

# Issues of detecting and effective investigation of unlawful gambling organization and promoting

N. V. Mashinskaya

*Department of criminal law and procedure*

*Higher school of economics, management and law*

*Northern (Arctic) federal university named after M.V. Lomonosov*

Arkhangelsk, Russia

n.mashinskaya@narfu.ru

**Abstract**—Taking into consideration negative consequences of the crime prohibited by the art. 171.2 of Criminal Code of the RF, the given article focuses on the issue of effective criminal procedural reaction to detected facts of gambling organizing and promotion. The author analyzes practice of law-enforcement agencies of Russia on detecting and preliminary investigation of the mentioned crime and highlights the lack of uniformity in leading police operations and investigative actions. Issues in detecting of aggravating features of body of crime are mentioned as well. In conclusion the author gives suggestions concerning organizing of detecting of crime, recording of proofs, initiation of forensic researches and overcoming of counteracting from the defendant party.

**Keywords**—*preliminary investigation, police operations, investigative actions.*

## I. INTRODUCTION

Unlawful gambling organizing and promotion (art. 171.2 of the Criminal Code of the Russian Federation) is detrimental to economic interests of the RF, offend morals, corrupt the youth and forms the ground for corruption offences<sup>1</sup> and other grave crimes [9]. According to

A.V. Ivanchin the crime mentioned above is a latent crime [5]. Its social danger, however, requires effective criminal procedural reaction.

Despite the relevance of timely detection and qualitative preliminary investigation of unlawful gambling organization and promotion, analysis of investigation practice in different regions of Russia highlighted a number of issues on organizational and legal provision of detection and preliminary investigation of the given crime. The lack of special research on methods of investigation and detection of the crime prohibited by the art. 171.2 of the CC of the RF is one of the reasons of that situation. Forensic methodology develops strategy of investigation of a crime and examines its structural elements [7]. According to R.S. Belkin forensic description detects correlation between its elements and that is why it has practical value and forms basis for suggesting of lines of inquiry for particular case [1]. Personality of a criminal requires attention as well as it is one of the parts of

mechanism of criminal conduct. That is why criminological research is required as it could increase the efficiency of law-enforcement activity in this area [2]. As A.V. Makarov, A.S. Zhukova, T.D. Makarenko and others mention, the state requires elaboration of the system of measures that aim provision of national security [6, 10].

In this regard study of foreign practice of fight against unlawful gambling is quite prompt. Foreign sources don't deal much with the aforementioned topic. One of the most discussed issues related to the given topic is the methodology of investigation of different counter-detection of crimes within the context of covering up of unlawful activity on the part of criminals [17]. Some authors note contradictions of a system of criminal justice, determine forms of punishable conduct in accordance with contemporary need for provision of national security and claim for improvement of criminal legislation [14].

Considering unlawful gambling organization and promotion as a socially dangerous act forming behavioral disorders a number of scientists suggest improving of legislation aiming prevention of these phenomena [13, 16]. Thus foreign researchers pay attention to different aspects of legal regulation of adequate reaction to detected facts of unlawful gambling business that can be explained by significant differences in legal regulation of mentioned public relations.

## II. METHODOLOGY

Methodology of study is based on materialistical approach to cognition of phenomena and essence of objective reality as well as general scientific methods of analysis, synthesis, induction and deduction. Particular scientific methods were also used. Method of formal logic provided analysis of rules of criminal procedural legislation. Comparative and legal method allowed to learn foreign practice and analysis of documents was used while researching materials of criminal cases led by investigative agencies of different regions of Russia. Maintaining the Integrity of the Specifications

## III. RESULTS

Without special methodology containing criminalistic characteristic of unlawful gambling organization and provision analysis and synthesis of practice of detecting and investigation of the named crime is crucial. Since 2011 up to the present day practice of investigation in different regions

<sup>1</sup> Criminal case № 8916226 // Omsk region Investigation Department of Investigative Committee of the Russian Federation 2013; Criminal case № 3196025 // Astrakhan region Investigation Department of Investigative Committee of the Russian Federation 2013

of Russia has discovered different ways of detecting of grounds for criminal proceedings initiation and recording of evidences

The most of criminal cases on art. 171.2 of the CC of the RF were opened on the grounds of police operations results, led by units of Ministry of Internal Affairs or Federal Security Service. There is only one case opened on the grounds of prosecutor's audit of the lottery club activity<sup>2</sup>. Inspection of premises is one of the police operations that are led most often. Buildings, areas and vehicles were inspected in 90 per cent of cases<sup>3</sup>.

