
Crime Analysis of Illegal Gambling Promotion in the Light of Amendments to the Criminal Code of the Russian Federation

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Abstract:

The sphere of gaming was always of considerable interest as subject to criminal encroachments as receiving high profit for rather short period and the control from the state is insufficient and not always effective. Gambling organization and conduction with violation of standards of the Russian legislation often predetermines communication of criminal structures with institutes of social control, becoming the determinant of crimes of corruption orientation.

Being part of show business, gambling organization and conduction have received the strongest source of inspiration for development. In this regard the legislator has to improve the criminal law which establish the responsibility for the illegal gambling promotion for the purpose of restoration of social justice and prevention of crimes.

The analysis of subjective and objective crime elements regarding illegal gambling promotion in the light of amendments to the Criminal Code of the Russian Federation made by Federal law No. 227-FZ of July 29, 2018, which provide in this article, will allow the law enforcement official to qualify this crime.

Keywords: Criminal code of the Russian Federation, gambling promotion, criminal action, element of crime.

JEL Classification Codes: K14.

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1. Introduction

Significant growth in cash flows, increase in use of electronic payments as well as diversification of gambling forms have led to intensive evolution of gambling industry as a kind of business activity. Due to its high profitability, flexibility and resistance to economic crises, gambling business have become a fair ground for a crime environment. It is a well-known fact that illegal gambling promoting not only demoralize a society and violates the rights and legitimate interests of citizens and the State, but also opens the ways for the criminal elements to get into national economy, provoking corruption and other criminal phenomena. That is why a criminal liability for the illegal gambling promoting has been imposed by the government.

Legal bases of state regulation of gambling organization and conduction in the territory of the Russian Federation are defined by the Federal law No. 244-FZ of December 29, 2006 "About state regulations of gambling promoting activities and about introduction of amendments to some statutes of the Russian Federation" (Hereinafter - Federal law No. 244-FZ). The federal law also set restrictions of implementation of the specified activity for protection of morality, the rights and legitimate interests of citizens.

So, according to Articles 5 and 13 of Federal law No. 244-FZ gambling institutions can be open only in gambling zones established by the Federal law on the basis of permission to implementation of activities for gambling organization and conduction in a gambling zone. At the same time such gambling institutions as bookmaker offices and totalizators and also their collection points for rates can be open also out of gambling zones in the order established by Chapter 3 of Federal law No. 244-FZ only on the basis of the license for implementation of activities for gambling organization and conduction in bookmaker offices and totalizators.

In bookmaker offices, totalizators, their collection points for the rates located out of gambling zones activities for gambling organization and conduction with use gaming machines and game tables cannot be carried out (Paragraph 3 of Article 14 of Federal law No. 244-FZ).

Besides, Federal law No. 244-FZ prohibit the activity on the gambling organization and conduction with use of information and telecommunication networks, including Internet networks and also means of communication, including mobile communication, except for the cases provided by the Federal law (Paragraph 3 of Article 5 of Federal law No. 244-FZ). The criminal liability for non-compliance by the person with restrictions and the ban, called by the current legislation of the Russian Federation, is provided by Article 171.2 of the Criminal Code of the Russian Federation (Hereinafter – the Criminal Code of the Russian Federation).

The relevance of this form of criminal characteristics` examination is defined by the fact that on July 29, 2018 the legislator of the Russian Federation has adopted the Federal law No. 227-FZ, thereby has made essential changes to article 171.2 of the Criminal Code of the Russian Federation.

2. Theoretical, informational, empirical and methodological grounds

Amid extensive amount of crime elements` interpretations, there is a settled concept in a criminal law science according which crime elements are the set of objective and subjective characteristics allowing to recognize a certain socially dangerous act and to match it with a specific article of the Criminal Code.

Structural placement of article 171.2 in chapter 22 "Crimes in the sphere of economic activity" of the Criminal Code points out the main direct object of such crime. These are the public relations, regulating lawful order of the gambling promoting, established by the Federal law No. 244-FZ of December 29, 2006 "About state regulations of gambling promoting activities and about introduction of amendments to some statutes of the Russian Federation", and protected by the above-stated Criminal Code`s article. In other words, relying on the legislator`s opinion, the public danger of a crime, described in Art. 171.2 of the Criminal Code is underpayment of fees and taxes from gambling activities to the State (Ulezko, 1998).

There is the collision of views of possible direct object of the crime provided by the studied article in the science of penal law. This criminal action does the harm to society in the forms of degradation of players` identity, disintegration of their families, compulsive gambling, constant aspiration to easy money, etc.; that is why it would be more appropriate to place article 171.2 in chapter 25 of the Criminal Code "Crimes against health of the population and public morality" (Vinokurov, 2018).

