

**Concept And Structure Of The Criminalistic Characteristic Of Extortion,
Committed By The Organized Criminal Group**

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Abstract. *This article considers studying the essence of the organized (or the criminal) group which based on the components of criminalistic characteristic because the exception even the one element from its maintenance changes a final picture of the phenomenon significantly. Studying of structure of the criminalistic characteristic demonstrates that the most correct approach in this situation would be to define three main components: the organized criminal group, committing extortion; the object of extortion by the organized criminal group; a way of commission the extortion by the organized criminal group. Such triad answers actually for the main questions of this criminal type studying, and its success. At the same time this triad requires the addition by means of inclusion in it of such elements as the extortion subject, the circumstances and conditions of the commission of extortion, its motives and purposes, the circumstances of the commission of extortion, the victim of extortion and the subject of extortion.*

Key words: an essence the organized criminal group, the criminalistic characteristic, an object of the extortion, a way of commission of the extortion.

Introduction

The specific of the extortion, committed by organized criminal group, has essential differences from extortion which made individually, or by the group which is impossible to call organized. At the same time, as priori, it is the main part of the statement that the organized criminal group, engaged in extortion, is significantly differs from other groups, where the basis of criminal activity is other sites of criminal activity. Such statement indicates that the nature of the organization of criminal activity and intra group relations does extortion, committed by the organized criminal group, and exactly given group as the specific formation, which can be carefully studied only together and deeply, so to say in the relationship of causality through functionality and vice versa. I am sure that the investigator of our work will be perplexed with the questions, and it is made him to draw such conclusion about specifics of the considered object. For this reason, the concept and the general question of the commission of extortion by the organized criminal group can't be resolved without the careful and detailed description of an essence of initial criminal group.

In turn, the unconditional condition, defining success of the determination the essence of organized criminal group, committing extortion, is the criminalistic characteristic, through definition of which, it can be possible to understand the essence, arising in the process of extortion of the information vectors. It is obvious; it can't be carried out without criminalistic characteristic of criminal group in general.

For this reason, any essence studying the organized (the criminal) group has to be based, first of all, on the components of criminalistic characteristic, because the exception even the one element from its maintenance changes a final picture of the phenomenon significantly. Inclusion in it the additional, facultative signs of the third level, equally with other signs of the first level of abstraction, turns such a characteristic, on the contrary, into contradictory and very disorderly description,

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which can be conducted, in general, to the little significant results.

Discussion

Scientists-representatives of absolutely different science branches of the humanitarian direction were engaged in studying by the criminal group, and their range is varied from the psychology and pedagogy, sociology, political science, etc., to branches, having legal value actually (criminal law, criminalistics, and criminology).

We will give for your interest some examples of it. So, for example, as the group in political sense, is understood as “rather stable set of the people, connected by the general relations, activity, motivation and norms”. At the same time, a basis of such classification is the beginning of existence of the general interest, uniting individuals in these groups. One of the most ancient group classifications goes to Aristotle, who distinguished the related, friendly and interested groups. Now, in the political science there is very conditional division on small, big, averages groups, and also on formal and informal.¹ It should be noted also the fact that the standard points of view per se on the theory of group and criminal groups, the organized criminal group in science, aren't revealed by us. We face to series of discussions about essence of the group central element only with disputes on the cementing meaning of the general interest in the context of group formation, concluding in the “interest, which is a relative concept, resultant force of influence, integrated into real integrity”.² And, having already proceeded from this conclusion, on fields of scientific discussions, it is possible to find attempts of methodical denunciation it in different type of the concept. The stratometric concept, in details described by A.V. Petrovsky, is very widespread,³ so in turn, it was formed as a basis for researches V.M. Bykov's criminalistic plan,⁴ also A.R. Ratinova's⁵ other later works,⁶ where we will concern later the parts, regarding the category interesting us.

However, primary, initial and main element in this cascade of the points of view on essence of the criminal group, the organized criminal group, for us it is not the criminalistic group the points of view on the given phenomenon. At the heart of such research, from the point of view of a hermeneutics there can be focused only the criminal and legal understanding of the criminal group, the organized criminal group. Why have we drawn such conclusion? First of all, that the cornerstone is the M. Heidegger's philosophical approach, believing, that the

¹ Yu.I. Averyanov (ed.), *Political science: Encyclopedic dictionary*, Moscow, Moscow commercial University Publishing Gouse, 1993. p. 79-82.

