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Criminal law and criminological characteristics of a criminal group as a special form of complicity in a crime of the article

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Abstract

Relevance. Criminal group as a form of complicity improves and becomes more complicated in its structure every year through various means of communication. The relevance of the study lies in the fact that over time, a periodic review of the norms of legislation is necessary for compliance with the realities and crimes of our time.

Purpose. The purpose of this research is, firstly, a general analysis of the criminal procedural features of criminal groups in order to determine the compliance of the regulations with the realities of the modern distribution of criminal groups, and secondly, the study of criminological features of a criminal group, the definition of ways to prevent and combat criminal groups.

Methodology. The paper uses the method of analysis and synthesis, descriptive, statistical analysis, induction and deduction, comparison, formal legal, and system analysis methods. Aspect and intersectoral approaches were also applied.

Results. The statistics of crimes committed by criminal groups involving minors, as well as the statistics of criminal groups (crimes under Articles 257-259 and 262-268 of the Criminal Code of the Republic of Kazakhstan) for the period from February 2020 to February 2023 are considered. A classification of psychological conflicts within a criminal group is proposed. Suggestions are made to improve the investigation of crimes with this form of complicity, and the stages of prevention and detection of such are presented. The norms of the Criminal Procedure Code of the Republic of Kazakhstan

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have been studied for the features of such a form of complicity as a criminal group. A cooperation agreement has been considered as one of the ways to identify a criminal group.

Conclusions. Thus, the study highlighted and analysed the criminal law and criminological features of several types of criminal groups and provided general social and criminal law recommendations for preventing this type of crime.

Keywords: criminal procedural features; organized group; criminal organization; organizer's conflict; cooperation agreement.

Introduction

Crime evolves and takes on new forms. Practitioners need the latest insights not only on investigation, but also on the prevention of gang crime. Since criminal communities are developing, it is necessary to periodically review the norms and procedures for their compliance with the current state of affairs and statistics. At the same time, legislation and practice must comply with modern trends in the fight against organized crime in the world. The relevance lies in the need to update criminological data within the framework of criminal psychology, which makes adjustments to the characteristics of criminal groups. The use of psychology, when working with various forms of complicity, leads to the designation of new methods of combating organized crime. Criminal groups are a complex form of complicity with a high level of public danger. It becomes more difficult to prevent the creation of organized crime at the initial stages, and this type of crime attracts minors to its members, which increases the degree of harm to public relations.

The topic was investigated by R. K. Tleukhan [1]. The criminal-legal and criminological aspects of a criminal group, namely, an extremist group, are considered. The concept of "extremism" is broader than the concept of "terrorism", since terrorism arises as a consequence of the development of extremism. The concept of extremism is given as a system of views, values and assessments, which refer to extremes: radicalism, intolerance. The types of extremist groups are singled out according to the purpose of creation: rational (religious, ecological, ideological), ineffective (youth protest movements, psychopathic). It is noted that extremism destroys political institutions, and global geopolitical movements in the world increase the possibility of danger in the field of national security. The paper indicates that the ideas of radicalism and extremism, especially religious ones, are strong in the Kazakh society.

The paper of Z.B. Akshataeva and T.N. Abdullaev [2] defines the main types of complicity. The responsibility of the accomplices and the characteristics of each of the participants are considered. A criminal group is a social group, because it consists of people and has a social structure. Simple (2 people) and complex (more than 2 people) groups are considered. In small organized groups, it is possible to mix the role of organizer and performer, when the leader sometimes takes part in certain crimes. But in large groups, more often the leader remains only the ruling elite, while the quality of the group's work is enhanced by the number of suitable participants and roles.

G.Y. Zhandykeeva and A.D. Baisalov [3] studied the criminological characteristics of participants in organized crime. Their paper highlights the typology of participants, the personality of the organizer as a leader and what influence this person has on the organization in general. Persons who constantly commit crimes as part of a group

are socially dangerous to an increased degree. They have certain personality traits (negative), with which they can influence members of society, involving them in crime. The leader of the criminal community, spreads the negative idea of life (impunity, illegal wealth) for minors. The paper notes that the criminal behavior of a person is influenced by psychophysiology, physical health, type of nervous system, and even physique.

A.M. Abyllaev [4] explored the topic of the actions of criminal groups on illegal arms trafficking. The analysis of the practice of other countries in the fight against organized crime in the field of illegal arms trafficking was carried out. The method of preventing illicit trafficking is supposed to be the legalization of weapons and the reduction of demand on the black market. It is noted that the illegal circulation of weapons is an indicator of the assessment of the security of the state. And arms trafficking itself destroys social structures. The legal circulation of weapons ensures security in society and the stabilization of the political situation.

N.Z. Sarsenbekov [5] explored the topic within the framework of organized transnational crime on money laundering. He identified and proposed tactical, psychological and organizational approaches that increase the effectiveness of investigative actions, more typical for the category of criminal cases under consideration. In their monograph, M.P. Vodko and O.O. Podobniy [6] define the main types and characteristics of organized crime, as well as methods of their prevention. It is emphasized that updating annual detailed statistics on organized crime is simply necessary in order to improve the quality and effectiveness of legislation.

Each paper contributes to the study of the characteristics of criminal groups. However, the vast majority of them focuses on certain aspects of the topic, while in general the phenomenon of a criminal group with its characteristics has not been studied a single paper. The research was conducted in order to identify shortcomings in the legislation and draw attention to psychological and criminological features in order to prevent organized crime, as well as improve methods of combating it. The intermediate goal is to provide recommendations for improving the efficiency of the work of investigators of pre-trial investigation bodies as well as operational work.

Materials and Methods

When writing this paper, general scientific (method of analysis and synthesis, as well as descriptive, induction and deduction, comparison methods) and special methods (statistical analysis and formal legal methods, as well as method of system analysis) were used. An intersectoral approach has also been applied. With the help of general scientific methods, the theoretical part of the paper was formed and the existing regulatory documents on the topic

were investigated. Using special scientific methods, individual results of the paper were achieved through approaches to research as well – options for achieving the goal and proposals for solving the problem were proposed. Using the method of analysis, the criminological characteristics of such a phenomenon as a “criminal group” were outlined. Also, general criminal-legal and criminal-procedural signs were presented using this method. The legislation of the Republic of Kazakhstan and the countries of the European Union were analysed. After that, the peculiarities of this topic and the ideas of various studies were derived using the synthesis method.

