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PROBLEMS OF QUALIFICATION AND INVESTIGATION OF THE CRIME PROVIDED FOR IN ARTICLE 210¹ OF THE CRIMINAL CODE OF THE RUSSIAN FEDERATION

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Subject. Problematic issues of legislative regulation of Article 210¹ of the Criminal Code of the Russian Federation and its application in practice.

Methodology. The methodological basis is the principles of scientific knowledge: objectivity, interrelation of phenomena and their characteristics, unity of theory and practice.

The purpose of the study is theoretical and practical problematic aspects of the application of criminal legislation for taking the highest position in the criminal hierarchy, and formulates ways to solve them.

Main results. The authors have established that there are a number of problems related to the application of Article 210¹ of the Criminal Code of the Russian Federation: there is no legislative consolidation of the concept of a person taking the highest position in the criminal hierarchy, as well as the accompanying conceptual apparatus fixed by law; the legislator does not regulate the list of actions that a person performs for taking the appropriate status in the criminal world, as well as actions to maintain and strengthen it. These shortcomings significantly complicate criminal proceedings and allow the leaders of the criminal world to avoid liability, and this has a negative impact on the eradication of organized crime in the country.

1. The criminalization of actions aiming at taking the highest position in the criminal hierarchy in the Russian Federation.

The problem of organized crime has always been urgent and acute for the state, and the Russian Federation is no exception in this regard. The era of 90s of the 20th century appeared the most difficult in the modern history of our country. However, even now, organized crime still poses a serious threat to Russian society and the State, as evidenced by judicial practice. The contemporary Russian situation reflects that organized crime is particularly active in the legalization of criminal assets, trafficking in narcotic and psychotropic substances, firearms trafficking, and prostitution.

One of the key properties of organized criminal groups is their hierarchy, which manifests itself in an accurate distribution of roles, responsibilities and, accordingly, “powers” among members of a criminal community, a significant place in which belongs to the so-called “kingpins” (‘vory v zakone’), “kingpin’s henchmen” (‘polozhentsi’), “supervisors” (‘smotryaschie’). Being bosses of these criminal groups, they determine the nature of specific criminal activities, provide their functioning, and serve as a de facto law within their domain. Without their decisions, guidance, and control, the operations of organized gangs would be unfeasible. Consequently, it is a critical and essential responsibility for the State to develop effective instruments to combat crime leaders and bring them to justice.

In 2019, the Russia’s legislature introduced an amendment to the Criminal Code supplementing it with Article 210¹. This amendment established that a person’s criminal status and his position at the highest level of the criminal hierarchy would serve as the ground for criminal prosecution¹.

¹ Russian Federation. The Laws. On amending the Criminal Code of the Russian Federation and Criminal Proceedings Code of the Russian Federation in relation to combating organized crime: Federal Law № 46-FL (April 1, 2019): as edited on April 1, 2019 [adopted by the State Duma on March 14, 2019: approved by the Federal Council on March 27, 2019]. Legislative Documents of the Russian Federation. – 2019. - № 14. – Art. 1459.

Thus, the judicial statistics of the Russian Federation of 2021 stated that only eight persons were convicted under Article 210¹ of the Criminal Code of the Russian Federation, the year of 2022 showed 20 convicts, 2023 – 33 convicted persons². According to the data from the Judicial Department of the Supreme Court of the Russian Federation of 2024, 23 suspects were convicted under Article 210¹ of the Criminal Code of the Russian Federation³.

Accordingly, the investigation of this issue is of paramount importance for the theoretical and practical aspects of implementing Article 210¹ of the Criminal Code of the Russian Federation.

2. The problem aspects of qualification and investigation of crimes under Article 210¹ of the Criminal Code of the Russian Federation

First, it is worth noting that Article 210¹ of the Russian Criminal Code fails to provide any statutory definition of the term “taking (occupying) the highest position in the criminal hierarchy”. Consequently, the determination of those who can be qualified as perpetrators of this crime is solely the responsibility of investigating officers, who decides this in the line of their beliefs and common sense, which inevitably affects the quality and efficiency of the preliminary inquiry. Moreover, the absence of a clear lawful definition for this crucial concept in the application of criminal law norms poses a challenge in bringing those responsible to justice, as they are seeking to secure their criminal activities and those of their subordinate criminal networks. These persons frequently establish links with public authorities, and this serves as a distinct factor that contributes to corruption and undermines the efficiency of the preliminary investigation and the fight against organized crime in general.

