

Some Criminal-Legal Characteristics of an Illegal Arrangement of Gambling

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Abstract – The article analyses prevention of gambling in the General spectrum of legal education. The authors draw attention to the fact that in the Russian Federation, as in most countries of the world, there are legislative restrictions and prohibitions on the organization of or participation in gambling and sweepstakes. The legality of this activity is often associated with a specific place, region or state of the country. In Russia, for example, it is the Krasnodar territory, and in the United States – Nevada. Restrictions in the law are associated with negative consequences of gambling – the possibility of bankruptcy, gambling addiction, mental disorders, etc. The article concludes that the multiplicity of changes in the wording of article 171.2 of the Criminal code of Russia in 2011-2018 is associated with the distinction with the existing similar provisions of administrative legislation. The amendments lead to positive results, but adjustments in the future are desirable in order to prevent this illegal phenomenon.

Keywords – criminal law, gambling, sweepstakes, slot machines.

I. INTRODUCTION

The need to combat wrongful acts is more acute than ever in modern Russian society. Of particular importance is not only the prevention of offenses but also their adequate suppression, in which a particularly important role is played by the improvement of criminal law. The introduction of changes, i.e. the adjustment of the current legislation, is certainly a positive and necessary process. This statement fully applies to the provisions of criminal law. However, the regularity with which legislators resort to the use of this practice is consistently at least 10–15 times annually. The above conditions the relevance of this article, its scientific and practical importance in the fight against the above-mentioned wrongful acts.

Analyzing some of the criminal-legal aspects of an illegal arrangements of gamblings, you begin to think that in addition to logical grounds of the necessity of making needed changes, due to scientific and technical progress taking place in the country and abroad political, social and economic changes, you understand that the reasons for such constant changes are clearly insufficient reasoning, justification, and elaboration of previously adopted regulations and a clear demonstration of the activity of legislators, in order to avoid accusations of inaction.

Far from the most, but still a good example and illustration of the above can serve as introduced in the Russian

Federation Criminal Code eight years ago by Federal law No. 250 of 20.07.2011 article 171.2. "Illegal arrangement of gambling" [1].

II. MATERIALS AND METHODS

The article is based on the materials of the criminal law of the Russian Federation. In its writing, scientific methods based on the laws of the dialectic, the comparative method and the method of scientific prognosis were used.

III. RESEARCH AND DEVELOPMENT

Awareness of the need to identify some criminal-legal aspects of the illegal arrangement of gambling requires, first of all, a clear definition of the concept itself, i.e. the content of the above-mentioned legal norm governing the organization of the fight against this crime. At the moment, the main means of combating illegal gambling industry in Russia are the provisions of this article of the Criminal code.

Originally, the act represented the organization and (or) conducting gambling with the use of gaming equipment outside the gambling zone or with use is information and telecommunication networks, including network "Internet" and also communication tools, including mobile communication, or without a duly authorised permit to carry out activities on organization and carrying on gambling within a gambling zone, interfaced to deriving revenue in the big amount, and the second part involved the same act associated with the generation of deriving revenue in especially big amount, or committed by an organized group.

Without going into a detailed analysis of constructive elements of the given structure, we will specify that in three years after its adoption by the Federal law of 22.12.2014 article № 430 was essentially corrected. The correction began with the first word in the disposition of the article, indicating the illegality of this business occupation. To this remark, we shall have to refer in our article a little later.

The second option was a reference to the illegal provision and (or) conducting gambling with the use of gaming equipment outside the gambling zone or with use is information and telecommunication networks, including network "Internet" and also communication tools, including mobile communication, or without a duly authorised permit to

carry out activities on organization and conducting gambling within a gambling zone.

Part two referred to the same acts committed also by a gang, but, unlike the previous version, committed by prior conspiracy, or involving of deriving revenue in a big amount, and not as previously, in especially big amount, due to the presence of the introduced third part, which provided for acts enshrined in both the first and the second part, and committed by an gang; involving of deriving revenue in an especially big amount; or committed by a person using his official position.

However, the legislator did not stop there and less than two years later, Federal law No. 325 of the third of July 2016 supplemented the article under consideration with a note that income in a big amount should be recognized as income in the amount exceeding one and a half million, and income in especially big amount should be considered such that its amount should exceed six million rubles.

We consider this addition necessary and essential, but again we will ask a question why it was made neither in the first, nor in the second editions, and it at that time existed less than five years, and any essential changes or cataclysms like default or hyperinflation in the country didn't occur?

However, the analysis of the mentioned legislative provisions is also not included in our task due to the fact that last year the Federal law No. 227 of July 29, 2018, the article was corrected by the legislator again, and as experience suggests, obviously not for the last time. In particular the acts specified in the first two parts of the article, in the presence of such aggravating circumstances, as the fact that in their commission participated gang, or this act committed with abuse of official position of a specific entity or contributed to the receiving of criminal proceeds, but at a amount prescribed by law for especially big.

Paying attention to the differences in comparison with the previous edition, we return to the term "illegal" previously indicated in our article, note its absence in the content of the current edition, and the fact that after the introduction of this term in the second edition, its use was less than four years.