The method of system analysis enabled investigating the constituent parts of such a concept as a “criminal group”, which are inextricably linked. “Criminal group” is a system of elements and it is impossible to consider only its separate component without connection with others, because in this case, the concept loses its inner meaning. Using the method of system analysis, a study was made of the phenomenon of criminal organizations as a plurality of elements, of which it consists, namely, different offenses, different roles of participants, conflicts between them, the personality of an organizer of a criminal group. With the method of statistical analysis, statistics on the topic of the paper were investigated and a conclusion was drawn from their statistical information in connection with other characteristics. Using this method, it is possible to determine the level of a particular phenomenon in society and its progress or regression over time. The participants of a criminal group as an element, its characteristic features and its influence on the group itself were investigated using the method of induction. The criminal organizations as a whole were considered by the method of deduction and both separate types and individual characteristics of such types were singled out.

The comparison method was used to study the legislation of European countries and evaluate their approach to complicity and organized crime. With the help of the comparison method, the opinions of selected scientists were compared, and the positive aspects as well as the dominant opinions in the studies were highlighted. Thanks to the formal legal method, the internal content and characteristics of organized crime as a social phenomenon were assessed, after which it was compared whether its formal consolidation in legislation corresponds to such content. It was assessed to what extent the legislation corresponds to reality and the requirements of society to combat this type of crime. An interdisciplinary approach was chosen to study a topic on the verge between criminal law, criminology and psychology, since these spheres are closely intertwined in practice. It enabled identifying new, previously unexplored characteristics. This research draws on the papers of scholars in criminal law, criminology, and psychology. The opinions of scientists that were taken as a basis include the papers of Kazakh and foreign scientists in the previously specified areas, as well as comprehensive research and the papers of scientists from Germany, Great Britain, the USA, Austria and Portugal on the relevant topic. The regulatory framework of the research is the Criminal Code of the Republic of Kazakhstan No. 226-V [7], Criminal Procedure Code of the Republic of Kazakhstan No. 231-V [8], and criminal law regulations of several foreign countries.

Results

Speaking about the criminal-legal characteristics, first of all, one should turn to the legislation, namely the Criminal Code of the Republic of Kazakhstan No. 226-V [7]. Article 27 of the Criminal Code of the Republic of Kazakhstan defines complicity as the intentional joint participation of two or more persons in the commission of a criminal offense. The regulation states that 2 people are enough for complicity. However, the United Nations Organization (UN) in the relevant convention provides for at least 3 people (a leader and two people). The basis for this is transnational organized crime. Its features are set out in the United Nations Convention against Transnational Organized Crime [9].

An analysis of the concept of an organized group accepted in international law indicates that it contains the following mandatory system functions: size of the group, consisting of 3 or more people, stability of mutual communication, coordination of actions, one or more crimes recognized in accordance with the United Nations Convention [9] as serious or particularly serious crimes, presence of intent to commit several crimes, direct or indirect financial or other material gain, presence of a goal. From the understanding of Article 31 of the Criminal Code of the Republic of Kazakhstan [7], the following types of complicity can be distinguished: a simple group of persons without prior agreement, a group of persons by prior agreement, and a criminal group. Such groups can also be described from a criminological viewpoint.

The simplest group is a group united for a short time, with the aim of committing one or two crimes and without the purpose of developing a group for further joint criminal activities. As a rule, such groups act unpredictably and have no clear plan. The leader may not be singled out because the decision is made jointly by the group and the crime is committed by the group together. Minors, for whom it is difficult to carry out their plans on their own, tend to unite in such groups. From a psychological viewpoint, such associations of minors around criminal activities are an attempt to socialize with their own kind because of the impossibility of socialization in the life of society.

The next type is a criminal group created by prior conspiracy, implying a previously thought-out idea and purpose of joint activity similar to criminal “companies”. The members of such a group are united, often stable in the composition of the participants, and such a composition may not change for a long time. The presence of a leader is not necessary, but there are certain central persons. These are, first of all, experienced criminals, authorities, as well as “honourable persons” in their circle. They are a certain core of a group, although there is no separate authoritarian leader. It is the criminal idea and purely criminal methods of its implementation that are expressed in such groups, which means working “according to the concepts”, without cooperation with the authorities, although there are such. Such groups can be called traditional gangs, in which ties to state authorities are condemned. The participants predominantly include adults or mature persons.

The next type can be identified as a criminal group, as organized crime, which has its own subspecies. Part 3 of

Article 31 of the Criminal Code of the Republic of Kazakhstan [7] defines that a crime is considered committed by a criminal group if it is committed: “by an organized group, a criminal organization, a criminal community, a transnational organized group, a transnational criminal organization, a transnational criminal community, a terrorist group, an extremist group, a gang or an illegal paramilitary group”. As seen from Article 31, there are 10 forms of criminal groups and each of them is defined in Article 3. In accordance with Parts 4 and 5 of Article 31, participants in a group have roles, which in general distinguishes a criminal group from a crime committed by a group of persons or by a group of persons by prior arrangement. The commission of crimes by a criminal group described in the articles of the special part of the Criminal Code of the Republic of Kazakhstan [7] is both a qualifying element of individual crimes and an independent element in the creation, leadership and participation in a criminal group. Consequently, a criminal group is the most socially dangerous form of complicity by prior agreement.

A criminal group, on objective grounds, is a special form of complicity, in contrast to the commission of a crime by a group of persons, where all participants commit one crime without division of roles and, in the case of a simple group, without prior conspiracy, while a criminal group has a multi-layered structure with important and different roles of each of the participants. Article 31 of the Criminal Code of the Republic of Kazakhstan [7] provides for at least 2 roles: organizer and participant. The organizer of a criminal group or the one who leads it is also responsible for the creation of such a group, its leadership and for the crimes committed by the group, provided that they were covered by the intent of an organizer. Accordingly, other members of a criminal group are responsible for participation in such a group and for a crime committed by a member, preparation for a crime.

The Criminal Code of the Republic of Kazakhstan [7] provides for separate elements of crimes in Articles 257-259 and 262-268 or organizing, managing and participating in criminal groups of each type. Thus, the legislator rightly distinguishes from other crimes – punishment for complicity as a separate special offence. Under these articles, responsibility already arises for the organization of a criminal group, even if such a group has not yet committed another corpus delicti. For example, legislation of some countries has no concept of “complicity”. There is no such concept in the Criminal Code of Austria [10] or German Criminal Code [11]. In the Danish Criminal Code [12] complicity is facilitating the commission of a crime by advice, action or instigation. The Italian Criminal Code [13] provides for the possibility of complicity in a crime through negligence.

