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**Insufficient Study Of The Organized Crime As One Of The Reasons Of Its
High Latency**

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Abstract. *Today there is no special research methodology, different from the studying of general crime, giving a full picture of the organized crime. Confrontation to the organized crime is possible only with condition of a clear idea about it, about the formation mechanism and functioning of criminal groups, and strengthening of statehood, as the organized crime arises only on those places where there are side effects and public administration faults. Therefore the search of legislative forms, which could eliminate legal invulnerability of such leaders, is one of key problems of effective impact measures on the organized crime.*

Key words: the organized crime, insufficient study, the hidden crime, latency, dangerous type of crime, activity of mafia type.

Introduction

Now, insufficient study of the organized crime is an open question. We have no standard definition of the organized crime, where there is no exhaustive list of the signs, characterizing this type of crime, despite abundance of the publications, devoted to problems of the organized crime, and also the considerable scientist list of the Soviet and Post-Soviet periods. Also there is no special research methodology, different from the studying of general crime which allows giving a full picture of the organized crime.

The main reason of such situation is put in the nature of organized crime emergence, the essence of which is its secretive and intangible character.

Let's consider why the organized crime is latent and what prerequisites are available for this purpose.

The first. Excessive politicization of criminology science. It is known, that during the Soviet period the party membership principle of criminology had brought in science a number of postulates, where all scientists had to be adhered to it and not only the former USSR, but also the countries of the socialist commonwealth. It was steady decrease, and in the long term it was the crime elimination in country, caused by advantages of socialist production way compared with capitalist.

The crime reasons were associated mainly with the side effects of the past of capitalism and the actual influence from outside.

In the late fifties a proclamation about the end of fight against gangsterism was not corresponding, and this type of crime was remained as active and successfully functioned, moreover, thanks to this postulate the qualification of criminal acts occurred in circumvention of this article of the criminal code respectively.

For example, we observe manifestations of criminology politicization on pages of the solid edition "Course of the Soviet Criminology", written by the leading scientific criminologists of the Soviet Union (Kudryavtsev V.N., Sakharov

A.B.) during an era of Gorbachev reorganization. They specified that for understanding of the social nature and the crime nature (including at socialism) as the initial is the Marxist-Leninist provision on historically caused character of the social phenomena.

It has great importance for a denial of attacks of the bourgeois ideologists to socialism “accusing” that it still “wasn't coped” with crime, ignoring the fact intentionally that in socialist society there are no the most dangerous crime forms, inherent in the previous formations, like a gangsterism, racket; there is no merging of underworld with government; there are no whole population layers, profiting on crime and interested in it; there are no politicians, seeking to come to the power by means of criminal methods. These are the huge socialism advantages, reached owing to radical restructuring of social life for very short historical period of time: crime exists many millennia, and socialism – only a little more than sixty years.¹

Yu.G. Kozlov has very critically spoken concerning this edition, which was the one of participants of the first round table on problems of organized crime. He has noted that this work was published in 1985: at this time investigative brigades of Prosecutor's office of the USSR had already worked in Uzbekistan, untangling a difficult tangle “our nonexistent” relations of underworld and the government highest echelons. There were known the Sokolovs, Krasnodar, Rostov cases. However, the diagnosis of the most dangerous disease of our society – the organized crime – hasn't been put in time. And here the social myths of the recent past are guilty in many respects: “We don't have it because it can't be there”. Therefore, it is possible to tell that the myth – is the statement about impossibility of existence of organized crime in our country – it is dangerous, and together with it disorients the public opinion and casts a sweet sleepiness over law enforcement agencies. In this connection the scientist and the journalist missions were become exclusively responsible – exactly they at continuous fruitful contact with officers of law enforcement agencies must inform in due time the society on the danger threatening to it, at the same time without being afraid of discontent from the power, discrediting myths of stagnant times.²

Moreover, the theme of studying under the name “Criticism of reactionary essence of bourgeois criminology” had been provided in teaching course “The Soviet criminology” in the highest legal educational institutions.

However, it is necessary to take into account that in the conditions of rigid ideological control - it wasn't necessary to speak about essence and the crime nature, and furthermore, about its organized forms. Otherwise, we wouldn't see the truthfulness any editions of new criminology annuals, including the quoted of “The Soviet criminology course”.

