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About the concept of criminal organization

Rising of scientific problem and its value. Activity of criminal organizations, being widespread enough, creates an extraordinarily near-accident law enforcement authorities of many countries ran into that. A fight with different displays of the organized crime causes the necessity of combining effort of world community, including in science of criminal law. A concept of criminal organization (criminal society) is one of very difficult determined in criminal laws and debatable in the theory of criminal law. The folded position generates the necessity of theoretical development of determination of criminal organization (criminal society), research of its signs, and also delimitations from other forms of participation.

Analysis of researches of this problem. Theoretical basis of research are a criminal statute and theoretical positions of doctrine of criminal, criminally-executive law, and also criminology, legal psychology. Among scientists there is not unity of opinions in determination of concept of criminal organization (criminal society) and specification of its signs.

Aim and tasks of the article. A research aim consists of realization of analysis of concept and signs of criminal organization as the most dangerous form of participation, that it is necessary not only for constructing of institute of participation on the whole but also for establishment of criminal responsibility for creation of criminal organization or confession of different forms of participation by the characterizing signs of separate compositions of crimes.

Exposition of basic maintenance of material and ground of the got results. The etymologic analysis of concept of criminal organization and criminal society does not allow conducting some considerable difference between them. "Organization" (from French – organisation) is interpreted as totality of

people, groups, incorporated for the achievement of some aim, decision of some task on the basis of division of duties and outline. By "association", there is an association of the people, bound by the general conditions of life, interests.

Now in legal science the single point of view is absent on determination of this concept. Firstly, it is determined differently in the theory of criminal law and criminology and, secondly, every author, regardless of his belonging to one or another from these branches of science, formulates own determination different from other. So, in a criminal and legal value concept of criminal organization from one side, determined on the basis of criminal statute and, from other – in the special literature equates with the concept of criminal society. In a criminology value it is determined on the basis of results of criminology researches of the organized crime, thus one scientist equates concepts criminal organization and criminal society, and other distinguishes them on maintenance. But, in spite of existent distinctions between criminology and criminal and legal looks to this problem, they have certain connection between them, therefore, criminology descriptions, very useful to opening of signs of criminal organization. Not small attempts to define or specify the signs of criminal organization were undertaken in science. In opinion of one scientist, under criminal society it is necessary to understand the steady association of persons that has a capital base, certain outline, hard collateral subordination for vertical lines, corruption connections in the law-enforcement system and another public authority [1]. Other as basic signs of criminal organization distinguish multiplicity of participants, structured and presence of interregional connections [2].

From position of theory of criminal law expediently for denotation of the examined phenomenon to use a term "criminal organization". Exactly it is used by a legislator in P. 4 Article 28 of the Criminal code of Ukraine, where it is said that a crime confesses accomplished by criminal organization, if it is accomplished by the steady hierarchical association of a few persons (five and more than), members of that or structural parts of that on a previous agreement coordinate for joint activity with the purpose of direct committing of severe or especially severe crimes by the participants of this organization or guidance or co-

ordination of criminal activity of other persons or providing of functioning, both most criminal organization and other criminal groups.

Appears, what determination of criminal organization takes into account international experience of fighting against the organized crime and necessity of strengthening of fighting against crimes, accomplished criminal organizations.

As it was already marked, criminal organization on the legal nature is one and forms of criminal participation and all objective and subjective signs are inherent it, characterizing participation.

Except general signs characteristic for participation on the whole, to criminal organization as signs qualificatory its enhanceable public danger are inherent the form of participation. American scientists Michael Gottfredson and Travis Gershi I distinguish three basic signs of criminal organization, namely: 1) distribution of roles; 2) activity of every member of criminal organization is coordinated with activity of other participants in accordance with the set rules is co-ordination of actions; 3) aim – all organization is created for the achievement of certain goal [3].

As the special signs of criminal organization also distinguish stability and hierarchicalness of association of five and more than persons; with good organization on the basis of previous agreement of members or structural parts of organization for joint activity; presence of aim of committing of severe and/or especially severe crimes the participants of criminal organization; guidance or co-ordination of actions of other persons; providing of functioning of activity as to the most criminal organization so of other criminal groups.

