

Main directions of counteraction to crimes' investigation

Abstract: It is considered distinctive features of organized criminality and is given their characteristics.

Activity on disclosure and investigation of the facts of organized criminality, as rule, is accompanying with active counteraction of criminal environment.

There is noted necessity investigation of particularities of planned in advance counteraction of organized criminality.

Despite reflection of certain aspects of counteraction, there are remained some issues uninvestigated.

Keywords: organized criminality; counteraction of investigation; combat to OCG; criminalistics.

As it known, problem of professional and moreover organized criminality for a long time was absolutely lighted neither criminological nor criminalistical literature. However, recently we may watch a surge of the works devoted to this problem. Taking into account that, according to expression of K. Prutkov, a man cannot do more than he can, we have only limited with one aspect of activity of organized criminal group (hereinafter, OCG), and namely: to particularities of contraction of members of these groups to legal activity of an investigator, who investigates those criminal case, in favourable results of which members of OCG are interested.

♦ **Koryagin Vitaly Sergeevich** – PhD in Law, Prosecutor's assistant of Sormovo District of N. Novgorod (Russia). E-mail: sid_legalservices@yahoo.com

Danger of organized criminality was understood by a society approximately in the beginning of 20th century. At least, just that time German guideline for employees of criminal investigation was fixed that a number of separate criminals are not so danger like half of them organized in gang [12, p. 170].

In Russia the manifestations of organized criminality became to be studied later, only in the end of 20th century, and in nowadays, they are sphere of scientific interests of N.P. Yablokov, Prof. of MSU named after M.V. Lomonosov.

According to N.P. Yablokov, members of OCG prearrange as minimum the following:

1. Fictional history about pastime those members of OCG, who participated in execution of concrete deeds. This is named like “legend” in professional slang, under which is understood the plausible, difficultly checked, outwardly reliable fictional data [9, p. 75]. In fact, as rule, detained members of OCG insist on their innocence, present false alibi, involve law-abiding persons in order to substantiate their alibi.

In addition, we should add to the characteristics of OCG’s activity a few exceptions (which confirm a common rule). So, not frequently detained members of OCG are confessed in their accompliceship to committed crime, give voluntary and objective testimonies and in course of whole preliminary investigation cooperate actively with investigator. Later, in a court they also do not refuse from given testimonies and seemingly obtain justified punishment. But, later it is found that this line of OCG member’s behavior was worked out by leaders of the group. The reasons of this order might be differed: from providing impossibility to bring to criminal responsibility other member of OCG who takes higher post in its hierarchy to punishment of the executor, who, in opinion of leadership of OGC, had become too “free” and indocile.

2. Second moment, which completely was truly noted by Prof. N.P. Yablokov in characteristics of activity of OCG (and consider as an element of contraction of

investigator) is frequent absence of witnesses or their completely “ignorance”, insincerity of victims and witnesses. Other words, as we believe, Professor pointed out high probability of absence so named by investigators “evidential base” under investigation of crimes committing by OCG. Here, absolutely supporting the position of N.P. Yablokov, we intend to supplement a content of this feature.

Not frequently leaders of OCG specially prepare pseudo eyewitnesses to giving obviously false testimonies. For example, in situation, when killer has shot in a victim being close to him, but eyewitnesses make up a version about ostensibly flashed by motorcyclist who had shot. Working out version about motorcyclist and conducting a “Interception” plan, law enforcement bodies lose time then are used the members of OCG for concealment from justice.

3. Researching the third feature, marked out by N.P. Yablokov, like quick operation of protective means charactering just for criminal organization, which has corrupted ties, group of cover and “their” lawyers, we should also make clarifications to it. The fact is that presently lawyers who are supported by OCG (on presence of which there are no any doubts to those specialists who have involved in matters of combat to OCG) are as if accidentally appeared in a scene of planned crimes (e.g. murders), and in course of detention their client are rendering contraction to legal requirements of the police beginning from legal up to physical persons (i.e. introducing as a lawyer of detained person, asserting under this that policemen have violated the rights of citizen, detaining his client without evidences; or just applying physical force to get free an offender from young policeman, who cannot perceive a lawyer as a member of OCG).

