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THE CONCEPT OF LATENT CRIME

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The urgency of the studyof the concept latent crime isconditioned by the absence among the criminologists of the universally recognized point of view regarding the sought concept, a unified methodological approach to its definition that takes into account both theoretical and practical aspects of combating latent crime. In addition, along with the definition of crime, being one of the central definitions of modern criminology, the concept of latent crime largely determines the main directions, contours and scope of the study of latent crime. The study is aimedat criticalcomprehending existing definitions of latent crime and, on this basis, developing the most correct methodological approach to the definition and investigation of latent crime that would allow authors to determine their own definition of latent crime. The main methods of research are formal-logical, historical, system-structural and comparative-legal methods that enabled to examine the evolution of the views of criminologists on the sought-after concept and determine the author's vision of the problem. The presented by the author definition of the concept "latent crime" is based on the need for the consistent implementation of one of the central principles of criminal law policy - the inevitability of criminal liability of a person guilty of committing a crime. Latent crime, viewed through the prism of the implementation of this principle, acquires a clearly expressed practical aspect, due to such traditional signs of latency, as unidentified and unaccounted for nature of crimes, and no less important, new - the undisclosedfeature (incompleteness of disclosure) of crimes. The presented model of latent crime definition directs law enforcement agencies to reduce the level of latent crime, including by increasing the level of crime detection, ensuring the completeness of their disclosure. The results of the research are of some interest to the faculty, lecturing relevant disciplines and special courses in the criminological and criminal law cycle.

Keywords: latent crime, natural-latent crimes, artificially latent crimes, concealed and hidden crimes, subject-latent crimes.

INTRODUCTION

Among criminologists there are different ideas about what should be understood as latent crime. With a certain degree of conventionality, there are three main criteria that underlie these views on latent crime can be allocated. The first of them is that latent crime is a collection of hidden (unknown, unidentified) from law enforcement agencies of crimes (Shcheglova, 1973; Konev, 1977). The basis for the definition of latent crime for the second group of scientists is the criterion of the unaccountednature of a certain set of crimes by criminal law statistics, they are not reflected in the summary data of these statistics, which leads to a substantial distortion of the actual crime data in comparison with the registered part

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(Zabryansky, 1973). For the third group of criminologists, both the given criteria-the uncertainty and unaccountability of crimes-are of big significance and serve as the basis for determining latent crime (Pankratov, 1967; Alaukhanov, 2008).

However, these views on the essential characteristics of latent crime do not exhaust the whole palette of points of view. Thus, a group of specialists believes that latent crime can be represented in its three aspects: criminological, criminalistics and criminal procedural (Tanasevich, Shraga & Orlov, 1975). Under the criminological aspect of latent crime, the authors understand the totality of crimes that are not taken into account by criminal statistics. Under criminalisticsis understood a set of undetected and undisclosed crimes. The procedural aspect of latency includes the totality of crimes, the commission of which did not entail legal consequences. One can agree with the above opinion on the multifaceted nature of latent crime. Moreover, if desired, it seems, it would not be difficult to single out the criminal-executive (penitentiary) aspect of latent crime. However, we believe that a broader view of latent criminality in the criminological aspect, broader than is usually accepted among domestic criminologists will provide an opportunity to cover the other two aspects of hidden crime, noted by the specialists cited. One can explain this thought.

The definition of latent crime from the point of view of the practical implementation of the inevitability principle of the guilty person's criminal responsibility for the committed crime leads to the conclusion that the structural elements of the hidden crime are undisclosed crimes, the totality of which the above-mentioned authors attribute to one of the signs of the criminalistics aspect of latent crime. Moreover, the criminological aspect of latent crime covers even those cases of crimes when they are officially considered to be disclosed. The discussion in this case is about the incompleteness of the disclosure of crimes, when not all accomplices of a group crime are brought to criminal responsibility, but only some of them, which, it seems to us, form the subject latency of a crime, the totality of which is an integral part of artificially latent crime.

The criminological aspect of latent crime is much broader than procedural its aspect. In the opinion of the authors, if the crime involved entailed legal consequences, then there is no reason to consider such a crime latent in the procedural aspect. Meanwhile, in such situations, one can argue about the latency of crimes in the criminological aspect. These are facts of illegal refusal to initiate criminal proceedings (formally this should also be considered a legal consequence of the crime), illegal suspension of proceedings in a criminal case, followed by its termination, termination of criminal cases without sufficient grounds, etc.