² *Ibidem*, p. 371.

³ A. V. Petrovsky, *Personality, activity, collective*, Moscow, PolitIzdat, 1982, p. 55.

⁴ V. M. Bykov, *Criminal group: criminalistic problems*, Tashkent, 1991, p. 4; V. M. Bykov, *The problems of investigating group crimes. Thesis abstract of Doctor of Law*, Moscow, 1992, p. 15.

⁵ A. P. Ratinov, "Legal psychology and problems of fight against crime," in *The questions of fight against crime*, XXXVIII (2002), p. 46.

⁶ V. T. Kontemirov, *The criminalistic characteristic of groups in the organized crime sphere. Thesis abstract of Candidate of Law Sciences*. Volgograd, Volgograd Investigative School of MIA RF, 1992, p. 18; V. V. Romanov, *Legal psychology: Manual*, Moscow, “Lawyer”, 1998, p. 288-289.

informative structure can have a formula “mission – sense – understanding – a concept”⁷; and also the development of this approach in I.P. Koryakin’s works, describing it in relation to the criminalistic interpretation and having at the level of the thinking algorithm the following form: “a process = purpose + the means = the process essence, purposes and means”⁸. In such context what qualitative wouldn't be the researches, devoted to studying of essence of criminal groups by scientific criminalists of the Soviet Union or Russia, all of them are focused on the reality which is a little divorced from us, connected with existence in these states of the criminal and legal legislation, defining a concept of the criminal group, the organized criminal group. At the same time, the specifics of criminal and legal understanding of these groups assume the conditionality and proof process and knowledge process in the concrete investigative situation. So, what makes the previous scientific researches in the best way as illustrative? We will notice that further we will use of course such illustrations in the context of facultative approach, but no more. In other words, if in the period of criminalistic and criminal and legal science of the Soviet Union and modern Russia we deal with other interpretation of criminal or organized criminal group in the criminal and legal legislation of that time and space, rather than that which is available in the criminal code of the Republic of Kazakhstan today, then the most part of conclusions about essence of the organized criminal group or extortion are remained inapplicable for the domestic legal framework, and respectively and for the domestic criminalistics, domestic practice of investigation. It is necessary to recognize that such approach where the understanding and a concept of the organized criminal group is dominating in researches of all authors practically, describing the questions of commission of extortion by organized criminal group, is as the main question⁹. In this case none of them are able to afford the divergences, concerning the end result at which the constructed knowledge model will be based on the structure, where the main is the terminology excluding further uses of the result. The exception, perhaps, there can be considered the works, devoted to a theoretical research of the most central concept (in our case – a concept of the group, the criminal group, the organized criminal group). Those have a criminal and legal profile¹⁰, and they logically are the “soil” for legislative judgment of these or those theoretical moments in the criminal legislation. Authors of the criminal procedure or criminalistic character works, being conducted in this logical chain, quite reasonably don't risk taking such step.

We will notice that according to structure of the Criminal Code of Kazakhstan the concept of the criminal group appears as aggravating sign of commission the extortion (part 4. Article 194 of the Criminal Code of Kazakhstan “Extortion”).

⁷ M. Heidegger, *Being and time*, Sankt Petersburg, SPb, 2006, p. 158.

⁸ I.P. Koryakin. *Monograph*. Karaganda 2009, p. 257-258.

⁹ N. Egorova, "The concept “criminal group and “group crime,” in *Legality*, II (1999), p. 19.

¹⁰ A. L. Onuchin, *Determination the signs of commission of a crime by a group and the investigation specifics of such crimes. Thesis abstract of Candidate of Law Sciences*, Sverdlovsk, Sverdlovsk Law Institute, 1970, p. 4-7.

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Besides, the criminal group in its legislative understanding is described by the set of points, described in the Article 3 of the Criminal Code of the Republic of Kazakhstan “Explanation of some concepts, contained in the present Code”. So, paragraph 24) of this Code is specified that: “The criminal group – organized group, the criminal organization, criminal community, transnational organized group, transnational criminal organization, transnational criminal community, terrorist group, extremist group, gang, an illegal paramilitary group”.