The concept of responsibility also varies in different countries. In Germany, accomplices bear the same responsibility as a performer, which is due to the lack of a definition of the concept of “complicity”. However, the accomplice, unlike the performer, is provided with a lesser penalty [11]. The Criminal Code of Austria [10] provides that liability should be differentiated depending on the boundaries of the guilt of each of the group. The Italian Criminal Code [13] provides for complicity as an aggravating circumstance, and also draws attention to the

guilt of an instigator. For example, the measure of responsibility is increased if a person persuaded a minor to commit a crime, or a person had mental or physical defects. And if an insane person is among the accomplices, the instigator bears increased responsibility, while the minors involved by this person can avoid responsibility through age, while the insane persons are not subject to prosecution.

Forms of complicity, such as “organized group” and “criminal organization”, are distinguished separately not only in the Criminal Code of the Republic of Kazakhstan [7], but also in the Criminal Code of Ukraine [14], Criminal Code of the Republic of Moldova [15]. But differences still exist. Article 28 of the Criminal Code of Ukraine [14] defines the concept of an organized group as a form of complicity of three or more people who previously organized themselves into a stable association to commit this and other criminal offenses, having a single plan and distribution of functions. A criminal organization is a hierarchical association of five or more persons, the members or structural parts of which, by prior agreement, organized for joint activities with the aim of directly committing grave or especially grave crimes by members of this organization or leadership or coordination of the criminally illegal activities of other persons or ensuring the functioning as the criminal organization itself and other criminal groups. Articles 46 and 47 of the Criminal Code of the Republic of Moldova [15] define the concepts of an organized group and a criminal organization. An organized criminal group, according to the legislation of Moldova, is a stable group of persons previously organized with the aim of committing one or more offences, while a criminal organization is an association of criminal groups into a stable community, with a division of roles and functions in order to influence the economic and other activities of individuals and legal entities or control such activities in other forms to obtain benefits and realize economic, financial or political interests.

There is a general approach to distinguishing between the concepts of an organized group and a criminal organization, but nevertheless, the Criminal Code of Ukraine [14] draws attention to the number of people in the definition. So, this is 3 or more people in case of an organized group, and 5 or more for a criminal organization, whereas the number is not mentioned in the Criminal Code of the Republic of Moldova [15] and the Criminal Code of the Republic of Kazakhstan [7], except in the concept of complicity (2 or more people). In these countries, approaches to criminal liability for organized crime are similar. They provide for responsibility for the creation, management and criminal group of a separate crime (Article 255 of the Criminal Code of Ukraine [14], Article 284 of the Criminal Code of the Republic of Moldova [15]). For example, Title 18 of the US Code Crimes and Criminal procedure specifies different types of criminal communities: “criminal enterprises of a financial nature” (paragraph 225), “criminal gangs” (paragraph 521), “criminal (including racketeering) enterprises” (paragraphs 1952, 1959 and 1961), “terrorist organizations” (paragraph 2339) [16]. The difference lies in the purpose, the composition of each type, the amounts of illegal profits. The US Federal Criminal Code makes conspiracy a crime.

As a result of the analysis of foreign legislation, it is seen that the institution of complicity in the Criminal Code of the Republic of Kazakhstan is fixed successfully and in accordance with general trends, summarizing international experience. Since a criminal group is a dangerous and multifaceted phenomenon, both the causes of their occurrence and criminological features should be considered. Complex forms of complicity have a special set of determinants and a non-standard internal psychological structure of the participants. That is why the investigation and prevention of crimes committed by a criminal group has a large number of nuances and requires constant updating, the development of new methods, the involvement of psychologists. It is necessary for the investigation bodies to have criminological and psychological information about criminal groups, since the pre-trial investigation and operational work become more efficient and effective in such case.

The factor influencing the formation of a criminal group is that not all crimes can be committed independently. Besides, some crimes aimed at obtaining large amounts of money must be committed in complicity, since it is impossible to do it on their own. Factors contributing to the formation of criminal groups include common criminal interests, norms of behavior, beliefs, as well as general distortions in the legal consciousness. Both the stability of a group and its effectiveness depend on the commonality of these factors. With such an approach and understanding of psychological processes and determinants, investigators will be able to infiltrate a criminal group or destroy it from the inside. The activity of a criminal group is based on the psychology of the entire group and each of its members. In the middle of a group, not only a functional structure is formed, but also a psychological one. And in this psychological structure, one can single out the descending and ascending perception of each other by the participants, respectively, from the bottom up. The “lower” participants in a certain way transfer to the “tops” responsibility for areas, in which they are not strong, which include mental activity, ambition, knowledge and courage. When the “tops” (leaders, managers, organizers) in relation to the top down perceive

the participants as a “tool” in their hands, as people with specific functions, roles and nothing more (killer, security guard, carrier).

However, the functionality, roles and characteristics of a group also depend on the types of crimes they commit. Therefore, due to the constant evolution of corrupt and economic criminal groups, the psychological component may be little noticeable, because the participants act solely according to their functions and for their own selfish purposes, but without emotional or any other relationship between members, “work” only. But even in such cases, there is a high probability of further unification of group members not only according to the functions, but also through personal qualities and relationships between them, and the longer such a group exists, the greater the likelihood. In addition, with the passage of time and the duration of joint work, the group tends to closer unity or, conversely, to separation. The variant of group separation always exists, and such separation is possible at the expense of even one participant who doubts this activity.

In paragraph 24 of Article 3, and Part 3 of Article 31, the legislator defines the concept of a criminal group and several categories of criminal groups that were mentioned above. Article 34, paragraph 36 of the Criminal Code of the Republic of Kazakhstan [7] provides that an organized group is a stable group of two or more persons who have previously united in order to commit one or more criminal offenses. Compared to the types mentioned above, an organized group is more dangerous both in terms of the severity of crimes, scale and socially. An organized group has a complex multi-level structure and puts a leader at the top of the hierarchy pyramid, and then distribute roles and functions. Based on statistics for 2020-2023, the number of crimes under Article 262 (creation and management of an organized group, criminal organization, as well as participation in them) significantly exceeds all other criminal groups. Let’s consider the statistics for 2020-2023 on the articles of the special part of the Criminal Code of the Republic of Kazakhstan, Section 10, on the creation, organization and participation in various types of criminal groups, namely, Articles 257-259 and 262-268 (Figure 1).