Thus, the conclusion suggests that the criminological aspect of latent crime, if it is viewed more broadly than traditionally accepted in the criminological literature and is not limited in its content to only unregistered crimes by criminally-legal statistics, includes both criminalistics and criminal procedural aspects, without

depriving them of their relative independence. And this independence, as a rule, is applicable to the understanding of the latency of a specific crime, and not of crime as a whole. In this connection, it seems quite justified to note that latent crime is a criminological category. It covers a certain part of criminality, and, consequently, its study refers to the subject of criminology, and not criminalistics or criminal process (Dan'shin, 1978).

A very broad interpretation of the concept of latent crime is contained in the work of Polish criminologist B. Holyst (1980). Among the latent crimes, he includes crimes that are not known to the police at all. To another group of latent crimes, he classifies the crimes identified with an unidentified criminal. The third group consists of disclosed crimes, which did not entail, for procedural reasons, an indictment or a verdict. The fourth group is the crimes for which there is a verdict that has entered into legal force, but not all the acts of the convicts were known to the police and are taken into account in the indictment.

The above opinions of specialists on the concept of latent crime do not exhaust the whole variety of judgments about it. However, many of them, including modern ones (Bogdanova, 2011; Muslov, 2006; Shikhanov, 2006; Inshakov, 2012, etc.), contain some interpretations of these points of view. This state of affairs is superfluous evidence that the modern criminological doctrine needs further theoretical comprehension and the establishment of all signs of latent crime that could give the most complete comprehension about it and would target law enforcers in an active and offensive struggle against crime.

METHODOLOGICAL FRAMEWORK

The methodological basis of this work is represented by a dialectic method of cognition of latent crime, its interconnection and interdependence with social processes and phenomena occurring in society, as well as a number of private scientific methods of cognition, among which it is necessary to distinguish formal-logical, historical, system-structural and comparative- legal methods.

Literature Review

In Russian criminology, including the Soviet period of its development, it is possible conventionally to single out two periods in the development of the theory of latent crime in general and the concept of latent crime in particular: pre-perestroika and post-perestroika.

The pre-perestroika period (until the mid-1980s) was characterized by extremely few coverage of latent crime problems in domestic criminology. It is enough to say that latent crime was not even mentioned in the textbooks on criminology of that period. Only three PhD theses were defended on this topic (Shcheglova, 1973, Konev, 1980; Akutaev, 1984) and no doctoral theses were presented. There was an impression that the political leadership of the country

imposed a taboo on the coverage of problems of latent crime. The materials of individual studies on latent crime could be found only in separate scientific papers. Many of them had the stamp “for official use”.

The well-known democratic transformations of the mid-1980s, which passed under the slogans “perestroika”, “new thinking”, led to a noticeable intensification of the study of latent crime problems. To a certain extent, the starting point of this period can be considered the publication in 1985 of the course on Soviet criminology, where for the first time in the domestic curriculum on criminology, one of the paragraphs was devoted to the coverage of problems of latent crime. Subsequently, in all textbooks, this problem is covered with some degree of completeness.

Latent crime and directly related to it the problem of victimization of the population, one can say, have rightly become one of the most pressing problems in the study of modern criminological science. It should be noted that in the post-perestroika period, attention to the study of many topical aspects of hidden crime has increased noticeably. It is symptomatic in this connection that for the first time in our country, under the auspices of the Ministry of Internal Affairs of the Russian Federation and the Rome Interregional Research Institute for Crime and Justice of the United Nations (UNICRI), an international scientific-practical seminar on the theme: “Latent crime: cognition, politics, strategy” was conducted. In addition, in the departmental research institutions of the Ministry of Internal Affairs of the Russian Federation and the General Prosecutor’s Office of the Russian Federation, appropriate structural subdivisions were created, one of the main tasks of which was the study of latent crime. An example is the department for the study of latent crime and criminological forecasting, established at the Research Institute of the Academy of the General Prosecutor’s Office of the Russian Federation, headed by a well-known criminologist Professor SM. Inshakov (unfortunately, after ten years of fruitful work the department was disbanded). Increased attention to the study of latent crime is confirmed by the growing number of published monographs, scientific papers, and defended dissertations on this topic. It is sufficient to say that representatives of a single scientific school, headed by a professor

R. M. Akutaev, defended more dissertations on problems of latent crime than for the whole pre-perestroika period (Akayeva, 2002; Amutinov, 2004; Bakhmudov, 2006; Isaev, 2002; Shakhaev, 2013).

