Criminal group and group method of committing a crime in Russian criminal law

Grupo criminal y método grupal de cometer un delito en el derecho penal Ruso
Grupo criminoso e método de grupo de cometer um crime no direito penal Russo

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Abstract

In this work the current state of institute of partnership in crime based on the analysis of statistical data which demonstrates to existence of problematic issues in definition of the concepts "criminal group", "group way of commission of crime", "partnership" that affects law-enforcement practice is considered.
It is necessary to recognize the increased public danger of the crimes committed by several persons as in such cases the criminal result is a consequence of the combined efforts of two and more persons. At the same time, at qualification of the crimes committed with use of a group way there are problems of their legal treatment at their commission, both within partnership, and beyond its limits.
Carrying out short historical digression in development of institute of partnership in the existing criminal legislation, analyzing opinions of scientists concerning differentiation of the concepts "criminal group", "group way of commission of crime", "partnership", the author of article proves need of development of the concept "group way of commission of crime" - by legislative fixing of this concept of the criminal legislation of the Russian Federation. For the purpose of improvement of institute of partnership, entering of corresponding changes into the Russian criminal legislation is offered.

Keywords: institute of partnership, criminal group, group way of commission of crime, Russian criminal legislation.

Resumen

En este trabajo, el estado actual del instituto de asociación en delitos se basa en el análisis de datos estadísticos que demuestran la existencia de cuestiones problemáticas en la definición de los conceptos "grupo criminal", "forma grupal de comisión de delitos", "asociación" que afecta Se considera la práctica policial.
Es necesario reconocer el aumento del peligro público de los delitos cometidos por varias personas, ya que, en tales casos, el resultado penal es una consecuencia de los esfuerzos combinados de dos o más personas. Al mismo tiempo, en la calificación de los delitos cometidos con el uso de forma grupal, existen problemas de su tratamiento legal en su comisión, tanto dentro de la asociación como más allá de sus límites.
Realizando una breve digresión histórica en el desarrollo del instituto de asociación en la legislación penal existente, analizando las opiniones de los científicos sobre la diferenciación de los conceptos "grupo criminal", "forma grupal de comisión de delitos", "sociedad", el autor del artículo demuestra su necesidad del desarrollo del concepto "forma grupal de comisión de delitos" - mediante la fijación legislativa de este concepto de la legislación penal de la Federación de Rusia. Con el fin de mejorar el instituto de asociación, se ofrece la introducción de los cambios correspondientes en la legislación penal rusa.

Palabras claves: instituto de asociación, grupo criminal, forma grupal de comisión de delitos, legislación penal rusa.

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Resumo

En este trabajo, o estado atual do instituto de associação em delitos se basea na análise de dados estaduais que demoliu a existência de questões problemáticas na definição dos conceitos "grupo criminal", "forma grupal de comisión de delitos", "asociación "que afeta Se considera a prática policial.

O primeiro e último incidente sobre o aumento do público dos delitos cometidos pelas pessoas, é que, em alguns casos, o resultado penal é uma conseqüência dos esforços combinados de todos os personagens. Al mismo tempo, na calificación dos delitos cometidos com o uso de forma grupal, existido problemas de tratamento legal em sua comutação, dentro da associação como mais todos os seus direitos.

Realizando uma breve digestão sobre o desenvolvimento do instituto de associação na legislação penal, analisando as opiniões dos cientistas sobre a diferenciação dos conceitos "grupo criminal", "forma grupal de comunicação de delitos", "sociedade", o autor Del nuestra des demolière des necesidad del desarrollo del concepto "forma grupal de comisión de delitos" - mediante a legislação fijación del concepto de la legislación penal de la Federación de Rusia. Con el fin de mejorar el instituto de associación, se de re ce la introducción de los cambios correspondents en la legislación penal rusa.

Palavras-chave: instituto de asociación, grupo criminal, forma grupal de comisión de delitos, legislación penal rusa

Introduction

The crimes committed with use of a group way occupy traditionally considerable part in structure of modern domestic crime. At the same time the crimes committed with use of a group way in comparison with other criminal manifestations have the increased public danger as the criminal result put in group crimes is reached in the shortest possible time through participation in them of two and more persons. According to statistics, the crimes committed in our country in recent years with use of a group way confirms a tendency of their preservation at the high level. So, according to the Ministry of Internal Affairs of the Russian Federation, group crime is characterized by the following data: in 2013 - 145 382 (-3,8%); in 2014 - 137 773 (-5,2%); in 2015 - 152 072 (+9,1%); in 2016 - 141 478 (-7%), in 2017 - 131 165 (-7,3%).

