

Committing a Criminal Offence by an Organized Criminal Group

Ruslan Orlovskyi¹, Olha Us²
& Viktor Shevchuk³

Abstract

Offences by criminal organisations are a particularly dangerous and destructive type of crime for both society and the state. This type of crime carries immense potential in the financial and economic spheres, which are not controlled by the state and society. The paper aimed to analyse existing international standards and methods of countering organised crime at the international level. In addition, the most important and relevant obstacles to the joint international fight against this phenomenon are examined. The study applies, along with general scientific methods, a number of special methods, to which induction, deduction, event analysis, and content analysis can be attributed. Moreover, the research methods are complemented by the use of a systematic approach. The study includes a detailed analysis of various types of international cooperation in the field of combating organised crime. The conducted study has shown that in the legal doctrine of Ukraine, the criminal concept of "commitment of a criminal offence by an organised group" is ambiguous: on the one hand, it is considered a social phenomenon (a real, conscious, volitional complex act of creating an organised group for the purpose of committing a crime or joining it at the stage of organising such a criminal association or a conscious, volitional act committed by a person as part of an organised group at the stage of its functioning). The study can also be used for the scientific and theoretical substantiation of further elaboration of actions to counteract the above type of offences.

Keywords: Criminogenic situation, destructive social consequences, shadow economy, modernisation of legislation, penitentiary system

Introduction

Today, organised crime has transformed into something more than the standard functioning of criminal groups. In fact, it would not be an exaggeration to state the construction of shadow institutions parallel to state and legally determined structures, which, by performing illegal activities, generate destructive processes in most spheres of public life (Chyzhmar et al., 2019). In addition, the

¹The author is a Full Doctorin Law, Professor at the Department of Criminal Law No. 1, Yaroslav Mudryi National Law University, Kharkiv, Ukraine

²The author is a Full Doctorin Law, Professor at the Department of Criminal Law No. 1, Yaroslav Mudryi National Law University, Kharkiv, Ukraine

³The author is a Full Doctorin Law, Professor at the Department of Criminalistics, Yaroslav Mudryi National Law University, Kharkiv, Ukraine. v.shevchuk7861@uohk.com.cn

functioning of criminal structures harms the ideological sphere by increasing the level of distrust of the general population towards the legal system and the state, which can lead, among other things, to the development of legal nihilism (Orlovskiy, 2014). Notably, this study relies on a very extensive database of sources, including materials that are directly related to the issue under study, as a theoretical foundation. Firstly, they include a legislative framework focused on countering the activities of criminal organisations, namely international regulations (including current Resolutions of the General Assembly of the United Nations (UN)), which directly address the activities of criminal organisations and the problem of creating and introducing the measures, the implementation of which would counter the type of offences considered in this study, into the national legislative systems. Moreover, the study involved scientific publications by researchers from different countries (USA (Galeotti, 2018), Great Britain (Coluccello, 2016), Hong Kong (Wang, 2017), etc.).

However, it should be noted that the studies mentioned above consider, primarily, certain properties and qualities of the phenomenon of organised crime (including the aspect of its international functioning). Nevertheless, a more voluminous and holistic picture is not provided, which would give an explanation of the type of offences under study in such aspects as the establishment of a fight against this phenomenon at the international level and consideration of this problem in the context of further prospects for this type of crime. In addition, the analysis of the activities of criminal organisations lacks full disclosure of the relationship between the shortcomings of the current penitentiary system related to their (organisations) activities, in particular in planning their activities and recruiting work. To develop a more holistic view of the methods and practices of combating corruption at the international level, this study places the main emphasis on the coverage and disclosure of such a phenomenon as a criminal organisation and on existing problems and discrepancies that arise during the analysis of this phenomenon to introduce it in the legal field. Secondly, attention is paid to the issues of international cooperation in the fight against transnational criminal organisations, to the coverage of the current international legal framework, and to existing international bodies whose activity is related to countering the phenomenon under study. Furthermore, recommendations were developed on the introduction of a number of new provisions in the current legislation to modernise it, which is necessary to build more effective mechanisms for countering criminal organisations. For example, guidelines and recommendations that allow creating more comfortable conditions to involve civil society and ensure its (society's) most effective work.