So, A.I. Dolgova, the leader of a round table on the organized crime problems, told in the opening speech that: “How it is possible not to recognize existence of the organized crime problem, if for its statement, the former General

¹ ***, *Course of the Soviet criminology. Subject. Methodology. Crime and its reasons*, Moscow, Crime, 1985, p. 145.

² A. I. Dolgov, S. V. Dyakov (eds.), *Organized crime*, Moscow, Crime, 1989, p. 66-67.

Talgat AKIMZHANOV, Balgyn TORGAUTOVA, Bayan ASHYRALIYEVA,
Anjelica TSOI, Ayzhan RYSALDIYEVA

Prosecutor of the USSR V.V. Naidenov was left the post for the first most active actions for fight against this crime? Now, it is the obvious fact”.³

The second. Confusion of ideas “the organized crime” and “organization in crime” were in the former USSR after recognition of the organized crime though the famous Soviet scientist Karpets I.I. paid attention to it several times. He wrote that the crime history testifies: group crimes were, are and will be. Criminal laws of the different countries, including and our fatherland, always contained the norms, punishing for participation in a crime. At the same time the sign of group participation of commission of a crime is characteristic for organized crime. Some scientists fairly suggest considering the general structure of the organized crime of the post-socialist period in two aspects, namely:

- 1) as the organization of general crime;
- 2) as the organized crime of officials.

And, “the growth medium” for these two types of the organized crime in the former USSR territory, in their opinion, is the intensifying process of demoralization of the public relations, chaos in economy, an impoverishment or worsening of the material population status, an aspiration of considerable population segments to a profit in any way.⁴

V.V. Luneev absolutely fairly noted: “whether is it possible to oppose an organization crime - the organized crime?”.

The first concept, in my opinion, is wider than the second. At the same time, it is it is unlikely possible to claim that organized crime – the highest level of criminal formation! The organization is the one of major signs of the considered type of criminal activity. It is very important to find its exact criterion, which would allow distinguishing the criminal community of the organized criminals from other groups, committing crimes by previous concert.⁵

Lack of the specified criteria, distinguishing the organized crime from organization in crime, contribute to distortion of representation of the true from organized crime.

The third. Despite the great number of conducted researches for the organized crime, the sciences have no united conventional approach, namely a methodology for understanding of organized crime essence. Ones scientists define organized crime as illegal activity; others connect it as a special type of the relations; the third as a special form of participation in criminal activity and so on. For example, we have the standard definition of a crime, the criminal nature, and when we consider the one of its crime types, so there is arisen a great number of the questions and ambiguities.

And as a result, it is the lack of empirical base of basic data and continuous “imagination” concerning various schemes and images of organized criminal society.

³ A. I. Dolgova, S. V. Dyakov (eds.), *Organized crime*, p. 4-5.

⁴ I. I. Karpets, *Crime, illusions and reality*, Moscow, Crime, 1992, p. 264-267.

⁵ A. I. Dolgova, S. V. Dyakov (eds.), *Organized crime*, p. 24-25.

Insufficient Study Of The Organized Crime As One Of The Reasons Of Its High Latency, Astra Salvensis, V (2017), no. 10, p. 103-112

According to the author opinions, existence of the great number of organized crime definitions, which are considered the given type of crime in the different viewpoints, testifies to the problems in methodology and research methods of the organized crime.⁶

The fourth. The reasons of high latency of the organized crime are directly connected with the legislation.

The omissions and crudity in legislative activity in relation to organized crime are caused by a number of problems in law-enforcement activity. The problems is: it is impossible to achieve clarity in the matter without knowing a clear boundary of concepts of the organized criminal group, which is the main criterion of the forming the number of crimes, called as the organized crime.

Because of high latency not only in Kazakhstan, Russia and even foreign countries, neither the legislator, nor scientific researchers, nor practical employees of the law enforcement agencies, conducting direct fight against it, and in general law-enforcement system, have no clear idea of this phenomenon.

