

Conceptual Apparatus in the Doctrine of Criminal Community and Criminal Organization: Searching for a Compromise

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ABSTRACT

The article deals with the issue of correlation between the concepts of "criminal community" and "criminal organization". First, the author analyses the existing views on the stated problem. Further, using legal hermeneutics as the research methodology, the author deduces the authentic meanings of the terms "criminal community" and "criminal organization". The article also reveals the signs of a criminal community and outlines its definition. In the text of the study it is proved that the concept of "criminal community" is not a part of the institute of complicity, therefore this term should be excluded from the general conditions of the Criminal Code of the Russian Federation, at the same time providing for criminal liability for ordering the activities of a criminal community within its particular conditions. The author claims, however, that in the current criminal legislation of the Russian Federation, the legislator unconsciously separated the criminal community and the criminal organization, although he did not formalize it in terms of terminology. The article also provides practical situations that confirm the results of the study.

Keywords: *complicity, criminal community, criminal organization, term, hermeneutics, type of accessory*

1. INTRODUCTION

At the legislative level, the definition of a criminal community (criminal organization) was first established in the Criminal Code of the Russian Federation in 1996. (hereinafter, the Criminal Code of the Russian Federation, the Criminal Law). Moreover, the criminal law developed the concept of "criminal community (criminal organization)", which existed in the science of criminal law, while changing its content and scope. Neither pre-revolutionary criminal legislation nor the legislation of the Soviet period knew about this concept. There is some note to be made here: in this case we are talking about the semantic, conceptual content of the concept. The term "criminal community (criminal organization)" was used in one way or another in pre-revolutionary and Soviet criminal legislation, but its criminal legal meaning in the criminal law of the Russian Federation is different from that which it was given before 1996.

At present, part 4 of Article 35 of the Criminal Code of the Russian Federation contains the following definition: an offence is deemed to have been committed by a criminal community (criminal organization) if it is committed by a structured organized group or a community of organized groups acting under unified leadership, whose members are united for the purpose of jointly committing one or more grave or particularly grave crimes for the purpose of

obtaining, directly or indirectly, financial or other material benefit.

Among the discussion questions is the question related to the identification of the concepts of "criminal community" and "criminal organization". From the legislator's point of view, these concepts are identical. Not all members of the scientific community, however, share this position.

As you can see, the B position could be splited. Bykova, who explains the opinion of the legislator by the fact that since the adoption of the Criminal Code of the Russian Federation in 1996, there has been no agreed upon and generally accepted terminology in the field of denoting this type of objectification of organized crime.

With a certain share of conventionality, we can designate three groups corresponding to the three established notions on the issue of delimitation of such lexical units as "criminal community" and "criminal organization". Representatives of the first group, including A. Andrianov, A.I. Dolgova and A.N. Mondokhonov differentiate the notions of "criminal organization" and "criminal community", drawing the following boundary between them. The representatives of this group, making appropriate author's corrections, in principle, correlate the criminal organization with the notion contained in part 4 of Article 35 of the Criminal Code of the Russian Federation. By criminal community the listed authors mean a certain community of leaders, organizers and (or) other representatives of organized groups and criminal organizations. At the same time, each of the authors

defines the goals of such a community in their own way: for example A. Andrianov considers the goal to be a coordination of the activities of organized criminal groups, while A.N. Mondokhonov considers it to be a development of plans and creation of conditions for committing heavy or particularly grave crimes.

The rationale for this interpretation of criminal community is as follows. According to Article 210 of the criminal law, a criminal community (criminal organization), in the opinion of representatives of this group, can be considered a meeting of organizers, leaders or other representatives of organized groups. They propose that this community be denoted by the word "criminal community". In this case, the authors refer to research in the field of criminology as an additional argument: they point out that these are criminal realities, carefully studied by sociologists and criminologists. The stated position does not seem to be quite correct. Firstly, the authors' desire to introduce additional meanings into the concept of a criminal organization (criminal community) fixed in the general conditions of the Criminal Law through the legal provisions of the particular conditions of the Criminal Code of the Russian Federation seems to be groundless. Secondly, even if we agree that there are indeed designated community of representatives of criminal organizations and organized groups in the society, we believe that it is not quite correct to use the term "criminal community" for their designation solely because of its use in the text of the Criminal Code of the Russian Federation, without reference to its paradigmatic meaning.