Results of the mentioned police operation had been provided to investigator by means of official report and then the case was opened. In one of the cases apart from inspection of premises there were collected samples for a comparative research and study of items and papers was led by experts as well. The expert found that boards from slot machines contain copies of software of particular company and that this software is designed for slot machines with cash prizes<sup>4</sup>. Thus, even that the practice of detection of the crime, prohibited by the art. 171.2 of the CC of the RF is not unified, it is possible to state that the practice has elaborated certain means of reaction to detected signs of the crime at the stage previous to the opening of the criminal case. But recording of evidences during preliminary investigation demonstrates that investigators don't understand the process of collection of evidences itself. For example, in the previously mentioned criminal case results of police operations including acts, protocols and decisions were interpreted as evidences that don't correspond to requirements of the Criminal Procedure Code of the RF concerning giving meaning of the evidence to police operations results.

Proving of large and extra-large amount of generated income that forms objective side of body of crime, prohibited by the art. 171.2 of the CC of the RF is the most difficult to investigators. Analysis of practice highlighted two issues of proving of the named circumstances. The first one is a scenario when gambling is promoted without cash accounting and financial documents. In that case slot machines containing boards with gambling software are not used. The gambling is promoted by means of card games or roulette [11]<sup>5</sup>. The lack of accounting documents makes the study of financial activity of the detainee impossible that provokes reasonable doubts on the proof of amount of income generated from unlawful business. In that case counting of cash discovered and seized during inspection of the place of illegal activity is not enough. That scenario

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<sup>2</sup> Criminal case № 93550 // Omsk region Investigation Department of Investigative Committee of the Russian Federation 2012;

<sup>3</sup> Criminal case № 36829-13 // Bryansk region Investigation Department of Investigative Committee of the Russian Federation; criminal case № 15025088 // Arkhangelsk region Investigation Department of Investigative Committee of the Russian Federation 2015

<sup>4</sup> Criminal case № 36830-13// Bryansk region Investigation Department of Investigative Committee of the Russian Federation 2013.

<sup>5</sup> Criminal case № 1532; 8188 // Vladimir region Investigation Department of Investigative Committee of the Russian Federation 2012

requires financial study of accounting documents that could show financial activity of defendant. According to the paragraph 12 of the Decree of Plenum of the Supreme Court of the RF «On court practice on illegal business and money laundering» illegal income is not only net profit but costs on the organization of illegal activity as well. Thus at the stage of procedural inspection one need to consider all costs incurred by organizer of unlawful gambling. In order to detect all costs one need to analyze seized rental and employment contracts as well as utility payments and so on.

The second issue is the lack of experience in computer forensics of boards seized from slot machines in order to detect amount of cash received from players. Thus, investigators from Omsk region marked that initiation of the given research had shown that expert organizations that could undertake the required study aren't presented in the region. As result, expert conclusion was based on pictures of slot machines, a number of statements based on personal experience of expert and data published in open web-sources<sup>6</sup>. At the same time during the preliminary investigation one need to detect correlation between points from system memory of slot machines and real use of cash in gambling hall activity in order to proof income and period of its generation.

Due to issues of detecting income from unlawful gambling organizing and promotion testimonies of witnesses (players and gambling hall employees) are of particular importance. Practice demonstrates that gambling hall managers and guards manifest the lack of awareness of gambling organizer's personality and withhold information about players because of their dependence on the employer. Players don't want to be detected and desire to conceal their participation in such activity. Thus investigators meet obvious countering to preliminary investigation that affect its efficiency<sup>7</sup>.

Issues in detection and investigation of the crime prohibited by the art. 171.2 of the CC of the RF require competent organization of work of units involved in detecting and investigation of crimes. According to O.B. Dronova and A.A. Kurin a prompt provision of subjects of investigation with full and reliable data on the event of crime and perpetrators is a key to successful gaining of required proofs [4].