The concept of the organized crime is “blurred” from simple complicity – as like a group crime, to the compound complicity, called by criminal group and that is, according to the item 3 of Art. 31 of the Kazakhstan’s Criminal Code, was made as the organized group, criminal organization, criminal community, transnational organized group, the transnational criminal organization, transnational criminal community, terrorist group, extremist group, gang or an illegal paramilitary force.⁷

Discussion

According to the Russian scientist S.M. Inshakov: the organized crime – is rather new research object for to the domestic criminology. The one statement of the numerous types of the organized crime, formed by various factors, including ethnic, economic can’t be possible to define it. However in general, this phenomenon can be characterized as the complex criminal activities, which are carried out in wide scales by the organizations and other groups, having internal structure, which get financial profit and get the power by creation and operation of the markets of the illicit goods and services.⁸

According to our deep belief, the organized crime should be studied as a type of latent crime, as organized crime is invisible and inaccessible for research methodics of usual crime in order to exclude simplification in representation of organized crime or artificial complication.

But the reason of insufficient investigation of the organized crime is given in the various images as the form of a pyramid, where the top part is unknown or it is in the iceberg form, which lower part is also “invisible and is under water”.

⁶ T.K. Akimzhanov, S. A. Begimbayev, *Organized crime at the regional level (Criminological, criminal and legal aspects)*. Manual, Almaty, IC OFPPI “Integral”, 2015, p. 33-34.

⁷ ***, *Criminal Code of the Republic of Kazakhstan: Practical guide*, Almaty, “Norma-K”, 2016, p. 34-35.

⁸ S. M. Inshakov (ed.), *Criminology: The manual for the students of higher education institutions*, Moscow, Norma, 2005, p. 151.

Talgat AKIMZHANOV, Balgyn TORGAUTOVA, Bayan ASHYRALIYEVA,
Anjelica TSOI, Ayzhan RYSALDIYEVA

Organized crime is compared to the state within the state,⁹ as it was based on the activity of the state institutes and was legalized the work completely. Sometimes it is compared to “a cancerous tumour”, meaning that it likes a fatal disease, which leads to degradation of a social organism, and that society wasn't found effective measures of its disposal.¹⁰ The organized crime on danger system to society is put on the second place after wars.¹¹

According to the Russian scientist Yu.M. Antonyan: a globalization creates conditions for emergence of new, wider crime forms, in particular to transnational. According to some estimates, now there are 50-60 thousand of multinational corporations in the world (MC) and about 150 largest now. By the end of the 20th century it is nearly a half of trade volume fell to their share in the developed countries, plus to it – the 80-90% export of the fuel-raw and agricultural goods from developing countries. At the same time, the share of informal transactions was made from 10 to 40%.¹²

It is not a coincidence in the Kazakhstan's Criminal Code, adopted on July 3, 2014 and which was come into force on January 1, 2015 in article 3; it is given the concept of transnational organized group, the transnational crime organization and transnational criminal association¹³ and also it was provided in the Articles 264 and 265 of the Kazakhstan's Criminal Code, for their creation, management and participation in them.¹⁴

Approximate study phases of the organized crime are given in the criminology textbook edited by N.F. Kuznetsova and G.M. Minkovskiy where it is specified that in domestic criminological researches the concept “organized crime” was used in the 1970th, however, the developed researches of a problem have been started since the middle of the 1980th. Practical specialization of the fight against organized forms of crime, ensuring this fight in organizational and legal aspects was happened even later, only since the end of the 1980th. In the same years the problem began to be emphasized in the training programs; as for criminology textbooks, for the first time it was emphasized in the textbook of Moscow Law Institute (1992) and in the edition of 1994 of the present textbook.¹⁵

The methods, applied at a research of other crime types were used in studying of the organized crime.

Therefore many aspects of the organized crime were not studied as it is almost impossible to see organized crime “with the naked eye”.

The position of the Russian scientists is absolutely fair that latent crime causes serious negative consequences. Its existence creates a psychological situation

⁹ A. I. Dolgova, *Criminology*, Moscow, Norma, 1999, p. 59.

¹⁰ S. M. Inshakov (ed.), *Criminology: The manual for the students of higher education institutions*, p. 294.

¹¹ V. V. Luneev, "Organized crime in Russia: consciousness, sources, tendencies", in *State and Law*, IV (1996).

¹² Y. M. Antonyan, *Criminology: manual for bachelors*, 2nd edition, Moscow, “Yurayt” Publishing house, 2013, p. 428.

¹³ ***, *Criminal Code of the Republic of Kazakhstan: Practical guide*, Almaty, “Norma-K”, 2016, p. 24.

¹⁴ *Ibidem*, p. 138.