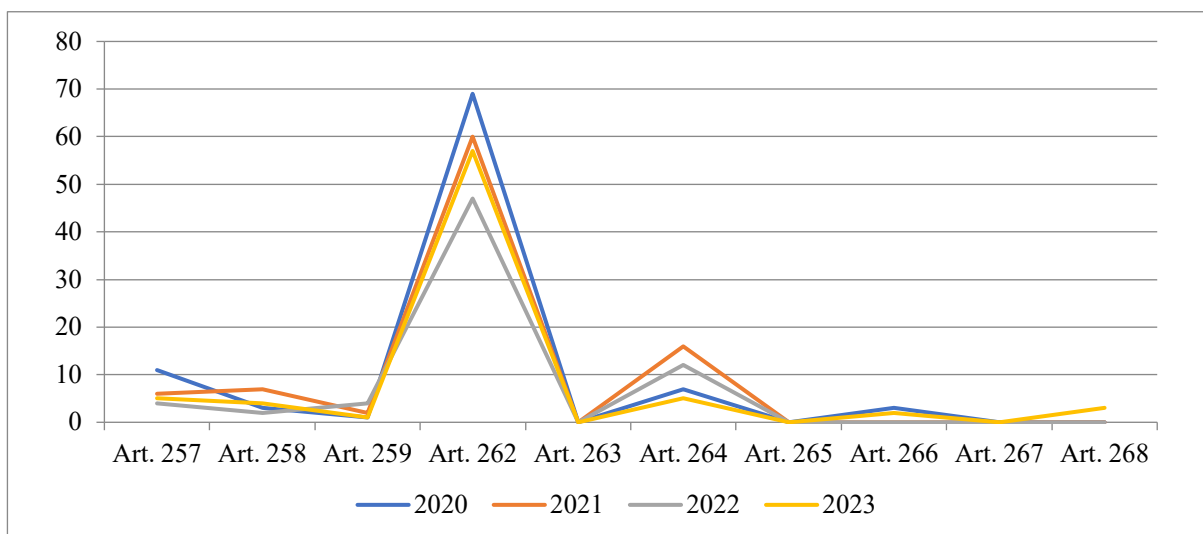


Figure 1. Number of offenses, the criminal cases of which were pending in the reporting period (data as of February 2020 to February 2023)

Note: Art. 257 – creation, management of a terrorist group and participation in its activities; Art. 258 – financing of terrorist or extremist activities and other complicity in terrorism or extremism; Art. 259 – recruitment or training or arming of persons for the purpose of organizing terrorist or extremist activities; Art. 262 – creation and management of an organized group, criminal organization, as well as participation in them; Art. 263 – creation and management of a criminal community, as well as participation in it; Art. 265 – creation and management of a transnational criminal community, as well as participation in it; Art. 266 – financing the activities of a criminal group, as well as storage, distribution of property, development of financing channels; Art. 267 – organization of an illegal paramilitary formation; Art. 268 – banditry.

Source: Portal of Legal Statistics and Special Accounts Authorities [17].

Thus, based on statistics, the most common type of criminal organizations faced by society and government agencies is an organized group and a criminal organization. Therefore, they should be considered in more detail. The following signs of an organized group can be identified: a pronounced organizational and functional structure, differentiation of roles, stability of participants and the group itself, discipline and a high level of cohesion, a high level of harm to social relations.

An organized group also has its own psychological characteristics, namely, resilience distinguishes it from simpler criminal groups by prior conspiracy. An organized group is closed, with difficult access to new members, stable, isolated and independent, which helps its long-term preservation. The psychological and emotional interests of the participants are similar, which helps to form unity and faith. Such a group is characterized by a close connection, constant contact of members, maintaining relationships with each other. Actions in an organized group, as a rule, are coordinated between the participants, thought out schematically, reliable in terms of methods, methods of transmitting information, communications, reliable secrecy, constant monitoring. Participants who, for one reason or another, refuse to participate or perform a task are subjected to violence and coercion. In such a group, there are constant methods of committing crimes and ways to implement them. In addition, the long duration of activity in the “criminal market”.

An organized crime group has a psychological structure that is more complex and is formed from the personal relationships of members, vertical and horizontal, as discussed above. A type of organized criminal group is a criminal organization. Paragraph 25 of Article 3 of the Criminal Code of the Republic of Kazakhstan [7] provides that a criminal organization is an organized group, the members of which are divided into organizational, functional and (or) territorially separate groups (structural units). And an even more complex form is the criminal community. Paragraph 23 of Article 3 provides that a criminal community is an association of two or more criminal organizations that have entered into a conspiracy to jointly commit one or more criminal offenses, as well as creating conditions for the independent commission of one or more criminal offenses by any of these criminal organizations.

A criminal organization can be called a prototype of organized crime in the closest sense of an organized group, the roles of participants and organizers. The very same criminal organization is an integral part of the criminal

community. Thus, the legislator determines in accordance with the criminal law viewpoint. However, criminological science explores the determinants of such a phenomenon as a criminal organization. It can be distinguished that the following main features that determine the commission of mostly grave and especially grave crimes, the criminal professionalism of the entire group and participants. The main sphere is illegal business, corruption, penetration into the most “monetary” spheres of state and public life, bribery or participation in groups of employees of state authorities at various levels. The criminal group has a set of methods and techniques for committing crimes, and there are certain internal rules and laws. And, of course, the roles are assigned. From a criminological viewpoint, a criminal organization has a high level of self-organization, reliable methods of committing crimes, cover-up and concealment of a crime. In a criminal organization, there are “business” relations between the participants, or the presence of such “business” contacts in state bodies and law enforcement structures. For them, a certain type of crime implemented by them is a business.

Criminal organizations are distinguished by their action within the territory into regional or local (operating within a settlement, district), regional (covering the territory of a region or several regions), state and international or transnational. In order to obtain income from illegal activities, united criminal groups penetrate into the sphere of business, the state and society in order to establish their own rules and monopolies, using all possible ways to penetrate the authorities, the law enforcement system, as well as public institutions. And at the same time, in order to have a wider impact on a larger territory or on more areas of public life, or on the commission of a certain crime and on a large scale, criminal organizations unite in a criminal community. Further, in such criminal organizations, the main role is occupied by their role structure and criminal characteristics of the key roles. Since a characteristic feature of a criminal organization is a leader, it is worth considering criminological and psychological portrait of a leader in more detail. Article 28 of the criminal law indicates that the organizer, instigator and accomplice are recognized as accomplices of a criminal offense along with the perpetrator. Thus, it is possible to single out such members of a criminal group: organizer, performer, instigator and accomplice. This type of organized crime has a certain professional orientation, a “subject” in which they operate.