It should be noted that the Supreme Court of

² Judicial Statistics of the Russian Federation. URL: <https://stat.ани-прещ.пф/stats/ug/t/14/s/17> (retrieved on Jan. 15, 2025).

³ Judicial Data. Unified statistics on convictions in Russia for 2024. № 10-a “The Report on the number of convicts on all types of crime in accordance with the Criminal Code of the Russian Federation. URL: <https://cdep.ru/index.php?id=79&item=8946> (retrieved on May 6, 2025).

the Russian Federation also does not provide any explanations on this issue⁴.

In this regard, law enforcement agencies face difficulties in practical determining whether such individuals are simply “kingpins” or they can also include “supervisors” and “kingpin’s henchmen” among them. Keeping in mind their roles in the criminal underworld, “supervisors” and “kingpin’s henchmen” can be inevitably classified as top persons of a criminal organization, occupying leading positions of the criminal hierarchy. However, this aspect has not been clearly defined in legislation, and, therefore, there is a need for interpretation of the terms “supervisor” and “kingpin’s henchman” in criminal legislation.

Unfortunately, the theory of criminal law also lacks a universal interpretation on this issue.

V.N. Kufleva argues that a person occupying the highest position within the criminal hierarchy can be identified as a person having significant credibility in the criminal underworld [1, p. 28].

V.M. Bykov identifies these individuals with the masterminds, leaders of a criminal community [2, p. 21]. A.A. Likholetov and M.U. Mikhailov similarly believe that a person who holds the highest position in the criminal hierarchy ought to be defined as the head of a criminal community (organization) [3, p. 36].

In I.V. Nikitenko and T.V. Yakusheva’s opinion, the hierarchy in the structure of a criminal community (organization) is regarded as the psychological structure of an organization, which members recognize a particular person as a leader [4, p. 61].

In accord with I.V. Godunov, the “criminal hierarchy” is a system that determines “the structure of subordination and relationships among individuals who adhere to the rules and traditions accepted within the criminal underworld” [5, p. 60].

S. D. Belotserkovsky considers that individuals occupying the top level of the criminal

hierarchy should include the so-called “kingpins” [6, p. 29].

Moreover, S. A. Bazhutov and A.A. Kunashev [7, p. 29], as well as A.V. Shesler [8, p. 120] identify two additional types of individuals occupying prominent positions within the criminal hierarchy: “kingpin’s henchmen” and “supervisors”.

According to Zh.V. Videnkina, “not only a “kingpin” can act as an «autocratic leader», but also any other person who was able to organize and manage the activities of a criminal community (organization)” [9, p. 113].

V.V. Agildin, S.E. Lovtsevich, A.A. Lokhova concluded that, in accordance with the wording of Article 2101 of the Criminal Code of the Russian Federation, “occupying the highest position in the criminal hierarchy means being a top level person of the criminal hierarchy, implying the management of a “professional” criminal environment throughout the Russian Federation [10, p. 167].

S.V. Kondratyuk defines “occupying the highest position in the criminal hierarchy” as a procedure for preparing and holding a meeting of “kingpins” [11, p. 10].

D.A. Grigoriev and V.I. Morozov point out that the highest position in the criminal hierarchy cannot be limited only to the criminal titles among members of the kingpins’ community [12, p. 54]. E.A. Khlebnitsyna and E.K. Shershakova also agree with the above opinion [13, p. 134]. Other researchers insist on a broader interpretation of the concept under consideration [14, p. 57], [15, p. 15], [16, p. 69], [17, p. 36-37].

Conversely, N.A. Egorova and A.G. Egorov argue that it is premature to assume that the highest position in the criminal hierarchy is identical with the status of a “kingpin” [18, p. 40]. Likewise, A.S. Morozov and A.N. Sukharenko admit that the concepts of “kingpin” and “a person occupying the highest position within the criminal structure” do not always coincide, and it is essential to delve into the specific functions performed by individuals in each case [19, p. 116].

Below is an example from judicial practice.

