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SOME ISSUES ON BANDITRY

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Abstract:

The article concerns the attempt of mixing the concept of “banditry” with the concept of “organized crime” what is typical to the Anglo-American approach. The legislation of Georgia essentially differs from this approach as it exactly specifies different features of banditry and thus meets the requirements of the resolution of the Committee of Ministers of the European Council.

Introduction

There is no common approach to the concept of “band” in foreign legislation and criminal law. If the comparative classification is accomplished in the process of legislative reforms in the world, the following global tendencies can be distinguished:

1. Ignoring the specific concept of “band” and identifying it with the organized group that commit multiple or single crime (the American model). From the countries of Roman-German law, the Estonian criminal code is merged with the American model.
2. Ignoring the specific concept of “band”, but the practical use of “band” is related mainly to community crime (larceny) (the German model).
3. Distinguishing separate members of a “band”. In this case the aim of committing a crime is not an attack but namely committing a crime (the Latvian model).
4. Distinguishing separate members of a “band”. Though, “rigidness” in science is changeable under the influence of Anglo-American law and it can be understood as the external expression of a criminal group that is connected not with committing multiple crimes but with the band structure. Practically, the Russian model recognizes the existence of a band for the purpose of committing a single crime.

5. Distinguishing separate members of a “band”. Though, the interpretation of the features of a band corresponds to the German doctrine that was worked out by Feuerbach and further developed by pre-revolutionary professorship. This tradition was followed by the criminal code of Georgia of 1999 (the Georgian model).

While estimating the issue, the American scientist L. Trostle admitted that the definition of “band” may seem easy at the first glance. Though, as the analysis of different definitions of “band” shows, it is not as easy as it seems. Furthermore, these definitions do not take into consideration multiple functioning aspects and features of “band”.¹

The General scientist Klaus Lampe called the situation even more critical. K. Lampe writes: “Different definitions of the concept of “band” in the in the conceptual history of organized crime are not similar and often even contradict each other. But when we focus on the given issue, it is clear that under the concept of “band” scientists imply an organized group that is ethnically homogeneous, formally structured and multifunctional, making an effort to destruct and subdue legal institutions of society”. As the author suggests, the general tendency of the definition of “band” is based on the understanding of an organized crime which originates from the times of dry law and is connected with the names of the well-known Italian-American gangsters such as Al Capone and Lucky Luciano.²

The confusion existing in the legislative definitions of “band” forced the Committee of Ministers of the Council of Europe in Strasburg (September 5, 1966) to accept the special recommendation #R/96/8 “Policy of criminal justice and struggle against crime in changed Europe. The explanatory memorandum was also enclosed.

The recommendations stated that it is difficult to struggle against an organized crime as the definition of “band” is not clear and there is no demarcation line between an organized criminal community and “bands”. This definition is necessary to provide the partnership with the international court.³ It is noteworthy that the necessity of such an approach has reached Georgia. Namely, the problem given in the paragraph 7 of the resolution of 1996 has become a problem of many countries including such member countries as Armenia, Azerbaijan, Belarus, Herzegovina, Croatia and Georgia.⁴

¹ L. Trostle, *The Stoners: Drugs, Demons and Delinquency*. New York: Garland Publishing, 1992, pp. 1-18.

² K. Lampe. *The Concept of Organized Crime in Historical Perspective*. “Not a process of enlightenment: the conceptual history of organized crime in Germany and the United States of America” (Paper presented at the international conference “Crime organisé international: Mythe, pouvoir, profit...”, sponsored by the Institut de recherches interdisciplinaires, Université de Lausanne, Switzerland, 6 October 1999). *Forum on Crime and Society*. Vol. 1. December 2001.

³ P. Ekblom, A. Wyvekens, *A partnership approach to crime prevention*. Council of Europe. 2004.

⁴ Doc. 7632. *Statutory Report. Communication on the Activities of the Committee of Ministers*. 4th Part of the 1996 Session of the Assembly (23 - 27 September 1996).

The major topic

The Anglo-American approach to the issue of defining the concept of “band” should be taken into consideration according to which the concept of “band” is mixed with the concept “organized crime” that caused a number of problems.

