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UNSOLVED AND LATENT CRIME: DIFFERENCES AND SIMILARITIES

Purpose of the article is to study the specific legal and informational nature of the unsolved crime in comparison with the phenomenon of delinquency, special study and analysis to improve the efficiency of law enforcement.

Methods of research are abstract-logical, systematic, statistical, study of documents. The main results of research. Unsolved crime has specific legal, statistical and informational nature as the crime phenomenon, which is expressed in cumulative statistical population of unsolved crimes. An array of unsolved crimes is the sum of the number of acts, things of which is suspended and not terminated. The fault of the perpetrator in these cases is not proven, they are not considered by the court, it is not a conviction. Unsolved crime must be registered. Latent crime has a different informational nature. The main symptom of latent crimes is the uncertainty for the subjects of law enforcement, which delegated functions of identification, registration and accounting. Latent crime is not recorded. At the same time, there is a "border" area between the latent and unsolved crimes, which includes covered from the account of the crime. In modern Russia the majority of crimes covered from accounting by passing the decision about refusal in excitation of criminal case. Unsolved crime on their criminogenic consequences represents a significant danger to the public is higher compared to latent crime.

Scientific novelty. It is conducted in the article a special analysis of the differences and similarities in the unsolved latent crime for the first time in criminological literature.

Practical significance. The analysis proves the need for radical changes in the current Russian assessment of the state of crime and law enforcement to solve crimes. The article argues that an unsolved crime is a separate and, in contrast to latent crime, poorly understood phenomenon. However unsolved latent crime and have common features and areas of interaction.

Keywords: unsolved crime, latent crime, artificial latency, shelter of crimes, the cumulative nature of crime.

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Совокупность нераскрытых преступлений представляет собой самостоятельный криминологический феномен. Первым обратил на это внимание А.Ж. Кетле. Всю массу преступлений он делил на три категории: обнаруженные преступления с обнаруженными преступниками; обнаруженные преступления с неизвестными преступниками; преступления и преступники, оставшиеся неизвестными» [1, с. 262-263]. В современной криминологической терминологии первая категория представляет собой феномен раскрытой преступности, вторая – нераскрытой преступности, третья – латентной преступности. Специфика каждого из них проявляется как в статистической, так и информационной природе. Выявленная раскрытая преступность со статистической точки зрения является периодической (складывается из числа преступлений, зарегистрированных и раскрытых в отчетный период). Нераскрытая и латентная преступность - имеют кумулятивный характер (слагаются из преступлений в пределах их сроков давности). В информационном плане также существует явная специфика связей и причинности между криминальным событием и реагированием на него [2, с. 41-43].

Unsolved crimes are an independent criminological phenomenon. The first scholar who drew attention to this issue was A. Quetelet. He divided crimes into three categories: crimes detected with detected criminals; detected crimes with unknown perpetrators; crime and criminals remains unknown "[1, p. 262-263]. In modern criminological terminology first category is the phenomenon of open criminality, the second - an undisclosed crime, the third - of latent crime. The specifics of each of them appears as a statistical and informational nature. The identified disclosed crime from a statistical point of view, is a periodic (the sum of the number of crimes reported and disclosed in the reporting period). Undisclosed and latent crime are cumulative (composed of the crimes within their statute of limitations). In terms of information there is a clear and specific character of relations of causality between a criminal event and response [2, p. 41-43].

It is necessary to pay attention to a small study of the phenomenon of undisclosed crimes. If the problem of latent criminality is the subject of many studies - both in Russia and abroad [3; 4; 5; 6; 7; 8; 9], only two monographs have been published by the Russian scholars [10, 11].

Undisclosed criminality is a phenomenon expressed in statistical aggregate cumulative unsolved crimes having a specific legal, statistical and informational nature of the socially dangerous. As you can see, phenomenon of unsolved crimes is regarded as a fundamental principle (element, "brick") of the concept.

Unsolved crime has a specific legal nature which is closely related to the criminal procedure law. Unsolved crime is the crime in which respect the criminal case was suspended according to paras 1, 2, 3 . part 1 Art. 208 of the Criminal Procedure Code of the Russian Federation. According to part 1 of Art. 208 Code of Criminal Procedure (hereinafter CPC) the preliminary investigation shall be suspended, if there exists one of the following grounds:

- 1) the person, subject to an involvement in the capacity of the accused, has not been identified;
- 2) suspected of or charged with has fled from the investigation, or the place of his stay is not established for other reasons;
- 3) the place of the stay of the suspected of or accused is known, but there is no realistic possibility of his taking part in the criminal case.