D.A. Elmakhanov, while serving his sentence in a correctional institution, assumed the role of a “supervisor” keeping up with the rules and customs adopted in the criminal environment. He appointed

⁴ Resolution of the Plenum of the Supreme Court of the Russian Federation “On judicial practices in respect to criminal cases of initiation of criminal communities (criminal organizations), or participation in them” № 12 of June 10, 2010 // Bulletin of the RF Supreme Court, № 8, August, 2010.

“supervisors” bearing responsibility for various sectors of the prison and deprived them of their authority. He served as the arbitrator in disputes and conflicts between inmates, as well as between inmates and the administration board. His duties also included establishing restrictions on specific behavior of inmates, giving instructions to the prisoners on the resistance to the prison authorities. Moreover, he ensured the collection of assets to fill up a criminal treasury and monitored their distribution⁵.

Having analyzed the judicial precedents in cases involving the assumption of the highest position within the criminal hierarchy in the period between 2019 and 2024, we have come to conclusion that this phenomenon is multifaceted and presents several distinctive characteristics. Thorough examination of court judgments, appeals, and cassation decisions available on the SudAct website⁶, made us infer that the primary problems in investigating such cases lie in the difficulty of establishing a specific timeframe for the commission of the offence stipulated in Article 210¹ of the Criminal Code of the Russian Federation. This issue arises due to the prolonged nature of the crime, its inherent secrecy within the criminal underworld, the inability of witnesses to provide sources of their evidence, and the lack of comprehensive legal regulation governing this particular offence that requires amendments and additions to the current legislation.

The further example from the current judicial practice shows some other considerations.

The fact that the suspect has the status of a “kingpin’s henchmen” is corroborated by testimonial evidence, which is also reflected in the court verdict. That person acknowledged the existence of this status, marking it to his association with “kingpins” while inflicting the bodily harm to the victims. Moreover, the court’s verdict explicitly stated that the suspected person held the highest position in the criminal hierarchy for an extended period spanning from December 2019 to March 21, 2020⁷.

⁵ Cassation Ruling of the Judicial Board of the Supreme Court of the Russian Federation of November 14, 2024 vs. Elmakhanov D.A. № 31-УД/24-11-A4.

⁶ URL: <https://sudact.ru> (retrieved on Jan. 23, 2025).

⁷ Judicial and normative acts of the Russian Federation (SudAct). Sentence № 2-26/2022 2-4/2023 of

The analysis of the semantic content of the given norm makes us consider that criminal liability is imposed on the very act of taking a highest position of power within the criminal hierarchy. This particular state being a condition of an individual [20, p. 53], contradicts provisions outlined in Article 8 of the Criminal Code of the Russian Federation.

In addition, it is conflicting with Part 2 of Article 6 of the Criminal Code of the Russian Federation, which establishes the principle of justice implying that no person should be convicted twice for the same criminal act. This contradiction appears due to the fact that individuals have to commit crimes in order to attain a top position of the criminal hierarchy. However, if we interpret the term “taking position” as defined in the disposition of this article, as a specific process encompassing certain actions, and assuming that a person has already been punished for these actions, then there is a direct violation of the principle of justice enshrined in the Russia’s Criminal Code.

Another significant problem in qualifying the attainment of the highest position in the criminal hierarchy refers to reciprocal influence of similar legal provisions. Specifically, Part 4 of Article 210 of the Criminal Code stipulates liability for committing acts prohibited by law while being in the status of a person occupying the highest position in the criminal hierarchy. However, Parts 1, 1.1., and Part 2 of Article 210 of the Criminal Code already include the list of these actions. At the same time, the reasons for bringing a person to responsibility for under qualification mentioned in Article 210¹ of the Criminal Code of the Russian Federation is the very status of the person, that is, his socially dangerous condition, encroaching on public safety. To qualify under Part 4 of Article 210 of the Criminal Code, this person’s actions must fall under the objective side of the crime contained in Part 1, Part 1.1 and Part 2 of the above-mentioned Article.