However, the foregoing should notin some way to create the impression that the problems of latent crime have exhausted themselves, are fully resolved and do not require further research. On the contrary, we have to state that targeted and relatively large-scale studies with the possibilities of using modern information technologies in Russia have yet to be carried out. We are talking about large-scale surveys of the population covering the maximum number of entities of the Russian Federation, the same kind of expert assessments, etc. It is necessary to understand

the nature of latent crime, specific forms of its manifestation, regional specificity of latent crime and in a number of other qualitative and quantitative indicators characterizing this social phenomenon. All this is dictated by both theoretical and practical considerations.

Theoretically, the study of latent crime is important for cognition of the actual (real) state of crime, its true size, structure, geography and the real price of crime. This is also important for the scientific analysis of the trends in the development of all criminality and its specific types, the reliability of comparative assessments of interregional crime and the knowledge of the true extent of victimization of the population. The reliability of prognostic functions in criminological science also significantly increases when taking into account information about the scale of real crime, and not only its registered part. Moreover, targeted federal and regional programs aimed at strengthening the fight against crime, developed at this or that period, would undoubtedly have a greater efficiency coefficient if included measures to prevent the latency of certain categories and types of crimes.

The practical importance of studying the problems of latent crime is determined by the need to implement the starting principles of criminal legal policy. First of all, it concerns the consistent implementation of the principle of the inevitability of the criminal responsibility of the guilty person for the crime committed, ensuring the completeness and comprehensiveness of the investigation and resolution of criminal cases, the adequacy and proportionality of the means of legal influence that is necessary for the imposition of just punishment and its individualization. Of great practical importance is the development of scientifically based methods and techniques for identifying hidden crimes, studying the factors contributing to the latency of crime, and their prevention.

RESULTS

The presentation of the material before this section convinced us that the semantic content of the phenomenon that is defined, which in this case is latent crime, largely depends on those signs that are significant for the researcher and which he includes in the desired concept. In turn, these signs themselves are formed in the mind of the researcher, proceeding from the goals that he or she sets for himself and which objectively were formed in the corresponding doctrine that determines the official policy of combating crime. In particular, we were convinced that many researchers resorted to such semantic signs, as unknown (undeclared, unidentified, unidentified) crimes or not taken into account by the criminally-legal statistics of the crime in determining latent crime. However, in our opinion, these signs, which form the basis for the definition of latent crime, do not give the fullness of the idea of the desired social phenomenon, leaving behind a “board” of latency a set of very dangerous, first of all, for obvious nature and impunity, the so-called artificially latent crimes. Moreover, the definition of latent crime, based on these characteristics,

does not orient law enforcement agencies to offensive fight against crime, confining them only to the full detection and recording of committed crimes. Meanwhile, the scope and direction of the investigation of latent crime, theoretical and, especially, its practical aspects, largely depend on the definition of latent crime. That is why, in formulating the definition of latent crime, understanding the content of the desired concept, it is methodologically correct, in our opinion, to consider this complex social phenomenon through the prism of providing an offensive and effective struggle against crime, strengthening constitutional guarantees for the security of the individual, society and the state. Of course, this primarily concerns to ensuring the constitutional rights and freedoms of a person and citizen, the consistent implementation of the principles of the rule of law, the strengthening of national security and stability in society, which is extremely difficult to carry out in conditions of unprecedented crime. In this regard, we believe that the traditional approaches to the definition of latent crime, based on the signs of the unknown and the undeclared nature of the crime by law enforcement agencies, their being unaccounted for by criminal law statistics, do not give a complete and objective view of latent crime and its specific varieties, artificially narrow its subject and do not meet the modern needs of combating crime.