Among the representatives of the second group we can distinguish such scientists as D. Brazhnikov, V. Bychkov, V.S. Komissarov, A.P. Kuznetsov and Yu.I. Suchkov. They also support the idea that the concepts of "criminal organization" and "criminal community" are independent, but they choose the quantitative index as a criterion for distinguishing them. As a result, the above authors propose that the criminal organization be understood as a variation of an organized group, and criminal community – as a community of organized groups. In other words, a criminal organization consists of one organized group, while a criminal community consists of two or more organized groups. Simultaneously D. Brazhnikov and V. Bychkov points to the importance of eliminating a criminal organization from the text of the Russian Criminal Code, since "it is practically impossible to establish any distinction between it and an organized group.

Representatives of the second group, as a premise, base their opinion on the fact that the legislator has fixed two models of existence of criminal community (criminal organization): a structured organized group and a community of organized groups. The first model they call a criminal organization, and the second one – a criminal organization. This view of the issue seems to us indisputable, because in this case the term "criminal community" is used solely because of its presence in the text of the criminal law, without reference to its at least vocabulary, paradigm meaning.

And finally, as a representative of the third group we can name L.V. Glazkov, with her rather interesting concept of

distinguishing between "criminal organization" and "criminal community". As a criterion for the differentiation of notions, she chooses the goal set by the community. Criminal communities, as she sees it, have an economic focus, while criminal organizations have a different, for example, extremist focus. We believe this point of view is quite vulnerable. Why can't criminal organizations have an economic focus? The specific focus of a particular community is only a species characteristic that distinguishes it from other similar communities. However, all such formations and communities, regardless of their goals, will ultimately be essentially the same, belonging to the same class or generation. In other words, the scope of a species concept is fully included in the scope of a generic concept. Article 35 of the Criminal Code of the Russian Federation sets forth the basic concepts on which the entire particular conditions of the Criminal Law is based. In addition, if we agree with the above mentioned opinion of the author, it is natural that there is a certain concept which will be generic for a criminal community and a criminal organization. However, the author does not give us that concept. It seems that for the reasons mentioned above, the outlined approach is not fully consistent.

It is also possible to distinguish a group of authors, who only indicate the need to eliminate one of the terms. Yakusheva T.V. writes about the possibility of excluding the term "criminal organization", leaving only the word "criminal community" in the text of the criminal law. Skotnina V.N., Petrov S.V., Videnkina Zh. V. have a similar viewpoint. The opposite position is taken by A.V. Cherny, D.V. Saveliev, Konstantinov V.V., Kazankova I.N., Bezruchko E.V. who write about the need to eliminate the term "criminal association".

2. METHODS

We see a criminal organization and a criminal community as two independent, self-sufficient criminal concepts. As a consequence, it seems that it is not quite correct to talk about elimination of one of the terms. The criminal organization, we believe, is one of the types of complicity, the definition of which is actually specified in Part 4 of Article 35 of the Criminal Code. The content of the concept of "criminal community" appears to be somewhat different. To establish it, we will resort to the interpretation of its constituent elements and, first of all, the generic concept of "community", using the methodology of hermeneutics (the doctrine of understanding, in particular, the understanding of texts).

The following should be noted. We believe that in international criminal law, as well as in the criminal legislation of foreign countries, the concept of "criminal association" is missing. The fact is that the word combination "преступное сообщество" when translated into English sounds like "criminal community". In contrast, foreign criminal law and international criminal law use the phrase "criminal association". And although the latter is translated as "преступное сообщество" in the

Russian legal literature, which, we believe, is due to the adaptation of the translation to the Russian criminal legislation, it would be more correct to translate the phrase "criminal association" as "преступное объединение, преступная ассоциация". As a result, the term "criminal community" is not used in international and foreign sources of criminal law.

From the point of view of the Russian language community - 1) an association of people, nations and/or states which have common interests and goals, 2) an association or group from among people who pursue a common goal, 3) an association or group from among people who are connected by common interests and goals.

According to the Cambridge Dictionary, a community is a group of people who live in a particular place, or a group of people who, due to a community of interest or similarity of the background, are considered as a whole.

In the American English Dictionary, a community is a community of people who have common rights or common privileges, or who have a common interest (civil, political, or religious), or whose activities are governed by the same rules.