Considering the above, it is worth addressing the critical issue of distinguishing between the application of general and special rules when qualifying the highest positions in the criminal hierarchy. According to Part 3 of Article 17 of the Criminal Code

October 9, 2023 in Case № 2-26/2022. Volgograd Regional Court. URL: <https://sudact.ru> (retrieved on Jan. 23, 2025).

of the Russian Federation, in the case of competing norms, criminal liability shall be imposed according to a special rule rather than a general one. If we are guided by the provisions of the General Part of the Criminal Code, which is the basis of criminal legislation, then this particular case of normative competition provided for in Part 4 of Article 210 and Article 210¹ of the Criminal Code, does not require the additional qualification under Article 210¹ [21, p. 280]. The rationale behind this is that an individual already possesses the status of leader of the criminal organization, fulfilling the considerations specified in the objective aspect of the offense outlined in Part 1 of Article 210 of the Russia's Criminal Code.

Article 210 of the Criminal Code contains a number of detailed provisions, such as coordination of the actions of organized criminal groups, creation of conditions for their success, and participation in meetings of criminal leaders. Accordingly, the legal norm set forth in Article 210¹ of the Criminal Code includes the provisions of part 4 of Article 210. To address this issue, it is essential to develop methodological guidelines for investigators and other personnel of the Investigative Committee of Russia, which would reflect an algorithm for investigative procedures. Additionally, these guidelines should clarify the proper qualification and investigation of such acts.

The process of proving in criminal proceedings under Article 210¹ of the Criminal Code of the Russian Federation seems a complex task, since it involves establishing all the circumstances specified in Article 73 of the Code of Criminal Proceedings. This process poses particular challenges due to the ongoing nature of the criminal act under investigation. During the preliminary stage of the investigation, it becomes crucial to determine the precise location and time of crime commission, as well as the method of crime commission and other significant details. Taking into account the requirements set forth in the Criminal Proceedings Law, it is essential to establish such elements as:

1. The timeframe and duration of a person's authority as a criminal leader.
2. The specific circumstances and location in which the individual attained the status within the criminal hierarchy.

3. The nature of the criminal organization that this individual manages.

4. The specific tasks and responsibilities that this person currently engages in or engaged in before within the criminal group.

When determining the time of crime commission, investigating officers should consider that even after being brought to criminal liability, an individual does not lose his status. This means that there is no crucial objective of criminal law, which is to reform a convict. Since an individual maintains his status, he can continue to exert significant influence in a correctional institution, promoting criminal traditions and negatively impacting other inmates to involving them into the criminal subculture. Consequently, these persons proceed to fulfill their roles and maintain their position of authority within the criminal groups. This implies that the goals of criminal proceedings outlined in Article 6 of the Criminal Proceedings Code of the Russian Federation are not being achieved in this scenario, as the punishment fails to include measures that would effectively discourage the individuals from engaging in criminal activity, thereby preventing their rehabilitation. Termination of this illegal activity is possible only if a person loses the status of a leader in the criminal hierarchy [22, p. 54].

Article 9 of the Criminal Code of the Russian Federation stipulates that only the applicable law can determine criminal nature of an act or omission, as well as its blameworthiness. Accordingly, the establishment of the period during which a person occupied a position of leadership in a criminal hierarchy is an incentive for proving his involvement in this crime. It must be demonstrated that the individual continued to engage in criminal activities or that his actions were not terminated prior to the enactment of Article 210¹ of the Criminal Code, which, as pointed out by V.N. Borkov [23, p. 10], remains in effect.

4. Foreign experience of combating crime lords (USA practices)

At present, the legal framework in the field of criminal law in the United States fails to guarantee adequate measures for holding the leaders of organized crime groups responsible for the crimes committed by their subordinates. This arises due to the intricate organizational structures employed by these

criminal organizations, which effectively shield their leaders from legal consequences. These groupings possess several distinctive features, including the concealment of leadership from subordinates, a decentralized system of leadership, and mechanisms that encourage initiative from the lower ranks [24, pp. 207-225].

However, a number of American legal experts (S.W. Brenner, R.L. Daft, C. Roxin, et al.) formulate this problem by drawing an analogy to the famous Rome Statute of the International Court of Justice⁸ that stipulates that the commander of any military unit is responsible for the actions of his soldiers, even if he himself is not directly involved in them. This comparison suggests that the allocation of the organizational role of the crime lords leads to the interpretation of their involvement similar to the role assigned to the commanders of legitimate military contingents.

