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Racketeering

Introduction

A racket is an illegal business, usually run as part of organized crime. Engaging in a racket is called racketeering.

There are several forms of racket. The best-known is the protection racket, in which criminals demand money from businesses in exchange for the service of "protection" against crimes that the racketeers themselves instigate if unpaid (see extortion). The second example is the numbers racket, a form of illegal lottery.

Traditionally, the word racket is used to describe a business (or syndicate) that is based on the example of the protection racket and indicates a belief that it is engaged in the sale of a solution to a problem that the institution itself creates or perpetuates, with the specific intent to engender continual patronage. One example is computer spyware that pretends to be detecting infections and offers to download a cleaning utility for a fee, being itself distributed by the maker of the cleaning utility.

In the example of a protection racket, the racketeer informs a store-owner that a substantial monthly fee will be required in exchange for protection. The concurrent "protection" provided takes the form of the absence of damage inflicted upon the store or its employees by the racket itself.

The term "racketeering" was coined by the Employers' Association of Chicago in June 1927 in a statement about the influence of organized crime in the Teamsters union.

Racketeering in Criminal Code of Georgia

On June 24, 2004 the Article 17^1 related to racketeering, racketeering group and racketeer was added to the general part of the Criminal Code of Georgia, and on July 25, 2006 the Article 224^1 – participating in the activities of the racketeering group - was added to the private part of the Criminal Code of Georgia.

In general, racketeering means extortion, but our legislator does not imply only extortion under this word.

Public order and security is an object of criminal defense. The objective element of the crime is revealed in action and the emergence of grave outcome is not necessary in order to consider the crime completed. Thus, there is a formal composition. Namely, this action is governing the activities of the

racketeering group independently or together with other person(s), so that a person governs the activities of the racketeering group independently or together with other person (s). In order to understand the essence of the racketeering group, first we need to elucidate the notion of racketeering itself. According to the Article 17^1 of the Criminal Code of Georgia, racketeering is an organized and permanent activities carried out systematically (at least three times) in order to get an income (for instance – money) or any other property benefits (for example – free travel), which is connected with committing intentional crime, if this crime was committed at least two times during five calendar years.

As we can see, the activity of the racketeer should be not only permanent, but organized as well (definition of the organized group is given in the Article 27 §3 of the Criminal Code of Georgia). So, committing misappropriation permanently and in an organized way at least two times during five calendar years, as well as bribe-taking under the same conditions and etc shall be considered as racketeering. I.e. commission of any kind of, even forcible, crime in order to get a benefit under the circumstances envisaged by the Article 17^1 §1 of the Criminal Code of Georgia, is considered to be racketeering.

As for racketeering group, legal entity, as well as any union of physical or/and legal persons, being an organized group by its form, connected to racketeering with their activities shall be considered as such.

Following sing of objective element of the crime under consideration is any other kind of participation in the activities of racketeering group, which means supporting (not governing) the activities of the racketeering group, by concealment or committing any intentional crime in order to get an income for instance.

Illegal settlement of disputes between racketeering groups or a racketeering group and other person means, that the racketeering group settles such disputes willfully, in absence of proper legal grounds, i.e. plays the role of a judge. Such disputes are property-related as a rule. The above mentioned format – "Illegal settlement of disputes" – is one of the characteristic features of criminal underworld. Although while participating in settling the disputes racketeer does not play a role of unilateral judge (in contrast to thieve in law), he is the participator of the process together with other racketeer.

In case of existence of dispute between racketeering groups at least two racketeering groups should be involved in the dispute, any other person is a physical person (14 years old, responsible).

It is very interesting, that according to Georgian scientist-lawyers "disputes between racketeering group should be differentiated from criminal inquiry (Article 223^1). In case of criminal inquiry the member of criminal underworld settles the dispute emerged between two or more persons and this inquiry should be accompanied by threatening, coercion, intimidation and other illegal actions (for

instance: mockery and degrade), in contrast to racketeering inquiry. Besides, in case of criminal inquiry the dispute is settled by the member of criminal underworld acting and settling the disputes according to "criminal laws", while racketeering disputes does not fall under the jurisdiction of any law established beforehand" [1, 320]. So that racketeering inquiry may be even more severe, to which I cannot agree, as settlement of disputes in this case carries the same character and components and does not differ from the moment whether it was apparent or under impact of other persons (threatening, coercion, intimidation and etc), if the process was apparent, visible format of "friendly conversation". The point is that the statute of "thief in law", the fact of participation in inquiry by him and "necessity of decision" according to the "criminal laws" includes failure to comply with them, threatening, coercion, and intimidation.