Our own judgments about the nature of latent crime, based on the need to implement the starting principles of criminal law policy, such as the principle of the inevitability of criminal responsibility for the crime committed, and the critical analysis of the opinions expressed on the concept of latent crime allowed us to develop the following point of view on the issue under consideration

We tend to believe that all latent crime, taking into account the signs of undetected and unaccounted crime and the person who committed it, can be divided into two main sets of latent crimes: natural latent and artificially latent (Alekseev &Rosha, 1973). Although this concept was first expressed by these specialists, but, in our opinion, it was not ultimately consistent and, in particular, did not take into account the subject-latent variety of artificially latent crime.

Naturally latent is the aggregate of crimes that have not become the property of the bodies and institutions that register them and carry out the prosecution of the perpetrators, respectively, which are not taken into account by criminal statistics and in respect of which the response measures provided by law are not adopted. Depending on the specifics of the contributing factors, natural latent crimes can be represented in four groups.

The first group includes crimes, of which no one can know, including the offender himself. These are crimes committed by negligence, when a person, as a rule, is not aware of the criminal nature of the actions being committed, although it should and could be aware of this fact. The second group includes crimes where victims do not report them because they are not interested in identifying them. Motives of such disinterest can be a variety of motivations. For example, in rape,

it is the unwillingness of the victim to be the object of gossip, compromising her or the aggrieved party agrees to appeals for reconciliation with the perpetrator. The third group consists of crimes where there is no clearly expressed injured party and due to this fact there is no one to report the crime to the competent authorities. Often, this can be observed with encroachments on state or public interests, especially with environmental violations. The fourth group is a crime, where the fact of its commission is known to a narrow circle of persons or only to the guilty person. These include disguised embezzlement, bribery, murder followed by the concealment of a corpse, possession of narcotic substances, attacks on persons with mental disorders, which makes it difficult to adequately assess what happened, and some others.

The second type of latent crime - a set of artificially latent crimes - form crimes as known to law enforcement agencies, but which are not taken into account, and those which are recorded, but not disclosed or incompletely disclosed. Artificiallylatentcrimescanberepresentedintwogroups.

The first group includes crimes that are not considered by law enforcement agencies, for which criminal cases are not initiated, although information about them is available to certain legal entities or individuals; it became the property of law enforcement agencies, but the latter did not take the necessary measures to implement legitimately this information. In this regard, in relation to a certain category of crimes, it is rightly noted that “most of the latent crimes in the field of occupational safety are those that can be considered latent only conditionally, since information about them is contained in official documents stored in enterprises. The existence of this group of latent crimes is associated with the existence of shortcomings in the organization of combating this type of crime “(Davydenko, 1980). It should, perhaps, be added that what has been said these days can be applied not only to crimes in the field of labor protection, but also to many other crimes.

The second group is formed by so-called subject-latent crimes. These are not disclosed (incompletely disclosed) crimes, when the fact itself is known and accounted for, but the person who committed the crime or some of them if the crime is committed in complicity is not known and not criminally responsible. Subject-latent crimes differ from other forms of manifestation of latency, mainly because in this case we speak about the latency of the entity who committed the criminal-wrongful act, and not the latency of the crime. In such situations, the person guilty of committing a crime, because of its unidentified nature, does not undergo those unfavorable consequences for him which is provided for by the criminal law. Therefore, it becomes impossible to achieve the goals of criminal punishment. Impunity also leads to ignoring, and, in the final analysis, at a significant scale of latent crime, many times exceeding the officially registered part of it, as is the case in contemporary Russian reality, and to a real transformation in its

opposition of the principle of the inevitability of criminal responsibility and the constitutional principle of equality of citizens before the law, because, as rightly noted in the legal literature, the principle of the inevitability of responsibility "appears as a projection of the social being of equality of citizens before the law . . . . After all, such equality is embodied in reality only in the situation when the overwhelming majority of crimes are disclosed . . . and the persons who committed them are brought to criminal responsibility in strict accordance with the law" (Mal'tsev, 1997).