The United States Criminal Code does not specifically criminalize holding senior positions within a criminal organization. However, the imprisonment of the leaders of such organizations who are accused for violating taxation regulations, committing financial crimes, or even minor offenses resolve this problem. This is because establishing evidence of an organized criminal group is nearly impossible due to the strict hierarchical nature, mutual responsibility of participants, and closeness of such organizations.

A marked development is the establishment within the US Department of Justice of a division to combat organized crime. This division consists of a dedicated group of prosecutors tasked with planning and implementing strategies aimed at curtailing the operations of some of the most notorious regional, national, and international criminal organizations that engage in committing violent crimes.

These prosecutors alongside with the US Attorney General's Office for Organized Crime possess the nationwide jurisdiction that deals with a wide range of crimes: extortion, murder, bribery,

⁸ Rome Statute of the International Criminal Court (Article 28 "Responsibility of commanders and other superiors" – [Digital resource]. URL: https://www.public.law/world/rome_statute/article_28_responsibility_of_commanders_and_other_superiors (retrieved on March 20, 2025).

fraud, money laundering, drug trafficking, and racketeering. In addition, this branch investigates federal crimes under The Racketeer Influenced and Corrupt Organizations Act (RICO)⁹ and designs guidelines addressing prosecutors' personnel aiming at enforcing this act.

5. Conclusion.

Having analyzed the content of Article 210¹ of the Criminal Code of the Russian Federation, we consider that both in theory and in practice there are utmost problems complicating the qualification and investigation of crimes provided for in this Article, and at the same time, immediate improvement of legislation and practice of its application is required. In particular, we propose the following measures:

1. To amend Article 210¹ of the Criminal Code of the Russian Federation with a determination of such basic concepts as "a person taking the highest position in the criminal hierarchy", "criminal hierarchy", "the highest position in the criminal hierarchy", "kingpin's henchman", "supervisor".

2. To develop guidelines for law enforcement agencies aimed at enhancing detection efficiency through elimination of heterogeneity of the application of criminal law regulations under Article 210¹ of the Criminal Code of the Russian Federation. This gap has gradually overridden, notably, by a monograph published by a team of experts from the Main Forensic Directorate and the Moscow Academy of the Investigative Committee. This academic work represents a significant step forward in addressing this issue [25].

3. To amend Article 210 of the Criminal Code of the Russian Federation to clarify the unambiguity of its application. Particularly, T.V. Stukalova suggests supplementing the analyzed article with a definition of

⁹ Organized Crime Control Act. (Title IX – The Racketeer Influenced and Corrupt Organizations Act, codified at 18 U.S.C. §§ 1961–1968 (2012) – [Digital resource]. URL: <https://criminal-justice.iresearchnet.com/criminal-psychology/criminal-organizations-and-networks/racketeer-influenced-and-corrupt-organizations-act/> (retrieved on March 29, 2025).

a person who occupies the highest position in the criminal hierarchy [26, p. 95].

4. To remove the competing considerations of legal provisions provided for in Part 4 of Articles 210 and 210¹ of the Criminal Code of the Russian Federation so that to improve the effectiveness of the investigation of criminal cases of this category and reduce the number of procedural errors and inaccuracies in the application of these legal regulations.

5. To adopt a resolution on the above-mentioned issues related to the application of Article 210¹ by the Plenum of the Supreme Court of the Russian Federation.

Thus, the criminalization of actions undertaken by persons seeking to acquire top positions in criminal hierarchy would have a positive impact on bringing criminal leaders to justice and dismantling

organized crime networks. To address this issue, it would be most appropriate for the Plenum of the Supreme Court of the Russian Federation to adopt a relevant resolution explaining the aforementioned controversial matters, thereby enabling law enforcers to refer to precise legal provisions. Furthermore, amendments to the current Criminal Code of the Russian Federation will likewise take effect, specifically pertaining to the definitions appended to Article 210¹ of the said Code, which delineate the definitions of “a person taking a highest position in the criminal hierarchy”, «criminal hierarchy», «highest position in the criminal hierarchy», “kingpin’s henchmen”, and “supervisor”. We have established that criminal proceedings under Article 210¹ of the Criminal Code of the Russian Federation are controversial and significantly complicating in the moment.

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