Louis Wirth devoted one of his works to interpreting the concepts of the world community, society and government. Among other things, the author has carefully studied the concept of "community". So, according to Wirth L. it is preferable to focus on community where individual connections are based on spatial contiguity, division of labor (specialization) and competition in the market. He also writes that the community in the simplest sense is a supporting population of habitat and it can be defined as a state of existence while the society is a state of spirit. That said, L. Wirth draws attention to the fact that any human community is always a society to some extent.

As a follow-up to the idea of L. Wirth we can't but agree with Jnanabrata Bhattacharyya, who points out that the spatially oriented conceptualization of the community is not susceptible to the radical social changes that modernity brings with it.

Kalpana Goel also notes that modern reality requires an expanded definition of community that should include not only locally based, interest-based, but also other criteria-based forms of new and emerging communities (e.g. web-based, Facebook or other social media communities that are beyond physical boundaries and interact with unknown people from different places).

At the same time, it is important to indicate that according to Bondarenko S.V., the "community" is a vague sociological term. To establish its fuller and more precise meaning, using as the concept of "language games" by Wittgenstein L., as a methodology according to which the meaning of a word represents the way it is used in a language, let us analyze how the term is understood in different language areas. So, there are many different kinds of communities that stand out: a cultural community, legal community, judicial community, world community, scientific community, medical community and so on.

Take, for example, the concept of "scientific community". In scientific literature, its meaning is defined in different ways. The scientific community - a set of scientific

professionals, the organization of which reflects the specifics of the scientific profession. The scientific community is a group of people of intellectual work, which has special cultural and spiritual orientations, mentality, way of life and actions. The scientific community is a set of individuals or groups who are connected by the exchange of activities for the production, accumulation and/or use of knowledge and who maintain sustainable interpersonal and inter-group relations. The scientific community is a social community of people that arises and functions in the process of a special socially useful and necessary type of work - professional scientific activity. It should be noted that in all definitions the scientific community is regarded as a certain amount of people who are engaged in scientific activities.

The world community has been interpreted as a set of peoples and states representing a single, contradictory, interdependent, integral world.

The legal community is defined by Zhalinsky A.E. as follows: lawyers who work in the country and are subjects of the legal profession. Lawyers, creating a community, are really and informally connected by the community of tasks, unity of professional and other rules, common training and common language and methods on the basis of which their professional legal activity is carried out.

The correct use of the word "community" in domestic legislation, as we see it, can be found in Federal Act No. 30-FZ dated March 14, 2002 "On the judiciary in the Russian Federation", which states in article 1 that "the judiciary community in the Russian Federation shall consist of judges of all types and levels of federal courts and judges of the courts of the constituent entities of the Russian Federation which constitute the judicial system of the Russian Federation". It is important to note that the judicial community is seen as a collection of people who have the status of judges.

Thus, it seems possible to conclude that whatever kind of community is mentioned, there is a certain set of people, States with a certain connection between them, in which there is a division of labour and competition.

3. RESULTS

Using the above as a methodological basis for defining the concept of "criminal community", it seems possible to conclude that the content of this concept does not equal the content of the term "criminal organization"; a criminal community is not a specific formation, association with a certain structure, goals and objectives. There is no rigid organization in a criminal community and there is a completely different concept in its essence. It contains an absolutely different paradigm and authentic meaning, expressed in the following. A criminal community is a certain amount of people who are integrated by the fact that they purposefully participate in the commission of crimes. At the same time, they do not commit crimes on a situational or accidental basis, it is they who carry out criminal activities. In doing so, criminals may compete with each other and there may also be a kind of division of

labour (specialization). Using the terminology apparatus of sociology, the criminal community is an informal organization. Spatial and time limits (boundaries) are of no importance to it: every person, regardless of location and conducting criminal activity, is a cell (link) of the criminal community. In this regard, we propose the following definition of criminal community - a set of people formed in the process of conducting criminal activities. Consequently, all persons are presented under the concept of "criminal community" - subjects of criminal activity.

Among the distinguishing features, attributes, properties of the criminal community are the following: 1) integrating origin, integrative sign - criminal activity. This is the common thing that unites and connects all structural units of a criminal community, each of its elements; 2) dynamism, which implies permanent continuous development of the system, its quantitative (number of criminal community) and qualitative (norms) characteristics, indicators; 3) explicit stratification within the criminal community system: each individual element takes a strictly designated and assigned to it, a position with a clear and explicit status that can be changed over time, performs the role assigned to it personally; 4) infinity, which means going beyond any limitations. In particular, the criminal community is characterized by the absence of spatial and temporal boundaries, as well as restrictions on the composition of its units, the number of subjects; 5) the existence of norms (rules of conduct), which should be adhered to by all participants in the criminal community.