The criminal legislator of Russia undertakes various measures for counteraction to the crimes committed in partnership, fixing, in standards of the Russian criminal legislation responsibility for commission of similar actions, however, at the same time, does not pay due attention to qualification of group crimes. In view of this circumstance, a research of a perspective of a group way of commission of crime, both in partnership, and beyond its limits attracts need of entering of the relevant proposals into the criminal legislation of the Russian Federation on elimination of the revealed problems. Thereby, standards of the Criminal Code of the Russian Federation (further - the Criminal Code of the Russian Federation) (Borovykh, & Kirova, 2018), fixing responsibility for commission of group crimes in partnership demand carrying out their comprehensive analysis with the subsequent entering of the relevant proposals into the criminal legislation on their adjustment.

Materials and methods

The institute of partnership is rather in detail developed, both within regulations, and in criminal and legal science. Problems of partnership in crime traditionally drew to themselves attention not only pre-revolutionary and Soviet domestic scientists (F.G. Burchak, R.R. Galiakbarov, L.D. Gaukhman, O.S. Zhiryaev, M.I. Kovalyov, G.E. Kolokolov, N.S. Tagantsev, A.N. Traynin, etc.), but also are object of fixed studying of prominent representatives of modern science of criminal law (A.A. Arutyunov, A.S. Baleev, N.G. Ivanov, A.P. Kozlov, V.S. Komissarov, etc.). At the same time we will notice that each of scientists, conducting scientific research, expresses own position on this or that problem of institute of partnership. As a result, numerous disagreements appear in a research of various aspects of institute of partnership in crime, for example, concerning types and forms of partnership, about a possibility of commission within partnership of careless crimes, about

expediency of allocation of a group way of commission of crime and some other problems.

The research is based on application of a dialectic method of the knowledge allowing carrying out the system analysis of institute of partnership in crime and its separate manifestations, in particular a group way of commission of crime. Private and scientific methods of knowledge of the phenomena of legal reality give the chance to disclose separate aspects of the considered perspective: comparative-historical (to track origin and development of institute of partnership in crime in the domestic criminal legislation); system and structural (to carry out classification of group crimes); logic-semantic (to open contents of the terms "criminal group", "group way of commission of crime", "partnership"); criminal and statistical (to show a criminogenic condition of the crimes committed by two and more persons on the basis of statistical data).

Results and discussion

Now in the analysis of doctrinal, legislative and law-enforcement interpretation of the concepts "criminal group" and "group way of commission of crime" it is not possible to give them unambiguous definition actually.

Emergence of a phrase "criminal group" and "group way of commission" are inseparably linked with history of development of institute of partnership which is understood as the system of criminal precepts of law establishing responsibility for commission of crimes by joint efforts of two and more persons.

The first legislative mention of criminal liability of the persons who committed a crime through joint efforts occurs in Contracts of Ancient Russia with Byzantium. So, for example, in article 7 of the contract of 911 g responsibility of the persons who committed joint robbery was established, sentence was imposed in the form of a penalty in a threefold size of cost of the stolen property. It was told about concealment of the runaway slave and his delivery in article 12 of the contract of 911" (Kovalyov ,1960).

Further norms on partnership found development in "the Russian Truth", Codes of laws of 1497 and 1550, the Cathedral code of 1649, the Military article of 1715 and the Charter military 1716, Code about punishments criminal and corrective 1845, the Criminal code of 1903, the Leading beginnings on criminal law of RSFSR of 1919, UK RSFSR of 1922, 1926, 1960 and in the current Criminal Code of the Russian Federation.

Having analyzed history of emergence and formation of institute of partnership, E.V. Yepifanova came to a conclusion about stage-by-stage development of this legal phenomenon in the domestic criminal legislation which formation the researcher connected with allocation of group and individual penal acts, division of accomplices of crime on different types, with the subsequent fixation of responsibility of each accomplice at the legislative level, definition of the main directions of criminal policy directed to fight against organized crime (Yepifanova , 2002).

In the existing Russian criminal legislation, the institute of partnership is regulated by standards of chapter 7 of the Criminal Code of the Russian Federation. Deliberate joint participation of two or more persons in commission of deliberate crime (Art. 32 of the Criminal Code of the Russian Federation) is recognized as partnership in crime. Thereby, the legislator establishes that partnership can be only deliberate and only in deliberate crimes, and responsibility of other accomplices for an excess of the performer is not allowed (Jessberger, & Geneuss, 2008) (Prosecutor , 2008) . As it is noted in literature, such reservation made by the legislator in Art. 32 of the Criminal Code of the Russian Federation speaks about his desire to avoid disputes on a possibility of presence of partnership in careless criminal actions (Arutyunov, 2013).