¹⁵ N.F. Kuznetsova, G.M. Minkovsky (eds.), *Criminology: Manual*, Moscow, Norma, 1998, p. 341.

of impunity of socially dangerous acts in a certain microenvironment, and it encourages the persons who have committed such crimes, to continue and expand the criminal activity. The influence of the hidden crime as it “is nevertheless caught” by the people around, the sense of justice of some society members undergoes negative changes which conduct to criminal acts .¹⁶

It can be shown especially in relation to the organized crime, considering its increased public danger.

According to the Russian scientists, expansion of the organized crime to economy had assumed the menacing scale. So, criminal business includes more than 40 thousand enterprises, the state and commercial organizations; 70-80% of the privatized enterprises and commercial banks, the most trade organizations are impose on extortion. The “tributes” size (a kind of tax in favor of criminals) makes 10-20% of a circulation that quite often exceeds a half of balance profit of the enterprises .¹⁷

The latent nature of the organized crime has also another side. So, Lunev V.V. at the first round tables, devoted to judgment of essence of the organized crime, specified that the one of ways of criminal community activity is the spreading rumors and fears about the power. It brings to criminal communities more benefit, than harm. Rumors and fears will demoralize witnesses and the victims. It is shown accurately on the Moscow racket. Widespread extortion and in a hundredth part isn't reflected in single criminal cases. Other victims were paid off and kept a silent. They are afraid of punishment, and they don't believe in protection of law enforcement agencies as well. So, it is accompanied with the organized criminals .¹⁸

Authors of the criminology textbook specify about it, and they were noted that by-turn, an intimidation with the assistance of mass media for the population “omnipresence” and “omnipotence” of this crime was generated the public opinion about power inability to carry out an effective fight against of the organized crime forms, having strengthened a passivity position, unwillingness to help law enforcement agencies .¹⁹

Such practice can bring, and sometimes and it leads, to the organized crime myth. Thanks to the latency the terms “mafia is immortal”, “mafia is impossible to behead, it can be only headed”, “mafia hands are long” and others have strongly become current not only ordinary citizens, but also representatives of law-enforcement system.

When organized crime is compared to an iceberg, where its part is invisible, it can be as reality that it was invisible part, and it can be both a big and small, and it may be doesn't exist at all.

¹⁶ V.N. Burlakov, N.M. Kropachev (eds.), *Criminology. Manual for higher education institutions*, Sankt Petersburg, SPb, 2003, p. 52.

¹⁷ V. D. Malkov, *Criminology: Manual*, Moscow, CJSC “Yustitsinform”, 2004, p. 406.

¹⁸ A.I. Dolgova, S.V. Dyakov, *Organized crime*, p. 26-27.

¹⁹ N.F. Kuznetsova, G.M. Minkovsky, *Criminology. Manual*, p. 342.

Talgat AKIMZHANOV, Balgyn TORGAUTOVA, Bayan ASHYRALIYEVA,
Anjelica TSOI, Ayzhan RYSALDIYEVA

Therefore, the organized crime can be considered and as a type of latent crime.

For a long time the scientific criminologists are interested in the latent crime problem and it is a subject of an independent research.²⁰

According to the scientific criminologists, in criminological aspect, the latent crime is multiple offences, which aren't included in the crime analysis of the statistical data, owing to absence of official data by a certain moment.²¹

Other scientists give more detailed description of the latent crime. According to their opinion, it is that part of real-life in the space-time (i.e. in a certain place and for a certain period) limits of the actual crime, which represents the cumulative (accumulative) crime massif and the committed crime persons, who aren't revealed by bodies of criminal justice and aren't considered by criminal statistics, within limitation periods of criminal prosecution.²²

The famous Russian scientific criminologist Hokhryakov G.F. considered in detail the latent crime in the special 12th chapter of the criminology textbook with the same name: "Criminology of Latent Crime".²³ Scientists were fixed such axiom: the execution organization is higher, the higher its latency.

As organized crime represents the multiple offences of highest organization and execution, so the latency of this type of crime is at appropriate level. Therefore it is possible to claim with confidence that organized crime is one of types of latent crime.

According to foreign experts, a latent part of organized crime at 6-10 times exceeds the part, registered by law enforcement agencies.²⁴ Despite special attention of scientists to a research of the fight against organized crime problems because of its latency, the further studying raises more and more questions, than answers.