Crimes, preliminary investigation of which had previously been suspended on the basis of paras. 1, 2, 3 partt 1 Art. 208 CPC, are excluded from the number of unsolved ones only after the decision to refer the criminal case to the court or to terminate it.

Therefore, an array of unsolved crimes is made up of the offenses for which the proceedings have been suspended or terminated. The guilt in these cases has not been proved and they are not considered by the court

Unsolved crimes should be registered. The crime which is unknown for law enforcement agencies is latent, it is not recorded and not diagnosed. Latent crime is not related to the unsolved ones because it has another informational nature. The main difference is in fact that latent crimes are unknown to the subject of law enforcement, which is authorized by registration and accounting functions. This distinction is complex and includes a response to the criminal information. It is assumed (and this standard is fixed) that police are doing everything possible to disclose the registered crimes and identify latent acts. The main informational crash happens while receiving information about the offender (undisclosed crime) or information about the fact of a criminal event (latent crime). Informational causality of undisclosed crimes is connected mainly with the flow of information within the criminal justice system. The informational causality latent crime is connected mainly with the channels of communication between the subsystems of "crime" and "law enforcement".

Polish criminologist B. Holyst relates unsolved crimes to latent ones. He divides latent crime into several groups. The first group consists of crimes that have not become known to the police. The other group includes identification of the offenses with unknown perpetrators. The third group consists of solved crimes which by procedural reasons have not caused the indictment or verdict. The fourth group are crimes in cases when the sentence has entered into force, but not all of the acts condemned were known to the police and taken into account in the indictment [12, s.45-46]. As you can see, B. Holyst identifies groups of crimes of different informational nature, the fight against which requires different strategies, including professional abilities, skills (and art) to carry out a) the identification of criminal events; b) the search for criminals and proving their guilt to the crime a crime; c) a thorough and complete investigation of criminal activity.

At the same time there is a "border" area between latent and unsolved crimes, which includes sheltered crimes. Shelter of the crime from the account is an act details of which are not reflected in the records or not included in the state statistical reports on the fault of persons who are required to record the statements and reports of crimes. The offense is also considered to be sheltered from the account, if in fact it was committed, despite the presence of the established art. 140 of the Criminal Procedure Code of the Russian Federation, of the reasons and bases, and was not adopted within the statutory period of procedural decision -has been decided that a criminal case or refusal to institute criminal proceedings on the grounds of non-rehabilitation. Or, if it was committed, and the order to dismiss the criminal case was issued, which was subsequently overturned by the prosecutor with the simultaneous excitation of criminal case and the proceedings on the criminal case during the reporting year was completed and the case sent to the court or the proceedings suspended by parts 1, 2, 3, 4 part. 1 Art. 208 Code of Criminal Procedure, or terminated for non-rehabilitating grounds.

Sheltered crimes are divided into two groups: a) concealed by persons who are obliged to record the relevant information; b) registered crimes which have been wrongly ruled to dismiss the criminal case. The first group is related to the commission of malfeasance. It is fraught with significant criminal risk, so its share is relatively low. But the second group obviously dominates in the overall structure of the hidden record of the crimes. The bulk of the crimes hiding from the account by a ruling on refusal to initiate criminal proceedings. These decisions are often subsequently cancelled by prosecutors with the simultaneous excitation of criminal case, but then again it is often ordered to dismiss the criminal case. Crime remains unsolved.

25 June 2013, the Prosecutor General of the Russian Federation Yuri Chaika held a board meeting of the General Prosecutor's Office of the Russian Federation. The theme of the meeting were the issues of the practice of prosecutorial supervision over the legality of the adoption of the bodies of inquiry and investigation decisions not to institute criminal proceedings and the effect of such procedural decisions to ensure citizens' rights to access to justice and a reasonable time of criminal proceedings. It was found that only in 2012 pre-trial investigation authorities recorded 12 million reports of crimes. And only one in six of them (2.1 million) criminal proceedings were instituted. For the most part of them it was decided not to institute criminal proceedings. Their number was 7.2 million. According to the Attorney General, the results of supervisory practices show that every third decision refusing to institute criminal proceedings was adopted with violations of the law, the number of which in 2012 increased by 11% (to 2.6 million). The large number of abandoned materials on which decisions were canceled repeatedly shows the extremely low level of organization of work in this area. Thus, in 2012 every ninth decision was revoked from 2 to 5 times (a total of 11.6 thousand, by 23%.), almost 1.4 thousand (4%) was revoked more than 5 times. In bodies of inquiry these figures are even worse: 350 thousand decisions (or one in seven) repeatedly canceled as illegal. The situation is compounded by a significant increase in terms of process inspections by the investigation and inquiry. Alarming large is the proportion of reports of crimes, in which the authorities refused to institute criminal proceedings in connection with the death of a

suspect. This is especially true for the regions of the North Caucasus and Southern federal districts, where the share of decisions taken on the grounds of non-rehabilitation, is 47 and 20% respectively. Tests show that it is often associated with the manipulation of statistical data in order to artificially improve crime detection [13].