Materials and Methods

In reviewing the existing system of legal and political counteraction to crimes committed by criminal organisations, a number of general scientific and special research methods were applied. The following set of methods (deduction, induction, content analysis, event analysis) allowed identifying the key provisions that determine the perception of a criminal organisation in its current form, which is especially important when establishing a scientific and theoretical basis for the actions of individual states on the creation, within the framework of national legal systems, of certain mechanisms that aim to prevent and to counteract organised crime. In addition, areas of further action were proposed that would reduce the level of criminalisation of society in the field of organised crime. These areas are recommended to be implemented in national legal systems.

Thus, the use of the deduction method provided a description of the mechanisms of a number of sovereign states in counteracting the organised crime, while the use of the induction method structured and generalised the available information, which entailed the compilation of characteristics of the fundamental qualities of policies aimed at countering organised crime and formulation of conclusions regarding the professional suitability of existing institutions at the international level created to counter the activities of transnational crime. In addition, other research methods were used, namely content analysis and event analysis. The content analysis allowed drawing key conclusions regarding the further area of activity in terms of modernisation of the current legislation to improve the counteraction of organised crime, the basis was the systematisation of the available extensive material. Moreover, event analysis allowed identifying a number of elements of the processes under study, namely historically determined features of the functioning of penitentiary systems, including the identification of shortcomings in their activities that negatively affect the full implementation of the policy of countering organised crime.

The generalisation of the methodology used in this study created the most complete picture, representing, firstly, a statement of the most relevant (the beginning of the 2020s) features of the world practice of countering transnational crime, it also allowed formulating conclusions about the most effective methods of countering organised crime at the international level. The study was conducted in three stages: At the first stage, the concept of a criminal organisation, the key provisions of its specific features, and its main features were formulated, guided by the scientific literature and the theoretical developments formulated in it along with the provisions of international and national law. At the second stage, a descriptive characteristic of the current activities of international and state

mechanisms for combating organised crime is developed using event and content analysis.

Moreover, an analysis of relevant international legal documents in the field of combating corruption was conducted. At the third stage, the current provisions of legislation and its legal framework aimed at countering organised crime are characterised; measures that, if implemented in national legal institutions, can contribute to reducing the criminogenic situation are developed.

Results

The first feature of the phenomenon under study is its social danger, which can be manifested as a threat that is aimed at destroying the social order, the order of national traditions, and public safety (Orlovskiy et al., 2018). The second feature is the fusion of criminal and economic crimes occurring in the shadow sector of the economy. During the period of the emergence of shadow economic crimes, the unification of criminal and shadow economic crimes led to the development of a criminal alliance, unity between these offenders based on a common goal, namely illegal profit and access to power levers to reduce pressure on their activities from law enforcement agencies. The third feature of organised crime is the active use of corruption offences, which, in a broad sense, includes personal abuse of power, bribery, commercial bribery or other illegal use of public office, which are a violation of the legitimate interests of society. Accordingly, organised crime takes actions aimed at extracting benefits both for itself and a third party.

In particular, such organisations seek to obtain money, valuables, other types of property or services of a property or non-property nature to illegally provide these benefits to certain persons and act as a representative party of a legal entity associated with the criminal world (Danilova, 2018). Thus, officials affected by corruption ensure the activities of organised crime, ignore criminal behaviour, do not contribute to the disclosure of this criminal activity, hide organised crime or demonstrate inaction that allows criminal organisations to function and perform their activities. The fourth feature is the fact that the main goal of organised crime is stable, systematic receipt of illegal income (Avram et al., 2020). The fifth feature is the total control of organised crime over its (organisation's) participants. The criminal community is guided by the general rules of managerial activity (for example, the algorithm includes setting tasks, searching for means of execution, attracting the necessary resources, etc).

It is worth adding to the above features that the higher the level of a criminal group, the easier and more often its members commit crimes (Nevedomaya, 2017). The sources of excess profits for these organisations are

smuggling, cars, weapons, gambling, illegal trade in antiques, and prostitution. Economic crime can also be added to them (Yokotani et al., 2020). In particular, it can appear in various leading sectors and spheres of economic activity, which can negatively affect the process of economic reforms. In recent years, the number of criminal organisations involved in drug trafficking has continued to grow.

