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**Devlet suverenliyinin organize edilmesinde suç örgütünün etkisi**

**The influence of organized crime on the sovereignty**

**Özet:** Devlet egemenliğinin sağlanması, yalnızca devletle siyasal sistemin unsurları ve sivil toplum kuruluşları arasındaki etkileşim sorunlarını değil, aynı zamanda antisosyal organizasyonlar, özellikle organize suçla olan etkileşimi de beraberinde getirmektedir. Örgütlü suç siyasi sistem unsurlarıyla aktif olarak işbirliği yapıyor ve belirli koşullar altında bireysel siyasi partilere ve siyasi hareketlere örgütsel ve mali yardım sağlayabilir. Örgütlü suç devlete özgü işlevleri çoğaltmış görünüyor, kısmen sosyo-politik alanın yerini değiştiriyor.

Devlet ve organize suç arasındaki çeşitli işbirliği biçimleri vurgulanmıştır: reaktif safha, aktif asimilasyonda pasif asimilasyon aşaması ve proaktif adım.

Organize suç tarafından oluşturulan tehditler ve suçların ulusaşırı hale getirilmesi ile ilişkili. Örgütlü suçların ulusaştırılması, egemenliğin egemenliğini tehdit eden bir orana ulaşmıştır. Orta Amerika'daki bazı ülkeler, ulus ötesi suçla mücadele için kaynaktan yoksun olan devletin çöküşüyle yüz yüzedir.

**Anahtar kelimeler:** devlet egemenliği, organize suç, ulus ötesi suç, yolsuzluk

**Abstract:** Provision of the state sovereignty entails not only the problems of interaction between the state with elements of the political system and the institutions of civil society, but also the interaction with antisocial organizations, in particular organized crime. The organised crime is actively cooperating with the elements of the political system, and under certain conditions can provide organizational and financial assistance to individual political parties and political movements. Organized crime seem to duplicate the functions inherent in the state, partially displacing the state of socio-political sphere.

Highlighted various forms of cooperation between the state and organized crime: the reactive stage, the stage of passive assimilation under active assimilation and proactive step.

The threat posed by organized crime, and is associated with the trans-nationalization of crime. Trans-nationalization of organized crime has reached such proportion that is a danger to state sovereignty. Several countries in the Central America are faced with the decline of the state, which lacks the resources to counter transnational crime.

**Keywords**: state sovereignty, organized crime, transnational crime, corruption

Ensuring state sovereignty involves not only the problems of interaction of the state with elements of the political system and institutions of civil society, but also interaction with antisocial organizations, in particular, with organized crime.

Organized crime is a group of persistent antisocial associations carrying out illegal activities aimed at causing economic and / or physical damage, as (the individual, society and the state. Possessing all the signs of a social group, an organized criminal group is distinguished by its illegal functioning (Tret'jakov, 2009:22). The characteristic features of organized crime are the occupation of criminal activity as a business for the purpose of obtaining benefits, as well as the existence of a strict hierarchical structure. These characteristics allow organized crime to plan criminal activities, and also plan to counteract social control by creating corrupt ties.

Organized crime actively interacts with elements of the political system, and under certain conditions can provide organizational and financial assistance to individual political parties and political movements. An example is the situation that has developed in the recent past in the Democratic Republic of the Congo and Northern Ireland. The interaction of organized crime with political movements and parties can also take the form of “assistance” in putting pressure on political opponents. Such incidents took place in the pre-election period, for example, the 1993 elections in Kenya.

In early 1993, the first presidential elections on a multi-party basis took place in Kenya in the last 26 years. The main struggle unfolded between the incumbent President DA. My (the candidate from the ruling party “African National Union”), who ruled the country at the time of the election for 14 years, and the oppositionist K. Motiva. Not only through the use of administrative resources, but also through organized crime, opposition candidates were obstructed (mass rallies in key areas of the country, physical attacks, etc.). According to official results, President D.A. Mine was once again re-elected president.

Organized crime tends to duplicate the functions inherent in the state, partially replacing the state from the socio-political sphere. P. Rawlinson notes the various stages of state interaction and organized crime: the reactive stage, the stage of passive assimilation, the stage of active assimilation and the proactive stage (Roulinson, 2000:18).