Sevostyanov and Prosvirin (2013) adhere to a similar position, proving by the fact that the illusory possibility of a prize of the huge sum of money for the short time period results in game dependence which according to the International classification of diseases of the 10th revision, is recognized as a disease and is considered in the block F63 "Habit and impulse disorders". Finally interest in gamblings has negative effect on consciousness and morality of the public and health of the population, it promotes planting of an image of gambling as only way to earn a big sum of money in a short space of time, without making significant efforts.

We believe that it is impossible to deny categorically the point of view of Vinokurov, Sevostyanov and Prosvirin as proceeding from cumulative interpretation of Articles 2 and 45 of the Constitution of the Russian Federation protection of the rights and freedoms of the person and citizen is a direct obligation of the state which

has to guarantee the state protection of the rights and freedoms of the person and citizen in case of their violation. A priority and one of the main strategic tasks in the field of the state and public security in the Presidential decree of the Russian Federation of December 31, 2015 "About the Strategy of a homeland security of the Russian Federation" it is proclaimed, including, protection of basic rights and freedoms of the person and citizen (item 42). Therefore, state regulation of activities for lawful functioning of gamblings in the territory of Russia also has to be directed to protection of the rights and legitimate interests of citizens, to maintaining public morality and health of the population. Elements of crime, which reveal the objective party of the offence, described in para.1 Art. 171.2, are formulated by the legislator as certain alternative actions including:

- gambling organization and (or) conduction with use of the gaming equipment out of gambling zones;
- gambling organization and (or) conduction without Gaming License obtained in accordance with the established procedure in bookmaker offices and totalizators out of gambling zones;
- gambling organization and (or) conduction without a permission to implementation of gambling activities;
- gambling organization and (or) conduction with use of information and telecommunication networks, including Internet networks, or means of communication, including mobile communication, except for cases of interactive rates reception by gambling organizers of in bookmaker offices and (or) totalizators;
- systematic space granting for illegal gambling organization and (or) conduction.

The disposition of para.1 Art. 171.2 has blanket character; therefore, for exact understanding of such basic concepts as "gambling", "a gambling zone", "an interactive rate", "bookmaker office", "totalizator" and also about the legal nature of the documents which are granting permission for gambling activities, it is necessary to address to the Federal law No. 244-FZ. For example, gamblings, according to the legislator, represent the agreement on a prize which is concluded between two or several participants of such agreement or with the organizer of gambling on the rules established by the organizer. The main moment is the fact that any similar agreement is based on the risk realized by participants.

It is also specified in Federal law No. 244-FZ that there are three types of gambling institutions: casino, totalizator and bookmaker office. The main difference of the last that in office the player concludes a bet with office, and in the totalizator - between other participants. The casino represents a gambling institution in which gambling organization and (or) conduction with use of game tables or game tables and other gaming equipment provided by Federal law No. 244-FZ are carried out.

For a definition of the "information and telecommunication networks and their use" concept, it is necessary to refer to the standards of the Federal law of 27.07.2006 No.

149-FZ "About information, information technologies and information security". "The means of communication`s" definition is given in Art. 2 of the Federal law of 07.07.2003 No. 126-FZ "About communication", the "mobile communication" concept described in the Resolution of the Government of the Russian Federation of 09.12.2014 No. 1342 "About telephone communication services".

However, the definition of "organization and (or) conduction" concept is not given by the legislator. Gambling organization and conduction should be understood as a service activity for the conclusion of possible winning agreements with gambling participants, based on certain risks (Podroykina et al., 2017). The legislator holds the similar opinion.

The appeal resolution of the Moscow City Court of July 27, 2016 on the case No. 10-9792/2016 could be an example. The court of appeals has dismissed a criminal case against a citizen G. on a charge of the offence provided by para. 2 of Art. 171.2 due to the absence of essential elements of the crime in her actions. In a gambling institution the citizen G. had performed service functions, had no relation to the games conduction, and her monetary reward had no connection to the business income from gambling activities (The appeal resolution of the Moscow City Court, 2016). Canceling the first instance`s court verdict, the court of appeal in its decision has accurately named the "gambling organization and conduction" actions.

The federal law No. 227-FZ has novated para.1 of Art. 171.2, having set the criminal liability for granting space for illegal gambling promoting, at the same time, such granting has to be systematic. According to the note to the studied article, the systematicity means granting a space two and more times.