Apart the listed circumstances testifying about offensive development of organized criminality, we should mention about application of modern computer devices by criminal world. Nowadays, computers entered in sphere of negative social practice and organically wind into criminal schemes and mechanisms, become their integrated components [11, p. 3].

Other words, studying the works of famous Russian criminalists, we may make conclusion that for five years after publishing of fundamental monograph (N.P. Yablokov), organized criminality has not stopped in its development, and improved its activity, quite probably, using for its purposes the book of famous criminalist.

Generalizing of stated, we may make conclusion that activity on disclosure and investigation of manifestations of organized criminality, as rule, is accompanied with active contraction of criminal environment. This connection, it is reasonable to say about judgement stated in History of domestic criminalistics, that neither so named common sense nor professional mother wit are sufficiently effective means of contraction of growing criminality. Problem of establishing the truth on criminal cases might only be solved by scientific methods of investigation that was clearly testified by foreign investigative practice in the beginning of 20th century [2, p. 82].

If a few years ago it was asserted that contraction of criminal environment, as rule, is begun at pre-investigating stage, in period of conducting of a complex operational searching measures [7, p. 15], then nowadays this position should be reviewed. Contraction is begun from time of planning a crime. Only at this stage might be foreseen the following:

- Necessity of development for each member of OCG, who is involved in participation of planning crime, own legend on his pastime in “criminal period of time”;

- Preparation of pseudo “eyewitnesses” who are as if accidentally appeared in occurrence place at time of killing for the following telling to the police about signs of “killer”, who left occurrence place in motorcycle, with purpose to assist a real killer to hide in a crowd of gawkers;

- Obtain a lawyer’s assistance (including physical if required) of detained killer, if the police catch him in occurrence place etc.

Understanding that criminalists should systematically and according to plan update recommendations for employees participating in combat to organized criminality, we believe necessity to research the particularities of planned in advance contraction of organized criminality, often provided with considerable financial resources. As it justly noted by Prof. A.G. Markushin, criminal world uses modern technologies and ways, gaps in valid legislation, shelter itself behind corrupted ties [8, p. 22].

As it has ever been noted, criminalistics for a long time does not pay attention to the problems of contraction and the core of organized criminality. One of the first definitions was given in 1997 by Prof. R.S. Belkin, according to whom, under contraction to investigation is understood illegal activity of persons, who are interested in the result of a case that might be directed to concealment of crime, evasion from responsibility etc. [3, p. 177].

Perhaps, for the first time some problems of contraction of OCG to investigative employee, investigator on monographic level was considered by V.N. Karagodin [6]. According to him, contraction for time will be increase and to be turned in complexly resolved task, on solution of which will be required considerable finance. The time has shown that the words of scientist-criminalist has come true and present time, according to data received during questionnaire of investigators, for years there cannot be brought to responsibility those persons who are ready pay for services of two-three lawyers. Tactics of their actions is simple. For example, in preparatory hearings of criminal case in court they submit a petition on elimination of number insufficient violations, which were found in case's materials. Since a court has no right to eliminate such deficiencies of preliminary investigation then in order of part 2 of article 237 of CPC of RF a case is sent prosecutor, who has for five days to eliminate indicated deficiencies, new familiarization of accused and their defenders with all materials of a case and to represent criminal case in a court. It is clear that established by a lawmaker five days' term is obviously insufficient for familiarization with all materials of a case

(consisting on few dozen of volumes) for two-three accused persons, each of them has two-three defenders, and as result criminal case is not submitted in a court in time. Further a defender lodges a petition on changing of coercion measure to his client submitting medical (or other) documents about mandatory staying of accused in freedom but not in investigation cell. Court has to release arrested. Later, it follows a new stage of contraction to investigation, and namely: concealment of accused from investigatory body and court, which might be lasted eternally.

Thus, we may make a conclusion that contraction of OCG to an investigator's activity is begun from time of crime's planning and might be lasted for a long time, up to real bringing of accused person to criminal responsibility, who is hidden from investigatory body and court.