The foregoing point of view on subject-latent crimes as a relatively common form of manifestation of artificial latency coincides with the position of a number of legal scholars who believe that latent ones should be attributed not only to crimes unknown to the authorities of justice but also to acts for which it was not possible to identify or locate the perpetrator,although the relevant authorities are aware of the crime itself. In particular, one can refer to the opinion of Bulgarian criminologists who, under latent crime, understand the totality of crimes that have not become the property of bodies fighting crime, or a set of identified crimes that have not been reflected in official statistics. They also refer to latent crimes those crimes that have not been convicted (but registered and disclosed), as well as unsolved crimes (Fundamentals of Criminology of the People's Republic of Bulgaria, 1987). In essence, the authors of the course of Soviet criminology adhere to the same opinion. "The real level of latent crime," they say, "is determined by the number of crimes that remained outside the scope of the criminal law, by the number of unpunished offenders" (1985).

A similar approach to the definition of latent crime was expressed by some Western criminologists. So, according to G. Y. Schneider (1994), a relatively large number of delicts, which are established by law enforcement agencies or known to them, can be attributed to relatively hidden illegal actions, but a significant part of them remains uncovered, and criminals are not identified. The totality of such crimes was called "gray" (half-hidden) crime. Thus, "gray" crime is nothing more than a collection of artificially latent crimes, while the totality of natural-latent crimes in western criminological literature has been termed "dark number" or "dark figure".

In addition to the allocation of natural and artificially latent crimes with the concept of latent crime, the concept of "border situations" is also closely related. The latter is nothing more than an erroneous idea of the actual or legal circumstances of the case. Usually they are found where people do not declare a crime because of incorrect factual or legal assessment of them. For example, this can often be observed with pocket thefts, robbing people who were drunk, fraud in the form of cheating, etc. "Border situations" include those cases when a crime is not reported to the competent authorities due to lack of information about the criminal nature of the act. As an example, we give two cases of this kind.

In the first case, citizen N. asked the hotel duty officer on the floor about the loss of money. The audit found that on the eve of N. came to the hotel in a state of intoxication. The next day, he found a missing piece of money. At the same time N. could not really explain: under what circumstances, when and where money was stolen, or he lost them or drank.

The second case is related to a judicial precedent, according to which women who claim to have been sexually abused while in a state of intoxication may be prohibited from applying to the British courts. According to the Times, this follows from the verdict handed down by the court of Welsh city of Swansea in the case of the alleged rape of a student-girl of a local university. The plaintiff claimed that the defendant, who worked as a security guard in a nightclub, took advantage of her helpless condition. The 20-year-old student from Ireland, RuairiDougal, in turn, says that the sexual act was committed by mutual consent. The victim told that she went to a party in the club and there she felt very bad. She asked Dougal to take her to the hostel. As a justification for the fact that sex occurred without her consent, the plaintiff says that if she had wanted, she would have invited the defendant to her room. And so everything happened in the corridor of the hostel. The judge, after listening to the arguments of the parties, recommended the jury to pass a verdict on Dougal's innocence, since *the victim was in such a condition that she didn't not remember, whether she agreed, or not on sexual intercourse.* According to the judge, "consent, expressed in a drunken state, is still an agreement" (In Britain, drunken women will be banned from complaining about rape http: // www. lenta. ru/news/2005/ll/24/drunk/ - 2005. - 24 November).

In scientific and practical terms, there is a certain interest and the concept of imaginary latency, which can be defined as an erroneous perception of the "victim" of the act as criminal, left without an appropriate response from the competent authorities, although objectively this act does not constitute a crime. Imaginary latency takes place also where specific forms of behavior, for example, drug use, are mistakenly perceived by others as criminal acts that go unpunished, although, as is known, they are indifferent to Russian criminal law.

DISCUSSIONS

The study of criminological literature makes it possible to state a noticeable limitation, and on certain issues, even the absence of special studies devoted to a comprehensive study of latent crime problems, taking into account modern criminological realities and the requirements of law enforcement practice. To date, domestic criminology has not developed a single concept of latent crime. Moreover, there is no unity and relative to the features that characterize latent crime, which, in essence, must determine the desired concept. As already mentioned, in general, specialists in the definition of the concept of "latent crime" proceed from two criteria: the unknown and unaccounted of the aggregate of crimes to official bodies

authorized to prosecute and attract persons who committed the crime to criminal liability and to register and record crimes (Goryainov, 1993; Gavrilov, 2001; Inshakov, 2007, 2012; Sazanova, 2004, Shikhanov, 2006). As before, the question remains concerning our proposal for subject-latent crimes as an integral part of artificially latent crime, as well as the notion of imaginary latency.