These stages do not always imply a rigid linear sequence of alternation, then we suggest to designate them not as stages, but as forms of interaction between the state and organized crime.

Experience of Colombia is evident. If in the 1990s, Colombian authorities interacted with organized crime in the form of assimilation, at the beginning of the twenty-first century an attempt was made to move to a reactive form. In the early 1990s, the government of the country conducted active negotiations, which led to the establishment in 1998 of a neutral dona by the RBCK, the military-political structure of organized crime in Colombia. At the same time, organized crime did not go to reduce activity and legalize their activities, including to reduce the production and export of narcotic drugs. The government of the country could not ensure the functioning of state territories in the neutral zone, while organized crime tried to increase the number of its representatives in the country's legislative body.

In 2002, the Colombian authorities terminated agreements with the RBCK and began to implement a set of measures to strengthen state power throughout the territory of Colombia (the “Democratic Security Strategy”), including increasing the number and armed forces, equipping with new weapons systems, and establishing civilian control over the armed forces. By 2007, state power throughout the country was restored, and interaction with organized crime was minimized. Structures representing the interests of organized crime were excluded from the political system of Colombia.

The reactive form assumes that the state power is strong, relies on an effective political system and a developed civil society, and to maintain its functioning there is no need for a compromise with criminal organizations. In other words, the state has a strong sovereign will to adopt and implement sovereign decisions. Because of this, organized crime in such countries operates with minimal use of violence, without interfering in the socio-political sphere.

The weakening of state institutions is associated with defects in the formation of sovereign will. The bodies of state power for the adoption and implementation of sovereign decisions are compelled to appeal to asocial structures, including organized crime. The downside of support from organized crime is the impunity of leaders for committed acts, as well as the formation of favorable conditions for functions specific to organized crime. In the scientific literature, the specific functions of organized crime include the following:

- assistance in the redistribution of capital, authorities, other resources;

- initial accumulation and concentration of capital;

- neutralization of bureaucratic obstacles on the way of business development;

- satisfaction of requirements for goods and services under any regulatory restrictions;

- providing protection against claims from state bodies and other subjects of social interaction;

- resolution of emerging conflicts, etc (Tret'jakov, 2009:23).

In conditions of weak state power, which does not enjoy broad popular support, the interaction of the state and organized crime manifests itself in the form of assimilation. Assimilation suggests that organized crime penetrates into the organs of state and municipal power, providing for itself the opportunity to act in parallel with the official authority. Organized crime acquires opportunities to influence the economy and state policy: “Organized crime becomes a powerful means of redistributing property and capital, including criminal, influence on power and politics” (Ivancov, 2009:14).

V.I. Tretyakov rightly notes that organized crime seeks to infiltrate the system of regulation of social relations, exerting a double influence on it: “On the one hand, it traditionally blocks execution of decisions in which it is not interested and whose implementation is capable of harming it. On the other hand, organized crime increasingly encourages official structures to adopt such decisions that create conditions for the existence and development of organized crime, thereby legitimizing criminal policy” (Tret'jakov, 2009:13).

Assimilation assumes that organized crime takes part in the formation of sovereign will, and its interests are taken into account in the adoption and implementation of political decisions by the central and / or regional authorities.

The proactive form presupposes that organized crime becomes the main dominant force in society, subordinating to itself both state and public institutions. The proactive form of interaction between the state and organized crime testifies to the “failed” state, that is, the state's loss of its positive sovereignty over the entire sovereign territory or on a certain part of it. For example, in remote areas of Colombia before the beginning of the 21st century, as well as in certain regions of the Democratic Republic of the Congo, state power is virtually non-existent, and armed organized crime leads in these territories to struggle for power and resources.

In the work on the problems of Russian organized crime F. Williams notes that the Russian underworld took on the legal and punitive functions of the state, having become the only force capable of providing stability, providing assistance in “knocking out” debts, guaranteeing interest payments on bank loans and permitting Disputes about property rights are honest and effective (Vil'jams, 2000:16). A feature of Russian organized crime is its regional structure, which often has an ethnic component. In Russia, “the peculiarity of the criminalization of regional and interregional communities is the presence of representatives who hold positions in federal and local government bodies, which fundamentally distinguishes them from previously functioning criminal groups. In this case, regional law enforcement agencies have to counteract their “own” regional criminal “organism”, often having national protection, simultaneously possessing transnational connections (Ivancov, 2009:17). The activity manifested by organized crime testifies to some assimilation of the Russian state with the criminal world. The course of the federal center to strengthen the vertical of power allowed the country to avoid a proactive form, limiting the possibilities of the criminal community.