A criminal organization that has a high level of self-government and regulation, primarily through common

value orientations, psychology and internal rules of the hierarchy, as well as unspoken discipline. Members of a criminal organization are usually professional criminals, but not necessarily. Professional criminals also work independently, however, to be a member of an organization, it is important to have a certain set of qualities and abilities, which is different for each role. For example, the organizer of a criminal group must possess the following qualities: authority of the participants, experience in the affairs of the group, i.e., have the appropriate experience, be self-confident, tough and authoritarian. An organizer or a leader of a group must have the mental capacity, physical strength and entrepreneurial abilities. This person should be decisive and able to quickly make the right and necessary decisions for the whole group and have high material motivation [18]. The head, leader, chief has certain functions: organization, strategic work, maintaining discipline and observing the rules of the organization, information support and, in fact, management itself. This person sets goals, tasks for participants, distributes responsibilities, processes all information coming from sources, evaluates and predicts. The leader also establishes the scope of a crime and actions in its commission. At the same time, an important function of the leader is to resolve conflicts and punish the guilty. Leaders can be both inspiring and purely organizers, or a combination of these two types [19].

It is rather difficult for investigators to find the leader of a criminal organization; this requires various techniques, methods, as well as operational decisions. However, in the investigation, it is important to apply the peculiarities of the psychology of the group and participants, to find the internal conflict and the “weak link”. During the investigation, it is necessary to collect evidence that indicates such a conflict or contradiction with the leader. With such knowledge, it is possible to effectively develop investigation tactics. Understanding the criminological and psychological characteristics of a criminal group and its leader helps investigators and operatives to expose them. Conflicts within a group, between members of a group make it weaker and reveal a group, and therefore an investigator must be able to find a conflict issue and use it. Conflicts within a group arise for various reasons, for example, due to a mismatch between the expectations and ideas of individual members of a group and the results of a group as a whole. Interests and needs are affected, and hence normal interaction within a group. Conflicts affect the moral interests of specific members or several at once. Due to the fact that conflict situations are different and for many reasons, the following classification of group conflicts is proposed on the basis of the scope of their occurrence. The conflict of several levels is separated (Table 1).

Table 1. Types of conflicts between criminal groups

Level	Name	Description
1	Participant identity conflict	In the process of participating in a group, a person changes or reconsiders their guidelines. There is a fear of leaving, a fear of being killed and detained. Sometimes there is remorse. Such a participant can no longer be a link in the chain and gradually wants to get out of it, which means this person has the motivation to cooperate with the investigating authorities. Such participants can be seen at the level of perpetrators or accomplices. During their interrogation one should put pressure on a personal conflict, identify exactly what it manifested itself in and contribute to this.
2	Leader conflict	Not everyone is able psychologically and morally to withstand the role of the leader of a criminal organization. Hard work and increased responsibility lead them to an identity crisis that affects the entire group as a whole. Or, on the contrary, excessive self-confidence and unconfirmed determination lead the group to the fact that they often take risks and almost fall into the hands of law enforcement officers. In both cases, there is a risk for the group and its crisis.
3	Conflicts within a group (between members, between leader and members)	Conflicts against the background of the division of profits and functions of participants, personal conflicts of participants, dissatisfaction of participants with leaders, the possibility of meeting participants to remove and replace the leader.
4	Conflicts within the “controlling elite”	Not always there is only one leader in a group. There may be a controlling core of a group or advisers close to a leader, who have the opportunity to propose certain solutions. Conflicts between them can arise both for personal reasons and for the work of a group, the division of values and powers among themselves.
5	Conflicts between different groups	They occur for the territory of their action, for the division of criminal spheres or spheres of influence. After the conflict between the groups, if it is not possible to reach an “agreement”, there is a considerable crisis in a certain criminal area. After such a conflict, there is a subtle process of redistribution of roles and sometimes a change of leaders, there is a losing side and a winner. By working with the losing side, a lot of information can be obtained, given the conflict of groups and the desire for the return of power.

The crimes committed by the group bring specifics to the investigation, as they have their own mechanisms and characteristics. The illegal activities of a criminal group

combine the individual characteristics, knowledge, skills and professions of the participants. That is why the criminological and psychological specificity of the

investigation of such crimes is important for the investigation, because such crimes are usually serious and not isolated, therefore the speed of exposing a group determines both the severity of the consequences and the number of further crimes. In addition, understanding the typology and psychology of criminal groups helps to prevent this type of crime with the help of special criminological means. Systemic counteraction is necessary

with the help of the state and its institutions to eliminate the conditions and causes of group crime or to prevent the commission of crimes already at their initial stages [20]. General social and criminal law measures to prevent crime are also highly effective. Combating crime and preventing crime is the task of the state for society (Table 2).

Table 2. Measures to prevent associations in criminal organizations

General social measures	<ul style="list-style-type: none"> • socialization of personality; • the work of civil society institutions to identify anti-social groups, individuals and children; • work with children and teenagers.
Criminal legal measures	<ul style="list-style-type: none"> • increasing the punishment for crimes committed by a group of persons for the vast majority of crimes; • leniency for members contributing to the exposure of a group; • increased attention to ordinary groups of people and the crimes they have committed.

There is a need to ensure the socialization of each person, provide them with the right guidelines and direct them to a positive introduction into socially important groups and institutions [21]. At the same time, schools, colleges and universities should pay attention to anti-social individuals and groups, the association of such individuals.

Children, and especially adolescents, gravitate toward the tendency to form groups, and not only for a positive purpose. The following chart shows the number of crimes committed by juveniles by a group of persons in 2021 for certain types of crimes (Figure 2).