The USA criminal legislation does not recognize the concept of “band”; though, the given term is sometimes used in the juridical practice. In general, conspiracy in the sixth degree, illegal ganging, is considered as “band”. The paragraph 105,00 of the code of New York criminal law determines conspiracy in the sixth degree. In order an individual to be arraigned according to this Article, it is enough if several people plan to commit a crime notwithstanding the structure of a criminal group and/or the number of crimes. The main terms are trust among individuals and the actually committed crime. The following Articles of the USA legislation consider only the degree of “conspiracy”.⁵ It should also be taken into consideration that the laws of States interpret the concept of “conspiracy”. Though, it does not change the nature of the legal approach.

It is noteworthy that such a definition of the American legislation is a bit strange for a Georgian reader. The given structure conditionally can be considered as banditry. For instance, the given norms apply to those individuals who commit multiple crimes. Though, the given norm can be spread on individuals who agreed to rob a bank only once. In this case, the following condition should be observed – one of them has to rob a bank overtly.

It is worth noting that in the USA legislation such a vague concept is more acceptable for the side of prosecution as they focus on the evidence of conspiracy of offenders. Rigidity of a band means rigidity of conspiracy. Illegal conspiracy is the core of the case. A prosecutor does not have to provide the evidence of conspiracy for committing a crime. In reality, prosecutors do not feel bound to prove the existence of the written conspiracy.

Prosecutors use accusation of conspiracy as a strong tool as they can build accusation on the basis of a witness’ testimony and arraign unlimited number of people.

⁵ Article 105 - § 105.00 Conspiracy in the Sixth Degree. - New York Penal - <http://law.onecle.com/new-york/penal/index.html>

Such legal ensuring of struggle against banditry faces difficulties. Figuratively saying, together with big fish, small fish can also appear in the indictment. Though, in most cases, organizers are unknown to criminals; the accusation that is built on conspiracy avoids organizers. On the other hand, those individuals who have not committed unlawful actions can also be accused.

In the American legislation the “band” institution is considered as a form of an organized group. This issue should be clarified. When an American legislator speaks about an organized crime, in this concept he/she also considers the concept of “banditry”. Unlike the federal legislation, in the legislation of some States of the USA there are definitions which differ from each other.⁶

The legislation of England does differ from the American one. In general, all the tendencies emphasized while analyzing the American legislation are typical for the legislation of England. That is why we briefly distinguish some typical features of the law itself. Typical norms of banditry are not found in the law of England.

The law on attempting to commit a crime enacted in 1981 generally determines the responsibility for “conspiracy”. According to the paragraph 4 of the given law, the band is if:

- a) an individual is in conspiracy with other individual or a group with the intention of committing a crime;
- b) an individual commits a crime or involves one of the sides in the crime;
- c) an individual is guilty even if there are certain circumstances that caused stopping the commitment of a crime.⁷

It is obvious that this law repeats the statutes of the code of the USA criminal justice. On the other hand, an individual is subject to arraignment for conspiracy. This can be typical for the legislation of criminal law. Though, the moment of committing a crime can be considered as the ending point of the whole process. This contradiction is still observed.

Conclusion

It is obvious that the shortcoming of the Anglo-American approach to the concept of “band” does not exactly describe the objective content of banditry. The Article 224 of the

⁶ Code of Alabama. § 13A-6-26 (2002); *City of Chicago v. Morales*, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67 (1999); California Penal Code § 186, 20, 0,33 (2001), etc.

⁷ Criminal Attempts Act 1981- <http://www.legislation.gov.uk/ukpga/1981/47>

criminal code of Georgia states: “Formation of a rigidly armed group (band) or leading thereof to launch an attack on a person or organization as well as participation into such group (band) or in the attack organized by this group, - shall carry legal consequences of imprisonment ranging from up to five to twenty years in length”.

As we see, it is typical for the Anglo-American approach to mix the concept of “banditry” with the concept of “organized crime”. The legislation of Georgia essentially differs from this approach as it exactly states different features of banditry and thus meets the requirements of the resolution of the Committee of Ministers of the European Council.

References:

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