Criminal association of several persons whose actions have the public increased danger are directed to commission of crime, both within partnership, and beyond its limits, it is necessary to recognize as criminal group. The legislator refers commission of crime by criminal group within partnership to the qualifying signs of corpus delicti and to the circumstances aggravating punishment; in turn the group crime which is not relating to a partnership form to constitutive signs of corpora delicti in the Special part of the Criminal Code of the Russian Federation (Kopnin, 2010).
The organizer, the instigator and the helper along with the performer admit the Russian criminal legislation accomplices of crime (p.1 to Art. 33 of the Criminal Code of the Russian Federation). At the same time we will notice that the criminal legislator of foreign countries, speaking about accomplices of crime, prefers to operate with

the concepts "collaborator" and "other accomplices" of crime, applying to the persons committing a crime the term "primary criminal, and the persons helping to make penal acts "the secondary criminal" (U.A.W.A. Schabas) (Schabas, 2006).

Cooperation in commission of crime as considers A.A. Cassese, takes place, "when each participating person, committing a crime, performs the same criminal acts which are expressed in intention to do harm (mens rea)" (Badar, 2006).

The performer of crime who is called as "primary" participant of commission of crime can accept physical, direct, indirect or other participation in crime, make it individually or together with other persons (Williamson, 2002).

The instigator of crime the person who does not take direct part in the committed crime admits, and carries out the actions directed to inducement of other person (performer) to commission of crime, carrying out seditious actions (instigating) with use of various ways (bribery, an arrangement, threats, etc.), at the same time existence of relationship of cause and effect between actions of the performer and instigator which are subject to obligatory proof (Onyinkwa, 2018).

. In case of rendering moral or other support(Badar& Karsten, 2007), or the actions provoking the person to commission of crime it is possible to talk about complicity (Weller et all, 2015).

The helper of crime, in the international criminal legislation, the called aiding and abetting, assists commission of crime in "serious degree", providing the practical or moral help and support, rendering considerable effect on commission of crime (Cassese et all, 2011).

Rendering "verbal or moral" support for commission of crime, or "simple presence" on the crime scene are a time sufficient for recognition of the person by the helper of crime (Maculan, 2015) attracting, anyway, mild sentencing to the helper, than the performer (Calvo-Goller, 2006).

In the Russian criminal and legal science there are different views on a ratio of the terms "partnership" and "group". So, the first group of researchers urges to recognize the concepts "partnership" and "group" as equivalent (Mälksoo, 2015); the second group of authors identifies the concept "group crime" with a cooperation (a certain form of partnership) (Galiakbarov, 1973) (Telnov , 1971); the third consider that group crime represents partnership in the narrow sense of the word (Semukhina & Reynolds, 2013).; and at last, the fourth group of scientists considers a concept of group crime wider than a concept of partnership (Mikheyev , 1983).

In foreign criminal law group crimes are considered, as a rule, within institute of partnership, at the same time the main signs of commission of the joint criminal venture or joint criminal activity are distinguished (joint criminal enterprise - further JCE): 1) commission of crime or crimes by several persons; 2) existence of the general plan of commission of crime or crimes; 3) participation of the person in implementation of the general plan at commission of any actions (Rodley & Pollard, 2009).

Existence of the general plan of its participants, and possibility of prosecution with any participation of the accomplice in commission of crime is characteristic of the main JCE form (Maravilla, 2000).

At the system JCE form the head of crime is perfectly informed on criminal character of such group and takes various actions for realization of mission of this group (Cassese et all, 2011).

Dangerous (expanded) to the JCE form takes place at commission of crimes which overstep the bounds of the general plan of their commission conceived earlier; and also the participations in it of other persons allowing risk (Rodley & Pollard, 2009).

As it is noted in domestic criminal and legal literature, "commission of crime by joint efforts of two and more persons can take place and out of partnership, or have with it the remote communication, but at the same time it is obligatory to be present at the objective party of crime" (Pochinok, 2008) that causes the necessity to address studying of separate aspects of institute of partnership and group crimes again and again and it despite the fact that a circumstance that most of scientists deny a possibility of existence of a group way of commission of crime (Mikhlin, 2004).

According to many modern researchers of science of criminal law (N.G. Ivanov, V.I.

Radchenko), "partnership in crime is excluded with participation in commission of crime of irresponsible or juvenile persons as in that case it is about prosecution only of the appropriate subject, sentence to which is imposed or for attempt at crime or for performance of a role of the performer (N. Ivanov, 2003).

The speech in such cases goes about mediocre execution (mediocre causing)" (Yustitsinform, 2004) . Also A.P. Kozlov who equates a group way of commission of crime to one of partnership forms adheres to a similar position, and participation in crime of inadequate subjects recognizes as the circumstance excluding partnership (Regushevskaya, 2009).