The threat posed by organized crime is also associated with the transnationalization of crime. Thus, Russian organized crime, becoming transnational, operates in dozens of countries around the world, concluding there with agreements with local criminal structures on joint criminal activities in the sphere of trade in petroleum products, money laundering, creation of channels for illegal migration, trafficking in human beings, smuggling and drug trafficking (Moscow, 2007: 27).

The transnationalization of organized crime has reached such a level that it poses a threat to state sovereignty. A number of Central American countries are facing the decline of a state that lacks the resources to counter transnational crime. Criminal communities have turned some Caribbean countries into corridors of the illicit transportation of drugs and people to Europe and North America, cocaine production in the world (Bolivia, Colombia, Peru, etc.). Some African countries suffer from the illegal exploitation of their natural resources, then as Asian countries are a transit corridor for opiates grown in Afghanistan.

Stable corruption ties have a negative impact on the provision of state sovereignty. Corruption undermines public confidence in public authorities, causing irreparable damage to its legitimacy. Corruption reduces the ability of public authorities to adopt and implement sovereign decisions in the field of law enforcement. The working definition of an interdisciplinary group on corruption of the Council of Europe under understood to mean bribery and any other behavior of persons entrusted with the performance of certain duties in the public or private sector and which leads to a breach of the duties assigned to them by the status of public official, private employee, independent agent, or of a different kind of relationship and has the purpose of obtaining any illicit benefits for himself and others.

Corruption, originated in the economic sphere, due to its internal logic of development and lack of effective public and legal control, quickly invades the sphere of state administration, deforming the state and the legal system. Corruption, which is in correlation with the shadow economy, becomes a “lobbyist” of the main actors of the shadow economy, which are an integral part of organized crime. Corruption is the link for creating an “alliance” of government agencies and organized crime. The profits of organized crime are directed at bribing officials, while “corruption serves to optimize and cover up the activities of organized criminal groups” (Tret'jakov , 2009:15).

As a result of the functioning of the “alliance”, the sovereign will is deformed: the sovereign will is not capable of ensuring the protection of national security and national interests. In addition, under certain conditions, public authorities are beginning to give priority to securing the “private” interests of the “alliance” (putting aside the national interests), which are the further criminalization of social relations. Organized corruption produces criminal or criminal phenomena (“raiding”, unfair competition, “covert”, drug business) (Astanin, 2009:12-13).

A vivid example of how corruption corrodes sovereign will is the history of Liberia at the turn of the 20th and 21st centuries. At the end of the 14-year civil war in 2003, Liberia faced massive corruption in the National Transitional Government of Liberia. It was corruption that became one of the key factors in the 1989 coup d'etat that led to the rise of Ch. Taylor to power, which led to a civil war. Civil peace was restored in the country only as a result of the implementation of the Political and Economic Management Assistance Program (GEMAP).

The main goal of GEMAP was to improve the budget process, fiscal systems, placement and implementation of the state order, including by establishing strict control over corruption. GEMAP was implemented with the active and massive use of international experts with the right to act as a counterparty in the actions of ministries and state enterprises, checking concessions (including timber and diamonds), checking contracts on state orders. International actors have also been given the opportunity to oversee the activities of local authorities in the framework of the Steering Committee for Economic Management (ECCE). The leader of the ECCE was the President of Liberia J. Sirleaf, and the Deputy Chairman was the US Ambassador.