The novels should also include an indication in the content of the bookmaker's office and totalizator and another addition in the note explaining that the systematic provision of premises should be the provision of premises at least two. This note is fixed as the first of the two, and the second position has moved the remaining unchanged note on the amounts of income in big and especially big amounts.

The wording, which includes the definition of "organization of activities", is found in the Russian Federation Criminal Code repeatedly. A.S. Limar believes that these actions aimed at ensuring it is substantively organizational [2].

In authoritative sources, it is claimed that the crime considered by us has many similarities with the illegal enterprise. [3] That, in including should spread and on objects of the offense. However, according to A. Likholetov with the inclusion in the Russian Federation Criminal Code such special trains of the illegal enterprise as an article 171.2 and

171.3 established notions concerning the direct object has ceased to clearly define its specificity [4].

V. N. Vinokurov expresses a rather controversial point of view in our opinion that the placement of article 171.2 among crimes in the sphere of economic activity is not entirely justified because the main danger and the harm associated with it are not so much the funds not received by the state from taxes on this activity, as the negative consequences of a social nature leading to the destruction of the individual, problems in family life or at work. Hence, it is concluded that it is necessary to place this act among crimes against public morality [5].

With this opinion, we could agree only under the condition of recognition of criminal any gambling, organization casino activity, etc. But since it is legal in the presence of its licensing and implementation in the designated regions, in accordance with this logic, it should also fall under the crimes against health and morality. On the inexpediency, in our opinion, a complete state ban on gambling, we give the arguments below.

Gambling is a risk-based agreement on the possibility of winning, which is concluded by the participants of such an agreement between themselves or with the organizers of gambling according to the rules established by them.

The arrangement of gambling can be carried out exclusively in gambling establishments located within the gambling zones. Gambling can be organized only by legal entities registered in Russia.

IV. RESULTS AND DISCUSSION

The introduction of legislative restrictions has led to the fact that gambling establishments began to mask their activities under various lotteries, entertainment shows, which offer financial incentives or the opportunity to provide Internet access to sites registered outside of Russia. Such services are provided by the organizers in conspiratorial.

When establishing the ban, the legislation, as a contingency measure, provided for special zones in the territory of which such activities are considered permitted and lawful. According to the law, the gambling industry is allowed in the following entities: in Crimea, in Altai Territory, in Kaliningrad region, in Krasnodar Territory, Perm Territory and Primorsky Territory.

Of course, the crime we are considering cannot be extended to the gambling industry licensed and conducted in these areas. The relevant activity becomes illegal when, despite the provided rules, bans or restrictions concerning the arrangement of gambling, it takes place in other than the listed constituent entities of the Russian Federation.

According to workers of law enforcement agencies, the problem associated with the existence of rogue casinos has not been eliminated in the country, and there is an urgent need for their complete elimination, as well as other gambling establishments outside the permitted zones.

Analysis of the content of article 171.2 of the Russian Federation Criminal Code "Illegal arrangement of gambling"

shows that usually, the game is a variety of images on the monitor, for example, rotating in the vertical direction of the drums. On any of the sections, there are schematic drawings, numbers, objects. Once the game starts, the images spin and then stop in a sequence of random numbers or objects. When three or more identical symbols are fixed on the line chosen by the player, points are added to it, each of which is equal to the specified electronic unit. One unit can be equated to one euro, ruble, dollar, yuan, etc. Unlike sports games, cards, chess or even totalizers, in this case, the result is almost independent of the skills, qualifications or intelligence of the participant. The player who made a bet and chose the option starts the movement of the drum in anticipation of random luck when similar images match.

When playing poker, participants, by concluding a contract on the number of winnings, according to the rules, also based on a random set of cards, contribute to the fact that the organizers by their actions assisted in the conclusion of such agreements on winnings, and themselves received for this illegal gratification [6].

A certain problem for the administrator of law is the need to distinguish penal offenses from administrative offenses, given the fact that their external manifestations are quite similar and partially identical, article 14.1.1 of the Code of Administrative Offenses [7].

As already noted, the prohibitions established in the law on the organization and conduct of gambling outside gambling zones have led to the creation of the illegal gambling industry. Some gambling establishments began to provide conditions for gambling underground.

The organizers of the gambling, after studying the prohibitive regulatory definitions, have tried and are trying to use the fuzziness and vagueness of the wording in the law. They organize gambling, masquerading as holding various and formally is not prohibited lotteries. Trying to avoid criminal sanction, the organizers are trying to obtain the appropriate licenses and permits for their production.

Often, the circumstances of a criminal law character that prevent the correct qualification of the acts considered by us are insufficiently defined in the law criteria and characteristics of technical regulations relating to lottery equipment and other gambling devices and machines. And this, to some extent, is an obstacle to their legal differentiation. That, in turn, gives rise to clearly excessive freedom of "discretion" of the executor of law. The presence of these legislative loopholes leads to the fact that the organizers begin to use externally modified both new and previously used gambling machines. Sometimes such alterations were limited to the liquidation of note cash boxes, which were replaced by an electronic form of calculating prize points and bets made by the gamer.