Stated leads to a conclusion that development of institute of mediocre infliction of harm within institute of partnership is impossible. Meanwhile we will notice that history of criminal law knows many interesting solutions of this problem, including through the doctrine about crime, but not partnership. The most striking example, in our opinion, shows published on December 31, 1768 in Austria-Hungary by Maria II Theresa Ugolovny and the Code of Criminal Procedure - so-called Tereziana, in § 6 which it is specified that "a crime can be committed as independently, and by attraction of the help or other assistance in its commission with use of various ways (bribery, the order, council, the order, a promise)" (Wien, 1768).

Thereby, it is possible to draw a conclusion that the doctrine of mediocre execution according to which the group way of commission of crime needs to be considered within the doctrine about partnership in crime - the actions of the person which is the appropriate subject, directed to commission of crime together with the person which did not reach age of criminal liability is dominating in science of criminal law or deranged it is necessary to qualify as actions of the performer. The irresponsible and juvenile persons who committed a crime are used as means and tools of crime, thereby about a group way of commission of crime out of the question.

At the same time, we will notice that a number of scientists state also an opposite position about the place of a group way of commission of crime in partnership, considering that it can exist also beyond the scope of institute of partnership (R.R. Galiakbarov, E.V. Yepifanova, A.I. Martsev, V.A. Nersesyan, D.V. Savelyev, I.R. Kharitonova).

So, according to D.V. Savelyev, "a crime can be committed, both in partnership, and in a deliberate and careless complicity with use of a group way of commission of socially dangerous criminal action" (Pochinok, 2008).In turn under a group way of commission of socially dangerous act the author considers necessary to understand commission of crime through joint efforts of several persons, actions which partially or completely objective signs of corpus delicti form (Pochinok, 2008).

A number of authors (E.V. Yepifanova and A.I. Martsev) recognize need of allocation from partnership of a group way of commission of crime, considering that "group crimes have the public increased danger (Yepifanova 2002), and their qualification occurs not on the basis of objective essential elements of offense, and proceeding from a way of their commission (Raroga, 2010).; what also has to be considered in the solution of a question of involvement of the special subject to responsibility, including in a possibility of several legal entities to commit a crime in partnership (Weisberg, 2000) (Kadish, 1962) (Radzinowicz et all, 1945).

In turn, we join the point of view of the scientists considering expedient allocation of a group way of commission of crime (E.V. Yepifanova, A.I. Martsev, D.V. Savelyev). And, in spite of the fact that each of the designated scientists considers questions of a group way of commission of crime within carrying out the analysis of various problem aspects of partnership, at the same time they associate in opinion on need of carrying out independent researches in the field of allocation of a group way of commission of crime.

Summary

Criminal association of several persons whose actions have the public increased danger are directed to commission of crimes, it is necessary to recognize as criminal group.

The group way of commission of crime assumes its use by two and more persons for commission of group crimes, both within partnership, and beyond its limits.

For improvement of the general norms on partnership in crime improvement of the criminal legislation establishing responsibility for the crime committed by group is necessary.

It is represented, also necessary carrying out an independent complex research of criminal and legal problems of a group way of commission of crime. Let's notice that similar researches in criminal and legal science were never conducted,

as a rule, the group way of commission of crime was considered only within the analysis of separate problems of institute of partnership though carrying out such theoretical and practical analysis is obvious.

Conclusions

By results of the carried-out analysis, we came to a conclusion that in the existing Russian criminal legislation there is debatability in qualification of actions of the persons who committed a crime within criminal group and with use of a group way of commission of crime. For elimination of the available theoretical and practical contradictions, we consider necessary to add the Criminal Code of the Russian Federation of Art. 181, having fixed in it responsibility of the persons who committed a crime with use of a group way. In our opinion, edition of Art. 181 Criminal Code of the Russian Federation can have the content of the following character: "As a group way of commission of crime it is necessary to recognize actions of the persons having the increased public danger as reached age of criminal prosecution and the persons recognized juvenile or deranged".

It is represented that the offered definition of Art. 181 Criminal Code of the Russian Federation gives the chance to consider the concept "group way of commission of crime" of narrow value of this definition, in turn commission of crime by joint efforts of two or more persons outside partnership in broad value of this phrase.

In view of the above, we also come to a conclusion about a possibility of use of the term "group way of commission of crime" as the circumstance aggravating punishment which list is enshrined in p.1 Art. 63 of the Criminal Code of the Russian Federation. In this regard we find possible, p.1 Art. 63 of the Criminal Code of the Russian Federation to supplement the list with point "in1" following contents: "in1) commission of crime in the group way".

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