Thus, the legislator lists all types of the criminal groups where it is entered the interesting us type “the organized group”. In turn, the last is specified in addition, and explained by paragraph 36) of the Article 3 of the Criminal Code of Kazakhstan “An explanation of some concepts, contained in the present Code”, pointing that “the organized group – is steady group of two or more persons who have united in advance with the purpose of commission of one or several criminal offenses”.

We will notice that this interpretation of the criminal group, the organized group, we will adhere further, during creation of our criminalistic characteristic of commission the extortion by the organized criminal group. We will point only to some approaches in such process and the logic of their separate probabilities in order to show futility of other attempts and at the same time to show the studying care of the question the structuring of criminalistic characteristic of commission the extortion by the organized criminal group. So, the question of drawing up the criminalistic characteristic of the phenomenon, its content was investigated earlier rather carefully.¹¹

However, today, the criminalistic science dominates, according to which “the criminalistic characteristic of a crime represents a data system on ways of the commission and concealment of a crime, also the commission circumstances of a crime; individual specifications for the personality of the criminality, motives, the purposes of crime committing; the description of the typical circumstances, promoting to the commission of a crime”.¹² We will notice that such approach, being and undoubtedly having the interest to our subject, assumes that the concept formation of the criminalistic characteristic the extortion, committed by the organized criminal group or only this group is impossible in view of the fact that the important criterion, defining degree of the organization of that group, and also the main indicator of such organization missed out of it (in understanding of the legislator) - “stability”.

Relatively the recent T.V. Kolesnikova’s works who believe that “From the point of view of the system analysis, the criminal groups are self-developing systems, passing the number of stages – such as origin, formation, further development, destruction, indicate the organization criterion as an obligatory component of such characteristics. At the same time gradation of the criminal groups are: the group of persons – is the group of persons by previous concert –

¹¹ R. S. Belkin, *Criminalistic encyclopedia*, Moscow, Publishing house BEK, 1997, p. 105.

¹² T. V. Kolesnikova, "Organized criminal group: system analysis," in *Investigator*, VIII (1999), p. 45-46.

the organized group – the criminal community represents the ascending line from the lowest step of organization – to the highest”¹³

From L.A. Sergeyev’s the point of view there are seven possible elements of the criminalistic characteristic of a crime: “the method of committing a crime, the conditions, circumstances, object of the criminal encroachment, the subject, interrelation between these elements, interrelation of these elements with other crimes”. He also excludes the criminalistic characteristic of the extortion, committed by the organized criminal group at the level of its point of view.

Together with this approach to understanding of the criminalistic characteristic there is also another - with the description of characteristic stages of development of the phenomenon.¹⁴

In general, R.S. Belkin’s reasonings have put the end in the series of discussions about nature of the criminalistic characteristic. So, as result we can do the following probable conclusions:

1) the concept of the criminalistic characteristic is a private fiction typical for the statement of the separate points of view on essence of the separate phenomena and it can’t embrace by its structure all situations in which such characteristic is necessary;

2) the concept of the criminalistic characteristic at the functional mission is just imperfect and it demands the specification then it can be used in criminalistic science.

In favor of the first conclusion there are testified the arguments of the scientists, pointing that the concept “criminalistic characteristic of a crime” is legally incorrect, and it narrows the types of researches, so, together with it, means the description of characteristic, distinctive properties.¹⁵

It is impossible to disregard also the opinion about an exception of the criminalistic characteristic of a crime from structure of private methods, and inclusion in it the fact in proof.¹⁶ At the same time, we can’t fully agree with it because the perspective of knowledge and proof are distinguished, so, therefore here is impossible to change the situational cognition – in the belief, from the point of view for its cognition, as for criminalistics there is placed as the first – a structure, and it must be structured exactly from the point of view simplification of cognition. Having removed from the content of the private investigation methodology this element, we risk to lower significantly the heuristic characteristics of this branch of knowledge. In this context it is possible to claim that the criminalistics as heuristic science anticipates a proof which takes place only at creation of final model of knowledge. At the same time, this model of knowledge is

¹³ V.D. Grabovsky, A.F. Lubin (eds.), *Criminalistics: crime investigation in the sphere of economy: Manual*, N. Novgorod, Nizhny Novgorod HS MIA RF, 1995, p. 48.