There is a process of monopolisation by criminal organisations of sources of production and channels of transportation of drugs and their markets (Durdynets et al., 2020; Tsiupryk and Alieksieieva-Protsiuk, 2016). To prevent and combat organised crime, the vast majority of national legislation provides for crime prevention measures that are aimed at identifying and eliminating all causes and conditions that lead to crime. Carefully elaborated scientific and practical measures formulated in response to the current situation in this area are the basis for an effective fight against organised crime.

In the international practice of combating financial and economic crimes, which are characterised by their diversity and complexity, there is a description of the major and related crimes (Revin, 2016). According to the “United Nations Convention against Transnational Organised Crime”, the major crime refers to any crime as a result of which its beneficiaries receive income from their deeds. In the development of the international practice of investigation of cross-border economic crimes, new methods and new technologies for investigating the causes and consequences of certain crimes have appeared (United Nations Convention..., 2000).

For example, the concept of “controlled delivery” refers to a method that allows one to export, transport, import illegal or suspicious goods into the territory of other states without the knowledge and supervision of the competent authorities of one or more countries to investigate crimes and identify those who are involved in them. The particular danger of transnational crime lies in its international nature, which implies its large scale (Grinko, 2020; Tsiupryk, 2017). The object of the crime is not only property rights, but also the sovereignty of a state over state property, non-interference in the internal affairs of other countries, and the protection of currency, finance, and banking system.

“Protection of sovereignty”, within the framework of the document under study, means that member states fulfil their obligations under the Convention in accordance with the principles of national sovereign equality and territorial integrity, guided by the principles of national banking systems and non-interference in the internal affairs of other countries. “Criminalisation of involvement in a criminal organisation” means collusion with one or more persons for the purpose of committing a serious crime, the purpose of which is directly or indirectly related to obtaining economic or other material benefits, and, if there are

relevant provisions in the domestic legislation of a particular state, it is also assumed that the participant actually colluded to the commission of such a conspiracy or took part in a criminal organisation. “Criminalisation of laundering money obtained by crime” means that a state-party to the convention, in accordance with the basic principles of its domestic legislation, takes legislative and other measures that may be necessary to criminalise such intentionally committed actions as the transformation or transfer of property (if it is known that the purpose of certain actions is to conceal the proceeds of crime or disguise the criminal source of property to avoid responsibility for their actions), concealment of the true nature, source, location, movement, modification of property rights or property rights, in the event that the property is known to be the proceeds of crime. In addition, it is necessary to prevent the acquisition, possession, or use of property, if at the time of its receipt it is known that it is the proceeds of a crime; involvement, collusion, or conspiracy to commit any recognised crime; aiding, abetting, facilitating or recommending it (the crime) to be committed.

“Measures to combat money laundering”, according to the UN Convention against Transnational Organised Crime of 2000, mean that participating states must create comprehensive internal surveillance systems for banks and non-bank financial organisations. In some cases, this also applies to other institutions and organisations that are particularly vulnerable to money laundering, within their powers to prevent and detect all forms of money laundering. Such systems are based on customer identification, reporting, and suspicious transaction reporting requirements. Participating countries should consider taking certain measures to detect and control international cash flows and related securities, moreover, they should take precautions to ensure the correct use of information and prevent the creation of any obstacles to the movement of legitimate capital.

Operating legal entities must be protected from the activities of criminal organisations, which can be achieved, for example, by the presence of public registers of legal entities and individuals involved in the creation, management, and financing of certain legal entities, imprisonment and conviction within a reasonable period of time through court decisions or other appropriate means. The participating countries should cooperate with each other and with international and regional organisations to develop and assist in the implementation of measures to combat transnational crime, including corruption (Shegabudinov, 2021; Fedotova, 2015). This implies involvement in international projects aimed at preventing transnational organised crime, for example, by improving the conditions that determine the vulnerability of socially vulnerable groups in the activities of transnational criminal organisations. To date, all UN bodies and specialised

agencies are working together to combat transnational crime, including corruption.