Considering the issue of identification of organizers of crime and amount of generated income at the first stage of investigation whereas unlawful gambling activity masquerades as legitimate business police operations represent the most effective way to detect all circumstances of crime. They should be led before opening the case and should aim detection of perpetrators, methods of maintenance of financial records, places where gambling games are promoted (café, club, car service and others) as well as the fact of gambling masking as stimulating lottery. Detection of method and mechanism of the game as well as

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<sup>6</sup> Criminal case № 93550 // Omsk region Investigation Department of Investigative Committee of the Russian Federation 2012

<sup>7</sup> Criminal case № 93550; 816226 // Omsk region Investigation Department of Investigative Committee of the Russian Federation 2012

proving of fact that player has received cash prize and so on is possible by leading such police operations as observation, control and recording of phone calls, purchase operation, inspection of premises, areas and vehicles.

At the stage of police operation materials implementation one need to create investigative and operating groups consisted of investigators of the Investigative committee of the RF, operative units of police of the FSS criminal investigation departments, operative units of economic security and counter-corruption department, expert (forensics' specialist), units of special forces (force protection). According to legal literature operative and tactic combination may be initiated before opening of the criminal case but agreement of a plan of action with the investigator is compulsory. Interaction in operative and tactic combination should be built on the ground of leading role of investigator [3, 12]. As organizer of detection and investigation of crime, investigator should focus police and the FSS operative units leading police operations on detecting of frequent visitors of gambling halls as well as those who mount and maintain video surveillance system in gambling halls. Further these people should be interrogated as witnesses. One should accept the opinion of A.A. Litvin that prevention of law-enforcement agencies' runaround has particular importance and that opening of criminal case should be prompt [8].

Organizing of the first stage of investigation of crime requires particular attention. Taking into consideration the fact that slot machines are usually kept in different places simultaneous inspection of all places of incident is crucial. Investigator should obligatory describe in protocol the inspected facility, availability of guard and video surveillance systems and seize and seal slot machines and its accessory as well as detect and seize cash, accountant and other documents that keep information on financial activity.

Researches are important to proving of required circumstances of crime prohibited by the art. 171.2 of the Criminal Code of the RF. Type of research depends on the circumstances of the case. If gambling was promoted by means of slot machines computer forensics is preferable. That type of research detects modification and designation of equipment, availability of gambling in its software, list of gambling applications, method of imposition and removal of game points, price of the point, availability of seal of metrological control, data on average per cent of winning, information on the fact of registration in AISS «Automaton – control – Region», on version of gambling software, on tools that randomly distribute the winning and on statistic information on credit. If recording of phone calls was led, one need to initiate forensic-acoustic research in order to identify affiliation of voice to particular person. Inspection of phonogram will contribute to obtaining information on amount of generated income since employees of gambling halls usually report to organizer on generated amount of income by means of phone calls or send SMS-messages. Data storages of video surveillance systems mounted in gambling halls should be seized for the same purposes. Records obtained from such storages should be analyzed. The aforesaid practice of investigation of crimes demonstrates that forensic linguistic study of content of conversations of perpetrators is a good proof as it

demonstrates actual organizer as well as amount of generated income from unlawful gambling<sup>8</sup>.

#### IV. CONCLUSION

Analysis and synthesis of practice of detection and preliminary investigation of unlawful gambling organizing and promotion as well as researches of different authors lead to the conclusion that contemporary law-enforcement practice requires clear organizational and legal provision of such activity. It seems that improvement of quality of operative and investigative activity on the discussed cases should be held in three ways.

Development of methods of investigation of unlawful gambling organization and promotion including its particular stages should be the primary task. The CPC provides legal mechanism of initiation of criminal case and preliminary investigation of crimes but the lack of approved methods of investigation makes effective reaction to detected violations impossible. Secondly, clear-cut organization of activity of competent authorities and their interaction has particular importance in improvement of quality of preliminary investigation. One need to create investigative and operative group consisted of few investigators, operative units and experts in order to detect and investigate unlawful gambling business. Good planning and leading of police operations and investigative actions is important for overcoming the mentioned challenges as well as prompt initiation of criminal case. And thirdly, there is a need for advanced training of experts in forensic research of data storages and computers in general.

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<sup>8</sup> Criminal case № 8188 // Vladimir region Investigation Department of Investigative Committee of the Russian Federation 2012

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