Herewith, it is noteworthy that in practice in terms of material law the goal, scope of regulation of counter-racketeering provision is still obscure, as it became problematic while demarcating it from other forms of crime. Due to the abovementioned reasons the new counter-racketeering norms are practically stagnant. According to the information of the Unit of Statistics and Information of the Supreme Court of Georgia, criminal cases related to racketeering have not been examined in court proceedings: "In 2005-2007 cases under Article 17^1 and 224^1 of the Criminal Code of Georgia has not been submitted".

Abovementioned norm is special, criminalized form of organized group. According to Georgian legislation, there is no general norm directed against organized crime. Abovementioned special norms regulate only some concrete kinds of organized crime, but outside these norms there is a large number of criminal actions without regulations.

The Article 224^1 of the law of July 15, 2006 may be considered as a positive step forward in counter-racketeering norms, as due to the aforesaid innovation the norm was equipped with sanction and formed an independent type of crime in private part of the criminal law, but it is still uncertain what is considered as racketeering activities. Assuming that the legislator considers the racketeering as one of the types of extortion, existence of two components of extortion – general and special – is meaningless when we cannot distinct them from one another.

§1961 of the Law of "Rico" establishes fairly extensive list of offenses that are considered as "racketeering activity". For instance, violation of the Law of "Hobs", money laundering, murder, hostage-taking, bribe-taking, international transportation of stolen objects, illegal obtaining of credit and etc are considered as the abovementioned activities" [2,110].

According to the Article 17^1 and 224^1 of the Criminal Code of Georgia and the Special Law on Organized Crime and Racketeering the main sing of the racketeering is organized criminal activity, and the high number of crime is the form of expression of aforesaid organization. "As it is understood from the content of the Article 171 of the Criminal Code of Georgia, racketeering is standing on the

boundary of the institutes of high number of crime and organized crime. Namely, according to the definition of racketeering, offender should act permanently and in an organized way."

The institute of "criminal agreement" is an effective instrument in fighting against organized crimes, especially its upper echelons. It gives an opportunity to make the heads of organized groups subject to criminal liability even in cases when they have not committed any "apparent action"; it is enough to prove the fact that they are the member of "agreement". Authors of American Law of "Rico", based on the statute of "criminal agreement" and provisions described in them, developed new conception of "organized agreement". One of the reasons to effectiveness of the Law of "Rico" in connection to fight against organized crimes is the conception of "organized agreement".

"Organized agreement" became an important instrument in fighting against the leaders of organized crimes. Despite the fact that they were governing the criminal groups, they violated the law in person very rarely. "Rico" gave the formulation to the provisions of "criminal agreement" in such way that it became possible to make a subject to criminal liability the person who in fact governed the organized crimes.

According to the opinion of one part of Georgian scientists, "in order to fight against organized crime effectively, the Article 27 of the Criminal Code of Georgia should envisage the notion of criminal organization (union) and while developing the aforesaid notion we should build on the main provision of "organized agreement" of the Law of "Rico", especially in connection with the issues related to determining the responsibility, as the scopes of responsibility of the Law of "Rico" became the basis for fair punishment of the leader of organized crimes" [3,10].

According to the Article 27 §3 of the Criminal Code of Georgia and the note to this Article the notion of organized crime includes organized group as well as criminal organization. Simply saying, Georgian legislator combined these two different phenomena in one notion.

Conclusion

In the end, we can conclude that counter-racketeering provisions did not fit effectively in the system of Criminal Code of Georgia and existing legal institutions. Their scope of regulations is uncertain. As the present analysis shows, critical remarks expressed against counter-racketeering provisions of USA has not been taken into consideration in Georgia and the progressive conceptions of the Law of "Rico" has not been transmitted properly. In the process of reception of legal institution it is most important to take into consideration the content and not the form. Unfortunately our legislator reflected in our counter-racketeering provision the form and not the content of "Rico". Due to all abovementioned, counter-racketeering provisions are practically stagnant nowadays and there is a danger for them to turn into dead composition.

References

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