Not incidentally, in the Leader Nation of N.A. Nazarbayev's Address to the people of Kazakhstan: "Strategy "Kazakhstan – 2050" was noted: the new political course of the established state shouldn't be reconciled even with the smallest offenses, hooliganism, lack of culture, because it violates public peace, reduces life

²⁰ A. S. Shlyapochnikov, G. I. Zabryansky, "Detection of latent crime," in *Soviet state and law*, V (1973) ; Yu V Bishevsky, A. A. Koneev, *Latent crime and sense of justice*, Omsk, 1986; K. K. Goryankov A. P. Isichenko, L. V. Kondratyuk, *Latent crime*, Moscow, Norma, 1994; ***, *Latent crime: cognition, policy, strategy. Material collection of the international seminar*, Moscow, Norma, 1993; S. A. Shcheglova *Latent crime and its value for efficiency of criminal law: abstract of the candidate thesis*, Moscow, 1973; A. A. Konev, *Main criminological characteristics of latent crime*, Omsk, 1980; R. M. Akutayev, *Criminological analysis of latent crime. Abstract of the Doctoral thesis*, Santk Petersburg, 1999.

²¹ ***, *Soviet criminology course. Subject. Methodology. Crime and its reasons*, Moscow, Criminal, 1985, p. 164.

²² K.K. Goryankov, A. P. Isichenko, L. V. Kondratyuk, *Latent crime*, p. 29.

²³ G. F. Hokhryakov, V. N. Kudryavtsev (eds.), *Criminology: manual*, Moscow, Norma, p. 397-410.

²⁴ A. V. Vasilyev, "Perspective researches of modern criminology. Legal and organizational issues of improvement of the Internal Affairs Department," in *Work collection of activity of adjuncts and applicants*, IV (1996), p. 137; V. V. Lunev, *Crime of the XX century. World criminological analysis*, Moscow, "Norma" publishing house, 1997.

quality. The disorder feeling and permissiveness creates the “soil” for more serious crimes,²⁵ to which is belonged organized crime as well.

The famous Russian scientist Luneev V.V. pointed about the high latency of organized crime at the International Scientific and Practical Conference, which was taken place in Moscow on November 2-3, 2000.²⁶

The reason of lack of a clear boundary of the organized crime as research object is an insufficient legal support of the questions of criminal liability and as a result of the empirical base.

According to foreign scientists, the organized crime is called sometimes as the state in the state.²⁷ The organized crime latency which poses to the state threat, and complicating to conduct researches, is shown in its aspiration to legalization: it is especially characteristic for the West countries, having longer history of the organized crime functioning.

This feature of the organized crime is described in detail in S.M. Inshakov’s work where it is specified that the main mafia weapon – savage reprisal, which is sidelines for the background gradually, and for the first place there are moved forward the bribery, based on criminal receptions of the extremely profitable business. And it is known that the mafia family becomes richer the smaller specific weight in its affairs had a crime. Now in the USA, there is quite accurately looked through the aspiration of criminal bosses “to launder” not only money, but also the children. They were distanced from the criminal world they are provided an education of the highest level. “Godfathers” would like to see the children senators and even as like the presidents.²⁸

The Russian scientists also point to aspiration of the organized crime legalization. So, Dolgova A.I., speaking about the organized crime relations with the state, noted that between them there is no clear and rigid boundary; the organized crime penetrates various legal relations, including, having own legal entities; it is considered with requirements and interests of different social population groups, trying to win them for their side and to have a reserve of the rank filling; along with constant and active participants of criminal activity has those who cooperates with it an one-time basis.²⁹

Therefore CIS countries organized crime has such tendency as legalization, that is from opposition with the state it passes to “close” cooperation by attraction to service, both on a constant and on their temporary basis of the heavy hitter, of government institution specialists, rendering them both material and moral support.

At such interrelating and of the legislation imperfection, for the scientist and furthermore for law enforcement agencies it is difficult to distinguish where

²⁵ ***, *Strategy “Kazakhstan – 2050”: New political course of the established state: Address of the President of the Republic of Kazakhstan - Leader of Nation Nursultan Nazarbayev to people of Kazakhstan*, Almaty, LAWYER, 2013, p. 35.

²⁶ “*State and Law*” journal, no. 5, 2001, p. 103.

²⁷ S. M. Inshakov, *Foreign criminology*, p. 303.