Such practice is sustainable. In 2013, the number of decisions on refusal to initiate criminal proceedings amounted to 67032 35 (57.4% of the examined allegations of crimes) in 2014 - 6,665,368 (56.6% of the number of applications of the crimes). The report of the Prosecutor General of the Russian Federation at a meeting of the Council of Federation of the Federal Assembly of April 27, 2016 said: "Unfortunately, prosecutors still continue to be identified by hiding the facts of accounting crimes. In 2015 more than 165 thousand criminal attacks not taken into account for different reasons have been detected. This is 6.5% more than in 2014. The vast majority of such acts are crime committed in non-obviousness. Therefore we cannot associate their concealment with the desire of some leaders to artificially increase the rate of detection notorious" [14].

Such practice discredits the reputation of law enforcement officers who are making a lot of efforts in order to mimic the successful fight against crime. Obviously, that's why in the available statistics for the study materials on crime state for 2015 there are no data about the number of allegations of crimes and including decisions not to institute criminal proceedings. They are simply ceased to publish, limiting the ability of the scientific analysis of law organov.

The area of the crimes sheltered from the record is the same for latent and unsolved crimes. Researchers call it artificially-latent [15, p.31]. Crime, forming an artificial latency, are classified into three groups by G.F. Khokhryakov:

1. Structural-latent crimes (eg, qualification of the murder as grievous bodily harm, causing death) .
2. Legally-latent crimse when there is no clear evidence to suggest the existence of criminal events (in particular, the murder disguised as a suicide or an accident) .
3. Registration-latent crimes that occur as a result of deficiencies or the specifics of primary accounting of crimes [16, s.401].

Z.M. Isaev distinguishes two groups of artificially latent crimes.

The first group is characterized by the fact that they are not taken into account bodies which carry out statistics on crime, although they have this information. Certain institutions, enterprises, organizations, their control or audit departments can have reliable information about the crimes committed. Accordingly, if desired, the law enforcement agencies could obtain and implement such information. However, they often do not do this. Thus, we can conclude that the existence of this group of latent crimes is in the first place due to the presence of deficiencies in the organization of the fight against criminality.

The second group of artificially-latent crimes are unsolved crimes. Considering the latent crime from the perspective of the need for consistent implementation of the principle of inevitability of criminal responsibility for the crime committed, Z.A. Isaev came to the conclusion that among the latent manifestations not only unknown (undetected, unidentified, unclaimed) crimes should be attributed to unrecorded crimes, but also crimes, where the person had not been prosecuted. In this case we can talk about the so-called subject-latent crimes. The latter differ from other forms of manifestation of latency the "thing in itself" is not the crime itself, but the person who committed it. He does not suffer the adverse consequences [17, p.11-12]. Therefore, an incomplete investigation

of criminal activity, which exposes the criminals in all episodes of criminal activity, is also and added by the number of both latent and unsolved crimes.

Thus, the set of hidden crimes applies to both undisclosed and latent crime. It is a crime that became known, but not disclosed. We note in passing that this reluctance often acts motivated malfeasance, which supplements the statistical set of latent or undisclosed crimes.

Undisclosed and latent crime are characterized by a specific feature of cumulativeness. If solved crimes "go" together with the reporting period, the latent and unsolved crimes tend to accumulate, which seriously complicates the criminological situation. In 2014 the total number of unsolved crimes amounted to 15,461,782. As for the latent crimes, the estimate of their number (the current in a year and cumulative for several years) does not have precision. "In modern Russia, - say L.V. Kondratyuk and V.S. Ovchinsky 14-15 million crimes a year are committed, when in fact there are nearly 3 million of registered ones [18, p.92]. According to the research department of latent crime problems and prediction of criminological research institute of the Academy of General Prosecutor's Office, which existed from 2006 to 2010, the number of latent crimes in 2009 totaled 23 million, but for 2001-2009 - 170 500 000 [19, p.612.]. A figure is perceived as very controversial and unrealistic one.