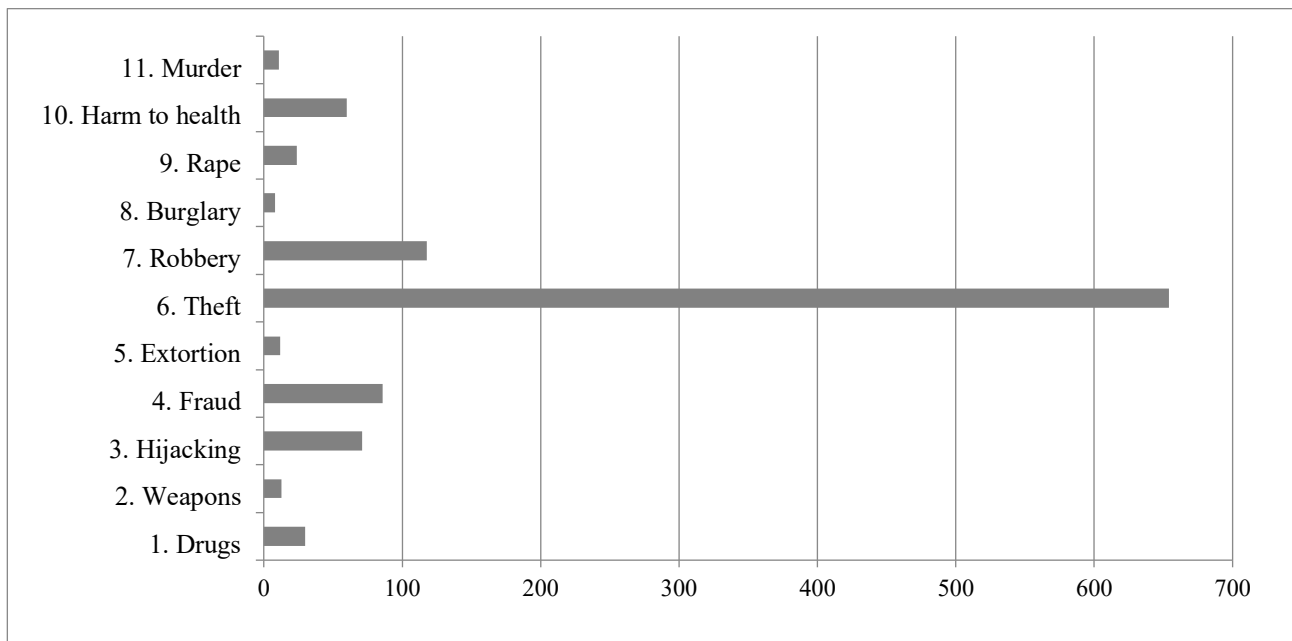


Figure 2. Certain types of crimes committed by minors and (or) in their complicity in 2021

Note: 1 – illegal handling of narcotic drugs, psychotropic substances or their analogues, as well as violation of the rules for the handling of narcotic drugs or psychotropic substances; 2 – illegal acquisition, transfer, sale, storage, transportation or carrying of weapons, ammunition, explosives and explosive devices; 3 – illegal possession of a car or other vehicle without the purpose of theft (hijacking); 4 – fraud; 5 – extortion; 6 – theft; 7 – robbery; 8 – burglary; 9 – rape or attempted rape; 10 – intentional infliction of serious harm to health; 11 – murder or attempted murder.

Source: Minor crime for certain types of crimes [22].

That is why special attention is needed to educate children and prevent them from committing crimes. At the same time, the work of the criminal justice bodies should be improved and activities should be directed not only to

investigation, but also to the prevention and fight against criminal groups. Using the typology of criminal groups and their psychology, the following specifically criminological

measures (stages) of prevention can be distinguished (Table 3).

Table 3. Stages of prevention and detection of criminal groups

No.	Measure	Description
1	Identifying groups	To prevent group crime, it is necessary to carry out activities to identify non-social groups to exemplify adolescents with anti-social behavior, to identify other anti-social groups, population segments with specific tendencies.
2	Matching information	All possible information about the group: typology, composition of participants, ways of action, places of gathering, identification of the leader and their features, the role of the group among other groups in a certain territory, competition.
3	Identifying weaknesses	Detection of conflict both within the group and in individual participants. Conflict of the leader within the individual or with participants. External conflicts with other groups.
4	Prediction building	On the basis of the previous steps, to make a prediction of the group and possible ways of its elimination.

The typology and classification of groups allows determining the specific determinants of each of them, which defines certain patterns of investigation. And psychological features show the possible behavior of participants in the investigation, which affects the ways and methods of collecting evidence. Based on the foregoing, the following methods for preventing crimes committed by a criminal group at the preparation stage are proposed. First of all, this is an attempt to disband the group through individual members and create conditions, under which the participant will refuse to participate. This can be done with the help of administrative or criminal liability and bringing to it a participant in other crimes. At the same time, investigators need to form two methods of influencing both the participants and, in parallel, a group as a whole.

The Criminal Code of the Republic of Kazakhstan defines the main provisions on complicity and the composition of crimes in a special part, and the features of the investigation with complicity and trial are determined in the Code of Criminal Procedure of the Republic of Kazakhstan. Article 187 of the Code of Criminal Procedure of the Republic of Kazakhstan [8] provides for the jurisdiction of crimes in relation to criminal groups. Preliminary investigation on such offenses as in Article 257 (creation, management of a terrorist group and participation in its activities) and Article 267 (organization of an illegal paramilitary formation) is carried out by investigators of the National Security Committee.

Under Article 259 (recruitment or training or arming of persons for the purpose of organizing terrorist or extremist activities), the preliminary investigation is carried out by the internal affairs or national security bodies that have begun a pre-trial investigation. According to Articles 262, 263, 264, 265, 266 of the Criminal Procedure Code of the Republic of Kazakhstan [8], the preliminary investigation is carried out by the internal affairs, national security, anti-corruption service or economic investigation service that initiated the pre-trial investigation. In cases of criminal offenses provided for in Article 258 of the Criminal Procedure Code of the Republic of Kazakhstan [8], the preliminary investigation is carried out by the national security, internal affairs or economic investigation service that initiated the pre-trial investigation. Under Article 268 (Banditry), preliminary investigation is carried out by

investigators of the internal affairs bodies. At the same time, other types of crimes provided for by the Special Part of the Criminal Code of the Republic of Kazakhstan can be carried out in various forms of complicity, and therefore jurisdiction will be determined in accordance with one or another element of a crime. In the case of complicity in the form of criminal groups, several crimes are committed: firstly, for the creation, organization and participation in a group, and secondly, for the crime committed by a group, which is the purpose of their association. In this case, a contradiction in jurisdiction is possible. According to Part 8 of Article 187 of the Criminal Code of the Republic of Kazakhstan [7], when criminal cases are combined in one proceeding, under investigation by different bodies of preliminary investigation, the jurisdiction is determined by the prosecutor.