The definition of the space of Art. 171.2 of the Criminal Code is also not provided by legislator. The existing Criminal Code contains a concept of the space which sense is revealed in the note 3 to Art. 158 of the Criminal Code. So, "the space is understood as structures and constructions, irrespective of forms of ownership, intended for temporary placement of material items or people for the productive use or other office purposes". Considering the principle of legality, which bans the analogy of law and rights in the criminal legislation, we cannot apply above stated concept of space. It follows, that the legislator needs to make changes to the note 3, or to enter independent definition of a concept of space in relation to Art. 171.2 of the Criminal Code.

The objective aspect of crime characterizes formal essential crime elements, which, from the legislator`s point of view, is made in the form of the gambling organization and/or conducting not in compliance with the Federal law No. 244-FZ. In other words, the moment of the beginning of implementation of illegal activities for the gambling organization and/or conducting says that criminal action is completed, and the person is a subject to a criminal liability.

There are also some changes in sanctions described in para.1 of Art. 171.2 of the Criminal Code, in particular the legislator has set the lower penalty limit of three hundred thousand rubles, and the size of the salary or other income of the convict now is counted for the period from one to three years. We believe that the lower limit has been entered taking into account the character and degree of public danger of such illegal act.

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The qualified crime defines the increased danger of the gambling promoting in breach of the Federal law No. 244-FZ if the criminal actions described in the disposition of para.1 of the Art. 171.2 are made by the group of persons by previous concert or are accompanied by commercialization in a large size.

To consider a crime under Art 171.2 as especially qualified, the criminal actions have to be made by either organized group, or the person with use of the official position, or have to be accompanied by commercialization in especially large size. The legislator has stated the large and especially large size of income in the note to Art 171.2 according to which the sum of income is, in the first case, over one million five hundred thousand rubles, in the second - six million rubles.

The subject of the considered crime is general, that is the natural responsible person who has reached by the time of criminal action commission of age of 16 years. It is necessary to emphasize that only person whose activity consists in gambling organization and/or conducting are subject to responsibility. Participation in gambling itself without other essential elements of the crime cannot be recognized as penal action.

In practice the gaming has branched organizational structure, all roles and duties are distributed between participants for increase in efficiency of activity. The organizational structure of an illegal gambling institution determines irregular shape of complicity. Actually there is a legal division of roles when each of accomplices performs the operations various in character described by Article 33 of the Criminal Code of the Russian Federation (the perpetrator carries out the objective party of a crime, and other accomplices create for this purpose necessary conditions). Illegal acts of the accomplices entering into organizational structure of an illegal gambling institution are characterized by sensibleness and designedness that is confirmed by the nature of their activity.

As the objective party of the studied crime is determined by a number of actions, the person who directly is engaged in the gambling organization and/or conducting in defiance of the order established by Federal law No. 244-FZ will be considered as the direct perpetrator.

Avetisyan and Batoyev (2016) think that the direct perpetrator should be considered the person who organized carrying out gambings out of territories, specially allotted for this activity, or directing creation of an illegal gaming, and the person who created the organized group directed to implementation of the crime falling under action of Article 171.2 of the Criminal Code of the Russian Federation, or a criminal society (the criminal organization) or directing them (Part 3 of Article 33 of the Criminal Code of the Russian Federation) is equal (Avetisyan and Batoyev, 2016).

Illegal gambling institution most often represents well kept dark extensive network that predetermines presence of wide personnel structure and causes participation in criminal group of co-perpetrator. That is, as Avetisyan and Batoyev offer, persons who directly communicate with clients-players, carry out gambling conducting, consciously carrying out thereby the objective party of crime are co-perpetrator (for example, the croupier, operators, network administrators, programmers, collectors, security guards, etc.). They also suggest to carry the accountant, because they exercise financial supervision of activity of an illegal gambling institution, control the main cash flows, provides supply and client delivery. We consider that for establishment of whether the person is a co-perpetrator, it is necessary to establish the fact of a parteciple of the person to gambling organization and/or conducting and also whether the person had intention on commission of criminal illegal action.

The subjective party is characterized by the direct and indirect intentional guilt. In other words, the person realizes public danger of the gambling promoting, expects an opportunity or inevitability of dangerous consequences and wishes such approach (direct) or consciously allows or indifferent to such consequences (indirect). The motive and the purpose are not obligatory characteristics of the subjective party, and therefore do not influence qualification of deeds.

3. Results

Taking into account intensively increasing character and degree of public danger of the illegal gambling promoting, it could be said that the legislator has legitimately expanded the list of criminal actions, which fall under the studied article of the Criminal Code. The penalty`s lower limit definition has become a powerful change in the article. According to our opinion, it is caused by the realization of the principle of justice at assignment of punishment. However, there are shortcomings in innovations, in particular, introduction of the concept "granting space" without due interpretation can create problems for the law enforcement official during a qualification of this crime.

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