Unsolved and latent crimes are a socially dangerous phenomenon, but its social danger is hidden from the public. On the one hand, society is not made aware of the damage caused by an artificially-latent crime. Meanwhile, the harm is very great. In addition to direct losses from committing crimes that are in the area of artificial latency (physical, material, moral) the costs that the state and society will hold in detention unscrupulous and dishonest police officers should be taken into account. Law enforcement agencies in violation of their duties falsify credentials or refuse to institute criminal proceedings on trumped-up grounds. Moreover, some law enforcement officials use their position to enrich, covering criminals and even participating in criminal activities. There are criminal systems, elements of which are whole units of law enforcement agencies.

On the other hand, even if the crime is reported, it does not mean that it will be solved and the perpetrator will suffer deserved punishment. Statistics show that about half of reported crimes (in 2012, in each reporting period - 45.6%, in 2013 - 56.1%, in 2014 - 54.1%, in 2015 . - 52.5%) are solved.

Undisclosed crimes pose a significant danger to the public which is higher in comparison with latent crimes. Undisclosed crime has a stronger criminogenic effect than an unregistered crime. On the first offense operational investigative work, the results of which indicate inefficiency (and sometimes impotence) of law enforcement, is conducted. This fact convinces the perpetrator to continue criminal activity. Criminality in general is closely monitoring indicators of law enforcement practice and takes into account the probability of being attracted to criminal liability for committing crimes.

Constant search for those areas where the risk of criminal liability is minimal takes place in professional criminal activity. It is also complemented with search of measures impeding the disclosure of the crimes. These aspects are not sufficiently studied in criminology, but we can already say with certainty, that the low crime-solving stimulates the continuation of criminal activity. Undisclosed crime in this sense has a strong criminogenic effect. The concentration of criminals in "zones of irresponsibility" formed under the influence of many factors, including inefficient work on crime disclosure, should be expected.

The specifics of public danger of undisclosed crimes manifests itself in the fact that it is perceived as a threat to the welfare of the system law enforcement and results as deviation in law enforcement.

References

1. Quetelet A.J. Social physics or research experience on the development of human abilities. Kiev, 1911.
2. Bafia E. Problems of criminology. The dialectic of the crime situation. Moscow, 1983.
3. Konev A.A. Crime and measurement problems in its real state. Abstract of Doct. Diss. Thesis. Moscow, 1993.
4. Akutaev R.M. Criminological analysis of delinquency. Abstract of Doct. Diss. Thesis. Saint-Petersburg, 1999.
5. Maslov B.V. Latent crime: some issues of theory and practice of resistance. Abstract of Cand. Diss. Thesis. Saint-Petersburg, 2006.
6. Kryventsov P.A. Latent crime in Russia: criminological research. Abstract of Cand. Diss. Thesis. Moscow, 2015.
7. Khramov S.M. Latent crime: the methodology of knowledge and the main directions of counteraction. Minsk, 2010.
8. Lynch J.P., Addington L.A. Understanding crime statistics: Revisiting the divergence of the NCVS and UCR. Cambridge, UK, Cambridge Univ. Press., 2007.
9. Mosher C., Miethe T.D., Phillips D.M. The mismeasure of crime. Thousand Oaks, CA, Sage, 2002.
10. Ivashchenko A.V., Revyagin A.V. Unsolved violent crime. Moscow, 2013.
11. Kleimenov M.P., Kleimenov I.M. Unsolved crime. Moscow, 2015.
12. Holyst B. Criminology. The main problems. Moscow, 1980.
13. The General Prosecutor of Russia held a meeting of the Board on the question of the practice of prosecutorial supervision over the legality of the adoption of bodies of inquiry and investigation decisions about refusal in excitation of criminal case. URL: <http://www.genproc.gov.ru>.
14. The report of the Prosecutor General of the Russian Federation at the meeting of the Council of Federation of the Federal Assembly of the Russian Federation on 27 April 2016 . URL: <http://www.genproc.gov.ru>.
15. Alekseev A.M., Rosha A. I. Latent crime and effectiveness of law enforcement bodies. *Problems of fighting crime*, vol. 19. Moscow, 1973.
16. Khokhryakov G. F. Criminology. Moscow, 1999.
17. Isaev Z.A. Problems of artificially-latent crime. Abstract of Cand. Diss. Thesis. Makhachkala, 2006.
18. Kondratyuk L.V., Ovchinskiy V.S. Criminological dimension. Moscow, 2008.
19. Inshakov S.M. (ed.). Theoretical basis of research and analysis of delinquency. Moscow, 2011.

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