Among other books on contraction to investigation we should mark a work of S.Yu. Zhuravlev, which in considerable part was based on his experience as detective officer of Agencies for Combating the Theft of Socialist Property and Speculation [5]. A core of this work might be considered substantiation by an author of his views on nature of contraction. Wherein he based on not only in ascertaining of the fact that investigator's activity contracts, as rule, a criminal, his relatives, but direct leadership of investigator, and also employees of prosecutor's office and court. Fourteen years ago these views of a young scientist caused doubts among the specialists, and nowadays there are the facts that criminal cases were actually sold by the police, prosecutor's office and court, including supervisory instance.

Number of the works has slightly been increased in the last years. So, A.N. Petrova researched the matters contraction to investigation, criminalistical and other measures of its overcoming [10]. S.A. Burlin devoted his researches to overcoming investigation of crimes associated with evasion of tax payments [4]. E.U. Babayeva in her fundamental work offered to form the stages of development of private theory overcoming contraction rendering to investigator by a victim,

witness, environment of accused person etc. [1]. In each of these works were found reflections certain aspects of contraction to investigation, and number of them, undoubtedly, are worthy of notice. However, in this sphere is remained such number of non-researched matters that as it seems, this topic will be a subject for studying by specialists for a long time.

References

1. Babayeva E.U. Problemy teorii i praktiki preodoleniya protivodeystviya ugovnomu presledovaniyu [Problems of theory and practice of overcoming criminal prosecution]. Moscow, 2006, 134 p.
2. Belkin R.S. Istoriya otechestvennoi kriminalistiki [History of domestic criminalistics]. Moscow, 1999, 237 p.
3. Belkin R.S. Kriminalisticheskaya entsklopediya [Criminalistical encyclopedia]. Moscow, 1997, 336 p.
4. Burlin S.A. Problemy preodoleniya protivodeystviyu rassledovaniya prestupleniy, svyazannykh s ukloneniem ot uplaty nalogov [Issues of overcoming investigation of crimes associated with evasion of tax payments]. Saratov, 2002, 183 p.
5. Zhuravlev S.Yu. protivodeystvie deyatel'nosti po raskrytiyu i rassledovaniyu prestupleniy i taktika ego preodoleniya [Contraction of activity on disclosure and investigation of crimes and tactics its overcoming]. N. Novgorod, 1992, 269 p.
6. Karagodin V.N. Preodolenie protivodeystviya predvaritel'nomu rassledovaniyu [Overcoming contraction to preliminary investigation]. Sverdlovsk, 1992, 176 p.
7. Kirichenko S.A. Osobennosti ispol'zovaniya kriminalisticheski znachimoy informatsii, poluchennoy operativno-rozysknymi metodami, na pervonachal'nom etape rassledovaniya proyavleniy organizovannoy prestupnosti [Particularities of using of criminalistically significant information received with operation searching

methods in preliminary stage of investigation of organized crime]: Dis... kand. jurid. nauk [PhD in Law Diss.]. Kaliningrad, 2002, 187 p.

8. Markushin A.G. Operativno-rozysknaya deyatel'nost' i zakonnost' [Operational searching activity and lawfulness]. N. Novgorod, 1997, 217 p.

9. Operativno-rozysknaya deyatel'nost' [Operational searching activity]. Slovar'-spravochnik . Avtor-sostavitel' V.Yu. Golubovskiy [Dictionary guide, ed. by V.Yu. Golubovsky]. Moscow, 2001, 384 p.

10. Petrova L.N. Protivodeystvie rassledovaniyu, kriminalisticheskie i inye mery ego preodoleniya [Contraction to investigation, criminalistical and other measures its overcoming]. Volgograd, 2000, 112 p.

11. Saltevskiy M.V., Litvinov A.N., Chernets N.G. Problemy protivodeystviya prestupnosti v sfere kompyuternykh tekhnologiy [Problems of contraction criminality in sphere of computer technologies]. Moscow, 2006, 223 p.

12. Shtibert V., Shneykert G. Prakticheskoe rukovodstvo dlya rabotnikov ugolovnogo rozyska [Practical guidelines for employees of criminal investigation department]. Moscow, 1925, 191 p.