Also, they may violate the conditions under which the possibility of using terminals and other lottery equipment is provided, in fact, at the same time, computer facility is used, which demonstrates cut scenes similar to visual images used in gambling machines.

It should be noted that after the amendments to the law "on lotteries" began to take effect in 2014, the powers to organize

them were limited by various executive authorities. The noted restrictions affected, for example, the Ministry of Finance, the Ministry of sports of Russia and a number of other departments.

The list of legislatively imposed restrictions includes:

- restriction of types of lotteries, depending on the place of their holding and territories of action, classified as having the character of international, state or other.
- prohibition of lotteries, that having stimulating character.

However, it should be pointed out that sometimes in practice there is a situation where shops carry out promotion actions, which in their content is not so different from the promotional lottery. During this promotion, the shop accumulates a stimulating prize fund.

The literature indicates the prohibitions imposed on gambling under the guise of lotteries[8]; prohibitions of any lotteries through the use of gambling machines or equipment, prohibitions on lotteries using the web of the Internet or other types and methods of communication, as well as the use of lottery terminals, except for those types of lotteries that are directly marked in the regulations, as indicated in their work Bazhanov S.V. and Vorontsov A.A. [9].

In our opinion, it is not in vain that the state considers the arrangement of gambling without appropriate licensing and regulation, not just socially undesirable, but a criminal act.

Using international experience in our country, it was decided to organize several dedicated zones where the gambling industry is legal and acceptable. Its world centers are Macau in Asia, Las Vegas in the USA, Monaco in Europe, etc. In other regions of the world, and sometimes in the same countries, the gambling industry is either completely banned or has significant restrictions. This is due to the negative social consequences that it generates.

In psychology, there is the concept of gambling addiction, which some psychiatrists and psychologists equate even to alcoholism or drug addiction. This behavior is called ludomania (gambling addiction).

Gambling addiction can manifest itself in the form of various disorders, such as mental depression, and in severe cases even lead to suicide attempts. Games that cause serious dependence can be computer network games.

In 2018, the World Health Organization (WHO) included this type of disorder in the eleventh international list on the classification of diseases, planned for implementation in 2022 [10].

In Russia, using the love of sports, constantly and obsessively present in the mass media advertising various offices such as "Fonbet", promoting sports totalizers and actually parasitic upon them. In fact, the desire to bet on any result of a certain amount in the hope of winning much more, almost no different from gambling and can generate the same negative consequences.

An example is a painful experience in the Republic of North Ossetia-Alania associated with a boxing match in

heavyweight among professionals between Murat Gassiev and Alexander Usik.

According to various data (official statistics are not available), some residents, both in North Ossetia-Alania and in South Ossetia took secured credit by apartments, cars, houses, and plots or using existing savings. They put significant amounts in sports totalizators for the victory of his countryman, after the loss of which some of them, like their families, we're on the verge of bankruptcy.

The very presence of various negative consequences can lead to the conclusion that it is necessary to completely ban gambling and totalizators in Russia. But it is obvious that this will not solve the problem to a large extent.

The advantages of such a ban can be attributed to the physical reduction in the number of casino visitors or participants of totalizators. The downside is that those wishing to travel to those countries where this kind of business is allowed, and this is an additional cost for them associated with transport costs, food, hotel services. Also, of course, they will spend a very significant amount of money in these countries, and taxes, respectively, will pass by the revenue part of the Russian budget. A similar situation and problems arise with online casinos and totalizators.

All mentioned above shows the theoretical and practical possibility for independent experts, who are not bound, as mentioned, by clear technical regulations, to present their subjective opinions or even not always bona fide conclusions about the compliance of the activities of the organizers of gambling with the requirements of by-laws. And the investigative bodies, relying on such conclusions and insufficiently clear wording of the criminal law, allow them to rely excessively on their own discretion, which, in our opinion, does not contribute to increasing the authority of the penal statute. To overcome this situation, (what we drew attention to in other works) it is necessary to increase professionalism in the actions of the investigative authorities, for example, during interrogation using tactical methods of influence on the accused [11], and also, the legislator should strive to implement the trend corresponding to the general direction of the legal policy of the state to decriminalization acts that do not pose a significant danger, or to regulate them outside the scope of criminal-legal regulation, in particular the legislation on administrative offenses legislation [12], which in turn will entail some reduction in the crime figure in the Russian Federation inflated at their expense.

V. CONCLUSIONS

Summarizing the above, we believe that a complete ban on gambling is not able to lead to a significant improvement in the situation in this area. We need a spectrum of legal

educational work "use our in-country experience in the development of adherence population," as rightly draws the attention of professor S. R. Jejemov [13].

Repeated reform of article 172.1 of the Russian Federation Criminal Code, in general, leads to positive changes, but at the moment, the goal of creating an optimal structure of the corpus delicti, in our opinion, is still not achieved. In many respects, the gradual reduction and possible further complete prohibition of various kinds of totalizators, including sports, will contribute to the effectiveness of the application of criminal legislation. Transfer the main burden of criminal liability to the sphere of material compensatory relations. However, our proposals are controversial, and we invite all interested parties to participate in their discussion.

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