In general, the Code of Criminal Procedure of the Republic of Kazakhstan [8] highlights the features of complicity in the criminal process, such as the impossibility of using accelerated pre-trial investigation if at least one accomplice does not admit guilt (Article 190, Part 6, paragraph 4), or, for example, a statement in Part 3 of the Article 182, which refers to the warning of the applicant about liability for knowingly false denunciation in the case of statements about accomplices in the crime. In addition, Article 612 of the Code of Criminal Procedure of the Republic of Kazakhstan [8] provides for the possibility to conclude a cooperation agreement in cooperation in the disclosure and investigation of crimes committed by a criminal group, extremist and terrorist crimes. Such an agreement does not exempt from civil liability to the victims and can significantly improve the position of the convicted, suspected or accused person after the implementation of such an agreement. According to Article 621, after confirming the procedural agreement on cooperation, the prosecutor considers the need to cancel or change the measure of restraint in relation to the suspect, the accused in the manner prescribed by Article 153 of this Code [8].

According to Part 2 and Part 3 of Article 621, as a result of the investigation of crimes related to the subject of a procedural agreement on cooperation, with the assistance of a suspect, accused, defendant, convict, persons who have committed especially grave crimes, crimes as part of a criminal group, as well as extremist and terrorist crimes,

are exposed, and guilty persons are convicted, the prosecutor takes measures to fulfil the terms of the procedural agreement on cooperation. With regard to a convicted person who has entered into an agreement on cooperation and fulfilled its conditions, the prosecutor applies to the court with a petition in accordance with Articles 476-478 of this Code [8]. The existence of such a legal possibility of cooperation and mitigation of punishment for a member of a criminal group who has expressed a desire to cooperate is an effective tool and the main one in exposing groups and organizations.

Discussion

After analysing the obtained results of this paper and comparing them with the papers of other authors, the following can be noted. In his paper, R.K. Tleukhan [1] came to the following conclusions on extremist groups. The most common types of extremism by direction are economic extremism, political extremism, nationalist extremism, religious extremism, environmental extremism, spiritual extremism. International extremism is a phenomenon that encroaches on the stability of international relations, territorial integrity and public security [23-25]. International extremist organizations are a source of funding for local organizations. The paper pays attention to the worldwide problem of extremism and the expansion of the network of such organizations. Methods of combating extremist organizations and prevention are provided, through legislation and the work of authorities [26-28]. This paper discusses organized crime on the example of extremist organizations and the features of such a phenomenon as extremism in general. However, the author does not pay attention to the phenomenon of group crime in general, its determinants and types.

The paper of S. Goertz and A.E. Streitparth [29] was written in a similar direction to the phenomenon of extremism. It draws attention to the features of transnational organized crime of extremely Islamic origin (jihadism). Unlike ethnic national terrorism, Islamist terrorism, jihadism, has a pronounced transnational orientation due to the global coverage of its religious and political (jihadist) orientation. The paper draws attention to the fact that organized crime derives huge benefits from the process of transnationalization and globalization. Organized crime takes advantage of economically and legally weak states, and more often those that do not comply with extradition agreements.

In his paper, D.U. Balgimbekov [30] explores the historical aspect of organized crime, the development of the institution of complicity as a phenomenon characteristic of the whole world, as well as in the Republic of Kazakhstan. The paper notes the genesis of the formation of European legislation in the field of combating complicity in crimes, as well as on the territory of Kievan Rus. It is determined that, according to Kazakh customary law, accomplices bear criminal liability at the same level as those who committed a crime. Further, the paper explores the genesis of the institution of complicity in the USSR and modernity. The paper is fundamental for understanding and studying organized crime, as it forms its origins and the first causes of formation, which gives a better understanding of the processes in modern times. However, the paper pays little attention to the

characteristics of criminal groups of our time. In this paper, the historical aspects of the emergence of complicity were taken into account, but it was considered in more detail from a criminological and legal point of view, and not a historical one, although the historical aspect provides a basis for understanding organized crime and many of its determinants.

K.A. Baikenzhina and B. Begaz [31] in their joint paper investigated the criminological and socio-psychological aspects of members of criminal groups. The paper notes that the significance of the criminological and socio-psychological characteristics of the most dangerous participant, i.e., an organizer, is associated with the need for the correct application of criminal punishment, the organization of individual educational work in places of deprivation of freedom of will and is one of the important prerequisites for the successful implementation of measures to prevent group crimes and recidivism. In this paper, the results overlap and coincide, since both papers note the importance of an organizer of the entire group. However, the paper differs in that this one contains recommendations based on criminological features for the investigation and prevention of crimes committed by a criminal group.

E. Kleemans and V. van Koppen [32] explored the topic of criminal groups and criminal careers, involvement in the organization and the reasons for their occurrence. The paper reveals the factors influencing participation in an organized group. It has been noted that access to lucrative criminal opportunities through social relationships ("social opportunity structure") is a vital issue in criminal career research that is often overlooked due to the focus on adolescence and large-scale crime, and the failure to capture adult criminals involved in more lucrative organized crime. The paper examines late criminal activity, namely the involvement of adults and mature individuals in a criminal group. It is emphasized that people who took part in the organization at an early age are influenced by some reasons, and those who are at a more mature age are influenced by others. Mechanisms for engagement in a group include social connections, life activities, work specifics, recruitment, as well as the social snowball effect. In this paper, compared to the above, there is no in-depth characterization of the causes and mechanisms of involvement in the organization. However, there are studies of the determinants and possibilities of working with it to prevent organized crime. But the papers also agree in terms of the fact that minors often become participants, and therefore it is necessary to prevent the participation of children in organized crime as much as possible, otherwise it carries a great social danger in the future.

A. Guerreiro et al. [33] present comprehensive considerations on the importance of feminist criminology in uncovering women's involvement in organized crime. Traditional androcentric views of criminal activity reinforce the subordination of women to men, with men remaining key figures and women secondary. The study shows that since the 1970s, with the rise of feminist criminology, these views have been rejected and a body of knowledge has emerged around female crime. However, stereotyping of women has limited research into their involvement in organized crime. A similar topic of

women's participation is considered by M. Paulus [34]. The paper investigates organized crime in human trafficking, namely women who become victims. The prevalence of this type of group crime, which is gaining a transnational character and exists in each country at its own level of development, is being investigated. This article does not focus on the participation of women in criminal groups, but highlights the aspect of the participation of minors. Indeed, the study of the topic from the viewpoint of feminist criminology is extremely important in the modern world and therefore qualitative new research is needed regarding the reasons for the participation of women in such organizations.