Obviously, that in basis of concept of criminal organization, evaluation signs lie, therefore one of problems of debatable character is a difference of criminal organization from other forms of criminal participation. Basic signs delimiting these concepts are "stability" and "solidarity". Stability inherent to the organized group and being an evaluation sign is a basic criterion distinguishing such group from the group of persons on a previous agreement. Solidarity also is one of signs distinguishing criminal organization from the organized group.

It is possible to distinguish the next criteria of stability: presence three or more than persons in a group, its relatively permanent composition, presence of

durable permanent connections between accessories, orientation on the committing of a few crimes or one, but requiring careful planning and technical equipment, distribution of roles between accessories, previous agreement on the committing of crime, duration of existence of group, planning of actions, presence of organizer (including a leader), submission to group discipline and pointing of organizer (leader) of criminal group.

The sign of solidarity, unlike the sign of stability, does not have official interpretation, therefore its consideration maybe only on the basis of analysis of different authorial positions, finding a reflection in legal literature. Scientists, speaking about solidarity, determine it as socially-psychological description of criminal organization or base the position on criminology description of the organized crime. Analysing these points of view and led by their supporters accordingly separate signs or their lists, it is possible to distinguish the most characteristic criteria, qualificatory solidarity: community of aims, intentions; presence of the single system of social values and identical social orientations; presence of withstand connections between accessories; multi levelness in a management by organization; distribution of functions among structural subdivisions; secrecy; co-operating with the structures of law enforcement, imperious and administrative authorities.

Debatable in the theory of criminal law is and concept "structural part" to criminal organization. One scientists suppose that the structural parts incorporated for the decision of general tasks of criminal organization can not only accomplish separate crimes but also execute another tasks sent to providing of functioning of criminal organization. These can be preparatory actions to the committing of crime or providing of participants of criminal organization by necessary technical equipment, establishment and communicating with public servants, chart of "washing" of illegal criminal incomes.

Structured of criminal organization, as well as its stability, categories are an evaluation and frequently carry subjective character, that, in turn, results in errors, both in qualification of the crimes accomplished by criminal organization and actions of its members.

Unlike all other forms of participation creation of criminal organization already self on itself is a crime. So, in accordance with Article 255 of the Criminal code of Ukraine, "creation of criminal organization for the committing of severe or especially severe crime, and also guidance by such organization or participating in it, or participating in the crimes accomplished by such organization, and also organization, guidance or assistance to meeting (gathering) of representatives of criminal organizations or organized groups for development of plans and terms of joint committing of crimes, material providing of criminal activity or co-ordination of actions association criminal organization or organized groups - punished by imprisonment on term from five to twelve year".

Thus, one of fundamental criteria distinguishing criminal organization from another form of participation is a moment of completion of crime. In this case by it is a moment of organization of criminal society, regardless of whether it accomplished the set crimes or no.

By the next distinguisher of criminal organization as the most dangerous form of participation there is an aim. The aim of creation of criminal organization consists, foremost, in the joint committing of one or a few severe or especially severe crimes for a receipt straight or by implication financial or another material benefit. In science of criminal law suggestion to plug the aims of creation of criminal organization and development of plans of committing of intentional crimes of middle weight in maintenance speaks out also.

A distinguisher is a criminal and legal value of criminal organization, that consists of that a fact of creation of criminal organization or participating in it is an independent corpus delict, while a committing crime the organized group is by the only characterizing or especially characterizing sign of another corpus delict.

Walkthrough the brought points over of view, getting a clear idea of etymologic value of terms "criminal organization", "criminal society", allows to draw conclusion, that these concepts are not identical.

Conclusions and prospects of further research. Criminal organization, as well as every system, must possess structured necessarily, i.e. to plug in itself subsystems as the organized groups of different size and maintenance,

from large to less and further to the indivisible elements, to the certain participants of criminal organization.

Criminal society is the most dangerous form of participation. This danger is stipulated by weight and prevalence accomplished by criminal association of crimes, and also by the features of maintenance of aims of their creation and impossibility of legal influence by means of another industries of legislation.

In basis of criminal responsibility positions of accessory theory of participation lie for organization of criminal society.

Responsibility for organization of criminal society in national legislations must to a full degree correspond to the norms of Convention of the UNO from November, 15, 2000 "Against the transnational organized crime" in part of determination of concept and signs of criminal society.

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