²⁸ *Ibidem*, p. 299.

²⁹ A. I. Dolgova, *Criminology*, p. 59.

Talgat AKIMZHANOV, Balgyn TORGAUTOVA, Bayan ASHYRALIYEVA,
Anjelica TSOI, Ayzhan RYSALDIYEVA

there are performed a legal acts and where the illegal actions where the organized crime representatives act as the expert of “legality”.

High latency of the organized crime doesn't only complicate but also give the chance to an explanation of true essence of the organized crime, and furthermore to acceptance of adequate measures of fight against it.

Both judicial and law-enforcement practice testifies to high latency of organized crime.

The such situation reasons were well explained by the Russian scientist V.V. Luneev, using of criminal statistics data in the Russian Federation. According to his opinion, the acts made by the organized criminal groups are included in the registered list only when criminal case was opened and there are sufficient proofs about commission of crime by organized criminals. The same acts aren't included in this account, which though had been committed by the considered criminals, but it isn't determined undoubtedly. For example in 1999, there were investigated the 25 terrorism cases, including 20th registered in the last fixed year. As a rule, this act was made by the organized criminal groups and the criminal organizations (communities). But, any cases weren't been proved that some terrorist act was committed by the criminal organization (group); therefore, we weren't found any data on commission of the terrorism act by the organized criminals.³⁰

Conclusion

The organized crime, thanks to its high latency, gets into all spheres of social activity and poses a threat to state security. It is possible to draw the following conclusion. The following circumstances demonstrate about insufficient study of the organized crime, in view of its latency, at the same time further studying of this phenomenon raises more questions, than answers.

First, the nature of this type of crime. The organized crime is the most socially dangerous type of crime, and scientists were established and almost were confirmed such dependence that the organization in preparation and commission of a crime is higher the percent of its identification is lower.

Secondly, aspiration of the organized crime to legalization and legitimation of its work. It is reached in two ways. An exception from the work of criminal means and methods, the maximum legalization of the work and activity in strict accordance with the current legislation. Another way is to take lobbying measures through the government and parliament in adoption of the “necessary” solutions and acts.

Thirdly, the most part of the organized crime is out of the activity sphere of the criminal legislation, therefore it is latent, and the border between the latent part and registered organized crime goes towards increase in the latent part. This picture is observed at statistical comparison of the committed crimes by organized

³⁰ “*State and Law*” journal, no. 11, 2000, p. 26.

criminal groups both in the territory of Kazakhstan, and in the territory of the CIS countries.³¹

Fourthly, the market relations in economy have brought serious changes both to the general crime, and to its organized part.

The main task of the organized crime – is receiving super-profits, and modern market economy disposes to it and favors, and wherein on the lawful basis.

In our opinion, consideration of the reasons on insufficient study of the organized crime will clarify the understanding of this problem, and also will allow to realize and reconsider the work of law enforcement agencies, designed to fight against the specified phenomenon which is referred to the main threats of national security, according to paragraph 1. subparagraph 1) of Article 6, Law RK of January 6, 2012 “About national security” No. 527-IV (with amendments and additions as of January 13, 2014) .³²

It is possible to oppose effectively to the organized crime only on condition of a clear idea about it, about the formation mechanism and functioning of criminal groups, and strengthening of statehood, as the organized crime arises only on those places where there are side effects and public administration faults.

The famous Russian scientist G.A. Avanesov fairly commented on it that definition of the organized crime is extremely important for the Legislator as only on its basis it is possible to pursue policy of criminalization of all structures activity of mafia type. The solution of the question, concerning the highest criminal echelons, outwardly untouchable to the crimes, is intractable problem. Search of legislative forms, which could eliminate legal invulnerability of such leaders, is one of key problems of effective impact measures on the organized crime.³³

³¹ A condition of fight against organized crime on the territory of the CIS states - participants / Bureau on coordination of fight against organized crime and other dangerous types of crimes on the territory of the CIS. Main information center of Internal Affairs Ministry of Russia.

³² ***, *Collection of the normative legal acts: Practical guide*, Almaty, “Norma-K”, 2016, p. 55.

³³ G.A. Avanesov (ed.), *Criminology: manual for the students of higher education institutions, studied on the 021100 “Law” specialty*, Moscow, UNITY-DANA, 2006, p. 426.