4. DISCUSSION

This approach makes it possible to reveal the place of the criminal organization and criminal community within the institution of complicity. This approach makes it possible to reveal the place of the criminal organization and criminal community within the institution of complicity.

Thus, article 32 of the criminal act states that the participation of two or more persons in an intentional joint commission of an intentional crime is considered to be complicity in the crime. Without purporting to assess this legal definition of complicity, as it is beyond the scope of this study, let us only pay attention to such distinguishing feature as the joint commission of an intentional crime. Determining that the criminal community is a "set, set of criminals", we conclude that there is no unification and complication of efforts to commit a single crime with all its constituent elements. In other words, there is no qualitative attribute of complicity, which reveals the content of objective and subjective connection of accomplices - there is no mutually-conditioned actions of the participants and no common criminal result for them, and, therefore, there can be no causal connection between their actions and the consequences, as well as no intention to commit a single criminal act of complicity.

Moreover, the concept of "criminal community" is a certain abstraction that reflects reality. The criminal community is just a whole bunch of criminals. The harm is

not caused by the community as a single organization, but by individuals acting on their own solely for their own benefit or in complicity. Such persons are held criminally liable under the relevant articles of the particular conditions of the Criminal Law. Results: the concept of "criminal community" does not fit within the framework of the institute of complicity, as this education does not represent a specific group of individuals with the aim of committing a single crime.

Thus, it is not possible to establish responsibility for creating and/or participating in a criminal community under criminal law. It's impossible in principle. Meanwhile, representing one of the varieties of community in general, all the properties of the latter, in particular self-regulation and self-organization, are also attributed to it. Leaders of the criminal world, acting as an organizing element of the criminal community, organize and coordinate its activities, increase the level of intra-systemic organization. Acting as "combat units" of a criminal community, criminals, organized groups and criminal organizations are forced and obliged to obey the norms and rules formulated and provided by such leaders. Moreover, they themselves aim to increase the effectiveness of their own criminal activities, the achievement of which is necessarily linked to their consolidation and cohesion with other similar units of the criminal community. As a result, the activity within the criminal community becomes more organized, which determines the increase of the organizational level within the criminal community, which is already opposed to the state and the law as a whole. These reasons necessitate the establishment of criminal liability at the legislative level for streamlining the activities of the criminal community. The criminalization of such actions will significantly increase the punitive capacity of the criminal law and improve the level of the fight against organized crime, as it will provide an opportunity to prosecute the leaders of the criminal world, which in turn will act as a prevention (prevention) of consolidation and cohesion of the criminal community.

The current criminal law actually distinguishes between a criminal organization and a criminal community by establishing criminal liability for certain actions aimed at streamlining the activities of a criminal community, but this, however, has not received its terminological form. Part 1.1 of Article 210 of the Russian Federation Criminal Code establishes, for example, criminal liability for participation in the meeting of organizers, leaders or other representatives of organized groups.

For example, police officers stopped a "meeting of thieves" at the restaurant "Comme il faut" in the city of Dzerzhinsky, Moscow region, which brought together 59 criminal leaders aged 20 to 47 years to redistribute the spheres of criminal influence. We believe that in this situation there are all imputable grounds according to Part 1.1 of Art. 210 of the Criminal Code.

However, the current criminal law does not always provide an opportunity to hold leaders of the criminal world criminally responsible for actions to consolidate the criminal community and putting in good order its

activities. For example, in the summer of 2018, Moscow hosted one of the largest recent gatherings of barons of crime; More than ten of the most influential mafia gathered to choose the holder of the world "common fund (obschak)", who would also become the "boss of all bosses".

In another similar case, on June 26, 2017, employees of the Russian Interior Ministry prevented a meeting of leaders of the criminal environment, which addressed the

5. CONCLUSION

Thus, we believe that it is necessary to eliminate the concept of "criminal community" from the general conditions of the criminal law, while at the same time providing for criminal liability for the regulation of the criminal community within its particular conditions.

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- issue of the appointment of an underboss for Novosibirsk. Such gatherings remain outside the criminal law field. We believe that there will be a real possibility of bringing such persons to criminal responsibility if a corresponding criminal law norm emerges, whereas at present these persons either bear no responsibility at all or are only brought to justice if they find psychotropic substances or narcotic drugs.
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