¹⁴ S. V. Lavrukhin, "Criminalistics subject," in *Criminalistics. Expertise. Detection. Collection of scientific articles*. Saratov, SHS MIA RF, 1995, p. 9-10.

¹⁵ S. N. Churilov, *The criminalistic doctrine about the general method of investigating crimes. Thesis abstract of Doctor of Law*, Moscow, Academy MIA RF, 1925, p. 28.

¹⁶ N. S. Yumashev, "Value of the criminalistic characteristic of crime type for development of a system of typical versions," in *The questions of fight against crime in modern conditions. Collection of scientific works*, Moscow, All-Russian Research Institute of MIA USSR, 1989, p. 48-49.

formed by means of the elements which aren't entering into the subject of knowledge. The inductive and deductive opportunities have and determine the large information volume passing through the learning person, and therefore it is impossible and useless in proof, in view of non-coherence with the fact in proof. The volume can have also auxiliary character as knowledge in fact has phenomenal character in difference from the proof, giving to knowledge certain forms, including by means of fictions and presumptions.

In favor of the second position there are testified the opinions that "the criminalistic characteristic of a crime is the necessary scientific construction, caused by practical activities, that the typical signs, which are contained in it, form a basis for development the system of the investigative leads" .¹⁷ So, together with it, we agree with the opinion data, because in relation to our research, such element is necessary, where there is an opportunity to study and characterize this phenomenon typologically and to detail its separate properties. Such need is determined by essence of axiomatic approach in combination with representative practice of knowledge.

One more point of view in favor of existence of the criminalistic characteristic is Kolesnikova's position that "the criminalistic characteristic of a crime can be considered as one of the constructional options and a statement of data system on a crime, from the point of view of its disclosure and investigation".¹⁸

In principle, the same position is taken also by Samygin L.D., believing that "the criminalistic characteristic can serve as model for development of an effective methodology at investigation of the organized criminal activity, who marked out the criteria of creation of such model".¹⁹ His position is closely bound with the point of view on essence of modeling in criminalistics and in some way follows from it . It should be noted that a basis of their point of view is the idea, following from opinion that "the criminalistic characteristic of a crime can be considered as model, because the ordered knowledge finds expression in it, an also conception about space-time construction, the phenomenon".²⁰

Conclusion

The attentive analysis of all specified positions indicates that Luzgin I.M. position is more attractive, as it allows not to be connected concerning quantity of elements of the criminalistic characteristic, their obligatory and facultative types. So, we can agree with this position correspondingly. Moreover, we believe that it functionally is reasonably because from the point of view of a hermeneutics the sense has the result

¹⁷ T. V. Kolesnikova, *The criminalistic characteristic of criminal groups, committing extortion. Thesis abstract of Candidate of Law Sciences*, Saratov, 2000, p. 19, p. 244.

¹⁸ L. D. Samygin, *The specific signs of organized criminal activity - Thesis abstract of Candidate of Law Sciences*, Saratov, 2000, p. 25.

¹⁹ M. N. Hlyntsov, *The criminalistic information and modeling at crime investigation*, Saratov, Publishing house of Saratov University, 1982, p. 160.

²⁰ I. M. Luzgin, *Modeling at crime investigation*, Moscow, 1981, p. 52.

and in a less degree – its form. Nevertheless, anyway, it is necessary to speak about the elements entering this type in relation to any separate kind of such characteristic, as the criminalistic characteristic can't be amorphous in the absolute. We will try to determine those elements of the criminalistic characteristic of extortion committed by the organized criminal group, which in our opinion, are inherent in this type of the characteristic.

Studying of the structure of criminalistic characteristic demonstrates that the most correct approach in this situation would be to define three main components: the organized criminal group, committing extortion; the object of extortion by the organized criminal group; a way of commission the extortion by the organized criminal group. Such triad answers actually for the main questions of this crime type studying, and its success.

At the same time this triad requires the addition by means of inclusion in it of such elements as the extortion subject, the circumstances and conditions of the commission of extortion, its motives and purposes, the circumstances of the commission of extortion, the victim of extortion and the subject of extortion.

We believe that an addition to the main group (the organized criminal group, the commission way of extortion by the organized criminal group) of the facultative elements must be happened in accurate relation with basic elements. It allows more accurately retracing the relations between basic and facultative elements, and also relations between basic elements and conducted behind them.

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