Internal capacity to fight corruption was not enough in Guatemala. Civil war lasted more than three decades in the country, causing massive corruption. To combat total corruption in law enforcement agencies, in 2007 an international commission to combat impunity in Guatemala (the Spanish abbreviation CICIG) was established by agreement with the UN. The composition of CICIG included international and Guatemalan investigators, forensic experts, prosecutors and lawyers on human rights, criminal and international law. The head of CICIG was appointed Secretary-General of the United Nations. The mandate of CICIG was that, in order to “maintain, strengthen and promote the institutions of the State of Guatemala to investigate and bring to justice the crimes allegedly committed in connection with the activities of illegal security forces and clandestine security organizations”. In the structure of the Public Prosecutor's Office, the Special Prosecutor's Office of CICIG was established. CICIG filed about two thousand lawsuits and arrested more than 100 people, including former President A. Portillo, accused of embezzling funds.

The threat of sovereignty from corruption contributed to a change in the position of countries on this issue. Many states encouraged corruption in third countries, allowing their citizens or companies to receive tax rebates to pay bribes to government officials in other countries. The cardinal change in attitude towards corruption changed at the beginning of the twentieth century. On 21 November 1997, the OECD Convention on Combating Bribery of Officials of Foreign States in International Business Transactions was adopted in Istanbul and the UN General Assembly Resolution A / RES / 58/4 of 31 October 2003, The UN Convention against Corruption.

The OECD Convention on Combating Bribery of Officials of Foreign Countries in International Business Transactions 1997 recognizes as an offense “active corruption” (“active bribery”), which means a promise or giving a bribe. The criminalization of “active corruption” is a radical revolution in international cooperation against corruption, which is especially important for states with defects of sovereign will, with weak governance. Article 1, paragraph 1, of the 1997 Convention states: “Each Party will take all necessary measures to establish that, in accordance with national legislation, a conscious offer, promise or giving directly or through intermediaries of any material, monetary or other benefits from any legal or natural person in favor of officials of foreign states , or for such officials, or for third parties in exchange for certain acts or omissions of this official in connection with the performance of their official duties in order to obtain or maintain business benefits, as well as obtain undue advantages in the implementation of international”.

The federal authorities are implementing a set of measures to counter corruption. Russia was among the first to sign the UN Convention against Corruption in 2003, and in 2006 it ratified it, with the exception of Article 20 “Illegal Enrichment”. Article 20 of the 2003 UN Convention states: “Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offenses, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official, exceeding his legal income, which he can not reasonably justify”.

In 1999, the Anti-Corruption Group of Countries (GRECO) was established to monitor the anti-corruption standards of the Council of Europe in the countries that joined the organization. The main objective of this structure is to improve the work on combating corruption at the national level by monitoring compliance with Council of Europe standards in this field. GRECO is not established on the basis of an international agreement and does not have the international law of subjectness, but is a body of the Council of Europe. At the same time, the GRECO Statute allows to join its activities and those countries that are not members of the Council of Europe. Since February 1, 2007, Russia has been actively involved in the activities of GRECO.

The National Anti-Corruption Plan is being implemented, the Federal Law on Counteracting Corruption has been adopted, as well as a number of other anti-corruption regulatory legal acts.

The above-mentioned measures form the legal basis for the anti-corruption policy, the content of which is reflected in the National Anti-Corruption Plan (approved by the President of the Russian Federation on July 31, 2008). The main content of anti-corruption measures is aimed at preserving the state's ability to express sovereign will, to exercise sovereign rights.

Countries rich in natural resources face a deformation of the political system. The ruling elite, which has access to the export of natural resources to world markets, seeks to build a rigidly built system of public administration, the main purpose of which is to preserve the monopoly on natural resources. Most of this course does not go beyond the legal framework, does not provide for violation of law and order.

At the same time, such countries may face attempts by certain groups (primarily regional elites) to usurp access to natural resources and profits from their exploitation. This is true for countries rich in oil and gas, diamonds and other precious stones, wood and mineral resources. An example is the situation in the Democratic Republic of the Congo. The struggle of the elites for controlling the export of coltan, tin and gold in the eastern part of the country led to a civil war that has lasted since the 1990s.

In international law, the opposition to the sale of diamonds by organized crime is the most regulated. To this end, since January 1, 2003, a global certification system has been created, called the Kimberley Process. The Russian Federation is a party to the Kimberley Process. The main task of the participants of the Kimberley Process is the prevention of rough diamonds from the conflict regions. The certification system functions on the basis of interaction between state authorities and civil society institutions.

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