of economy: materials of the International scientific and practical conference, Moscow, on December 17, 2009 / under the editorship of A.G. Khabibulin. – M.: Academy of economic security of the Ministry of Internal Affairs of Russia
- [3] A.I. Dolgova, 2005, 106, The quoted work.
- [4] L.D.Gaukhman, S.V. Maximov, 1996, p.235, Criminal liability for crimes in the sphere of economy.
- [5] T. Akimzhanov, 2005, p. 196, The doctoral dissertation "Criminological and criminal and legal problems with organized crime"
- [6] E. Saterlen, 1987, p.56, Ekonomicheskaya pretupnost'. / Vstup. Art. of M. A. Mogunova and Yu.A. Reshetov; under the editorship of M. A. Mogunova. – M.: Progress
- [7] B.V.Volzhenkin, 2002, p.798, Crimes in the sphere of economic activity (economic crimes). – SPb.: Publishing house "Legal Press center",
- [8] B.M. Nurgaliyev, 1997, p. 312, Organized criminal activity (criminal and legal, procedural and criminalistic aspects): Monograph. – Karaganda: KVSh GSK RK
- [9] E.E. Dementieva, 1992, p.93, Economic crime and struggle against it in the countries with the developed market economy (on materials of the USA and Germany).
- [10] Takekhiko Sone, 1998, Issue 4, p.865. The theory and practice of economic penal law in the conditions of market economy of Japan//the Bulletin of MSU, a Series 11, the Right
- [11] N.A. Deulenko, 2002, p. 122, Pseudo-business: concept, forms and criminal and legal value. Dis ... Cand.Jur.Sci. / academy of management of the Ministry of Internal Affairs of the Russian Federation.