At the same time, it can be noted with satisfaction that the concepts we have developed such as "subject-latent crimes" and "imaginary latency" are gaining increasing recognition among criminologists (Amutinov, 2004; Isaev, 2002; Shakhaev, 2013). And the last of them - imaginary latency, although is close in content to the concept of "border situations", but is not identical to it. Their main difference is in the nature of the subjective perception of the act, which largely determines the choice of the person's further behavior in bringing the information to the law enforcement agencies about what happened. Studies show a relative prevalence of imaginary latency, which, it seems, should be taken into account when carrying out appropriate sociological research. Thus, in 28% of the cases, according to the circumstances of the case, which the respondents rated as criminal, they were not objectively so (Kaiser, 1979).

The necessity of isolating subject-latent crimes as an independent group of artificially latent crimes, among other things, is dictated by the fact that the statistics of the perpetrators do not coincide with the records of the number of crimes committed. In addition to the fact that one crime can be committed by a group of persons in complicity or one person has committed a number of crimes, the magnitude of these indicators is significantly affected by the disclosure of crimes. As correctly noted in the criminological research, "with a large number of undisclosed crimes, the actual number of criminals who committed recorded crimes can be significantly distorted, since persons who committed undisclosed crimes are not reflected in statistical reports" (Zabryansky, 1973).

In the activities of law enforcement agencies, there are non-trivial cases when one or more of the guilty parties are identified and punished from all the accomplices of the crime. Nevertheless, according to the current accounting system, these crimes are recognized as disclosed. In our opinion, in such situations one should speak of a partially disclosed crime and, consequently, of a partially subject-latent crime. Full disclosure of the crime, which deprives it of a latent character, is possible only if all accomplices in the crime are identified and brought to justice. We believe that the independent registration of subject-latent crimes, as undisclosed or incompletely solved crimes, would allow not only to know and, in necessary cases, to operate with indicators of the state of the latter, for which the law enforcement agencies still have to conduct a complex of operative-investigative and investigative actions until their full disclosure, But would also target these bodies to intensify the provision of full disclosure of crimes, especially the most serious of them.

CONCLUSION

The conducted research made it possible to establish that the modern doctrinal criminological ideas about latent crime and the tasks facing law enforcement agencies correspond to its broader interpretation, which is not limited to indicating that latent crime includes only a set of unknown and unrecognized offenses. In the structure of latent crime, it is necessary to take into account the artificial part of it, which is formed both by crimes concealed by law enforcement agencies and by subject-latent ones, i. e. undisclosed or incompletely disclosed crimes.

Taking into account this, in the most general terms, we can identify latent crime as a set of crimes and those who committed them, which did not entail criminal law measures of response and impact on the part of bodies that prosecute and bring those responsible to justice.

The signs of latent crime are the undetected (unidentified) and unaccounted for nature of the aggregate of crimes by the authorities conducting prosecution and bringing the responsible persons to account, conducting their registration and recording, as well as unsolved (incompletely disclosed) crimes.

In the process of this study, new questions and problems have arisen that need a solution. This dictates the need to continue studying the problems of latent crime. In particular, it is necessary to study the approximate state of actual (real) crime in certain constituent entities of the Russian Federation and in the country as a whole; identify the main trends in the development of latent crime and its constituent categories and types of latent crimes; identify factors that contribute to the latency of crimes, including regional ones; and, finally, to develop effective measures to prevent the latency of crimes.

RECOMMENDATIONS

The materials of this paper can be useful as initial data for specialists investigating the problems of latent crime, quantitative and qualitative indicators of crime in general, for prediction and planning for combating crime. To a certain extent, they can be used to improve federal and regional targeted programs to combat crime and its prevention.

Research materials can be claimed in the educational process: when writing textbooks and teaching aids in criminology, conducting lectures and practical classes in the relevant sections of criminology and criminal law, conducting special courses among bachelors and masters, as well as law enforcement professionals undergoing professional retraining.

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