N. Breuer and F. Varese [35] explored the theoretical basis for classifying organized crime groups based on what they do – whether they produce, trade or manage – as well as their goals. The article examines whether the internal structure of a heroin distribution organization in New York differs from that of a Sicilian mafia group and the Provisional Irish Republican Army. Merchant-type organized crime and financial groups show a high level of centralization, an even distribution of clustering values, short paths, as well as low haemophilia. Organized crime of the state type and politically motivated groups show opposite features. The paper concluded that the main activity and purpose of a group are crucial for understanding the organizational structure. It is indicated that organizations operating for profit will be pushed towards short-term thinking from their members who expect timely payments, while members of groups focused on political gain or ideological goals are more likely to adopt a long-term view of success and reward. Organized crime groups with shorter time horizons as a result of their business or goals are more likely to emphasize rapid coordination between different individuals within their network structures; for managerial-type organized crime groups that seek to control communities, or politically motivated groups that seek broader change, security is paramount to ensure that the long-term goal is met before the group is discovered and destroyed [36-39]. Both works have something in common in the direction of the classification of criminal groups, but for different classification criteria. The papers consider the internal structure and features of organized crime. However, attention is drawn to various aspects of such a structure. The above paper considers the characteristics of a group depending on their goals of association and existence, focusing on their strengths and weaknesses and exploring specific historical examples of such organizations. This paper examines the psychological characteristics and conflicts within a group, as well as its individual members, without reference to a specific criminal group.

The paper of L. Holland [40] considers the topic of transnational organized crime (also TOC), namely the theory of weakening the influence of TOC on society and the state. It is noted that the field of international and state relations tends to apply the concept of TOC as autonomous statespersons who seek power or as certain groups rebellious against power, who themselves seek to dominate the nation state. This view is reinforced by “weak” or “failed state” notions, in which TOC is seen as successfully challenging nation states for control of governance. But the paper argues that the state, in turn, benefits from becoming

a kind of a partner with TOC that effectively strengthens both of them at the expense of civil society. An alternative point of view is offered, which is to say that the country's armed forces cannot be the main strategy for combating TOC. Since the state and TOC are interdependent, the strengthening of civil society and democratic norms comes to the fore in weakening the power of such criminal organizations, which can be a more effective strategy. Comparing the paper of the researcher and this one, it can be noted that the difference lies in the fact that this paper considered criminal groups and the prevention of their development in general, as well as within the framework of a common type – a criminal organization, while in the work provided above – within a separate type of criminal group – a transnational criminal organization. Common in the two papers is the emphasis on the need to prevent organized crime, as well as social and legal methods to prevent their creation and further influence on society.

Each paper brings its exceptional contribution to science and the study of the issue of a criminal group. In this paper, some aspects were combined that were considered by the authors regarding the species characteristics, the role of the organizer as a leader, preventive, psychological aspects. On the basis of such a comprehensive study of the topic, proposals and classifications were provided that were not previously described and systematized.

Conclusions

Based on the results of the research, the following conclusions were drawn. First of all, a definition of the main concepts in the category of complicity and organized crime was given while studying the criminal legislation of the Republic of Kazakhstan on the topic of paper. In comparison with the legislation of the countries of Europe, the USA and the countries of the post-Soviet space, it was determined that the Criminal Code of the Republic of Kazakhstan and the Code of Criminal Procedure of the Republic of Kazakhstan meet modern realities and global trends in the fight against organized crime in terms of securing the institution of complicity. The criminological characteristics of criminal groups, the psychological characteristics of their formation and functioning, as well as the personality traits of leaders, their role and significance for organized crime are investigated and described. The classification of types of criminal groups and forms of complicity is given from the criminalistic viewpoint as well as from the viewpoint of the legislator. A classification of the types of conflicts of criminal groups is also provided, dividing them into categories according to the cause of their occurrence. And in this regard, the possibilities of using such conflicts by the investigating authorities to further expose such groups or prevent organized crime are described.

The paper studies the determinants of organized crime and provides general social and criminal law recommendations for the prevention of this type of crime. Based on the information obtained during the research, a table was created with the possible stages of identifying criminal groups. This paper is of direct practical importance, namely, aimed at preventing organized criminal activities through the results obtained, as well as assisting pre-trial investigation bodies in exposing and

bringing to justice members of criminal groups. It was also concluded that, an understanding of real statistics on organized crime is required for a better assessment of the work of criminal law, since it is possible to consider only data on identified criminal groups, while a certain number of criminal groups remain outside the statistics of state bodies. The paper compared the legislation of other countries and borrowed their good practice in preventing such crimes. Thus, the goal indicated at the beginning of the paper was achieved. For a deeper study, it is still necessary to study each of the types of criminal groups

separately, since they have their own criminological and criminal law aspects. It is also necessary to deepen the knowledge of organized crime in terms of the role of women and children as participants and victims.

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Conflict of Interest

None.

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Кримінально-правова та кримінологічна характеристика злочинної групи як особливої форми співучасті у злочині

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Анотація

Актуальність. Злочинна група як форма співучасті з кожним роком удосконалюється та ускладнюється за своєю структурою через різноманітні засоби комунікації. Актуальність дослідження полягає в тому, що з часом необхідний періодичний перегляд норм законодавства на відповідність реаліям і злочинам сучасності.

Мета. Метою даного дослідження є, по-перше, загальний аналіз кримінально-процесуальних особливостей злочинних угруповань з метою визначення відповідності нормативно-правових актів реаліям сучасного розповсюдження злочинних угруповань, по-друге, вивчення кримінологічних особливостей злочинних угруповань, визначення способів попередження та боротьби зі злочинними угрупованнями.

Методологія. У роботі використані методи аналізу та синтезу, описовий, статистичний аналіз, індукція та дедукція, порівняння, формально-юридичний та системний методи аналізу. Також застосовано аспекти та міжгалузевий підходи.

Результати. У статті розглянуто статистику злочинів, вчинених злочинними групами за участю неповнолітніх, а також статистику злочинних груп (злочини за статтями 257-259 і 262-268 КК РК) за період з лютого 2020 року по лютий 2023 року. Запропоновано класифікацію психологічних конфліктів у злочинній групі. Висловлено пропозиції щодо вдосконалення розслідування злочинів із цією формою співучасті, наведено етапи попередження та розкриття таких злочинів. Досліджено норми Кримінально-процесуального кодексу РК щодо ознак такої форми співучасті, як злочинна група. Угода про співпрацю розглядається як один із способів виявлення злочинної групи.

Висновки. Таким чином, у дослідженні висвітлено та проаналізовано кримінально-правові та кримінологічні особливості кількох видів злочинних угруповань та надано загальносоціальні та кримінально-правові рекомендації щодо запобігання цьому виду злочинності.

Ключові слова: кримінально-процесуальні ознаки; організована група; злочинна організація; конфлікт організатора; договір про співпрацю.