The United Nations Office on Drugs and Crime provides technical assistance to states parties and signatory countries to ensure the integrity of the judiciary, improve legislation, and work on effective anti-corruption strategies. The Office plans, directs, implements, and coordinates technical cooperation activities to prevent and combat corruption, helps countries create and implement effective institution-building and professional development programmes to strengthen their (countries) anti-corruption potential. UNODC collects data and develops statistical indicators to guide the assessment and monitoring of corruption, conducts studies and analyses to deepen understanding and qualitatively, impartially assess the problems that corruption brings. The ultimate goal, in this case, is to facilitate the adoption of appropriate regulatory, political, and business decisions.

Discussion

Crime itself is a negative social phenomenon. In the event that it acquires the status of organised crime, the problem of its existence is much more considerable. It violates public safety, life and health of citizens, their property, disrupts the normal activities of the state, business, other public spheres, established institutions, organisations, and public associations. The untimely adoption of measures leads to the inevitable occupation of important sectors of the economy and politics, from which it can be concluded that the fight against organised crime is an important task for any state (Gula, 2016). In this regard, the penal enforcement law should be assigned a particularly important role. When building a strategy aimed at countering the phenomenon under study, it is also necessary to consider that detention facilities often act as kind of criminal schools that do not fulfil the role of correcting people who get there.

Prisoners are drawn into the criminal subculture and spread it, exchange criminal experience (some acquire a new one by committing crimes inside places of detention), establish appropriate social ties, plan further criminal activities, and unite in groups (Avakyan, 2020). In addition, the current situation is aggravated by the fact that the impact is exerted through threats from the so-called “criminal authorities”, that is, leaders of groups of criminals. Regarding detention facilities, their division into two subtypes can be discussed (depending on which value system and power grouping dominate): “black” (more power is in the hands of criminals) and “red” (on the contrary, the dominant role is assigned to the legitimate authorities). Although the latter is less affected by organised crime, it is often the focus of the same problems (Kleyenov et al., 2019).

Notably, the current development of legislation in this area is constructive.

Thus, for example, the goal of reducing recidivism of crime by persons serving sentences can be considered fixed, which means the exclusion of such persons from organised groups. In turn, this leads to the fact that it deprives them of an important indicator of stability in terms of their composition, "personnel". In addition, the following tasks are laid down: gradation of the level of isolation of the offender considering the severity of the crime committed and the personal characteristics of the convicted person; strengthening of psychological and pedagogical work of a person to prepare them for further life in society; improvement of control by the penitentiary system; transparency of the criminal system and expansion of cooperation with civil society and its representatives.

Furthermore, one of the important areas of activity is the creation of conditions for a gradual reduction in the number of criminals who are kept in residential premises, which is aimed at complicating the processes of spreading prison ideology and related information, making organised group decisions, recruiting personnel for criminal organisations (Popova, 2020). In addition, the task is to expand the set of punishments and other measures that act as a sound alternative to imprisonment, which, in some cases, would be a more correct measure to combat organised crime. Aside from the established trends, the mechanism for countering organised crime already has working elements within the framework of criminal law. To date, all of these measures, which are provided for by criminal law, require improvement. In this regard, it seems logical to adopt a planning document that considers all aspects of legislation to combat organised crime. In particular, the following resolutions should be included in such a document:

1. To introduce additional protective measures aimed at preventing criminal encroachments, countering the influence of criminal leaders on prison system employees.
2. To provide support to employees of the penitentiary system who counteract organised crime through administrative, criminal, and disciplinary responsibility and create effective mechanisms for the detection, investigation, and suppression of such types of crimes.
3. To develop proposals on methods of interaction with leaders of organised crime for employees of the penitentiary system for the purpose of increasing contradictions between criminal leaders to implement the divide and rule principle.
4. To isolate the leaders of organised crime, which would exclude their interaction with other criminals.
5. To strengthen public supervision and create work-friendly conditions for its (supervision) implementation.

At this stage, it is necessary to determine the area of further development and promotion of the practice of modernisation of existing mechanisms for countering organised crime, which was provided in the above list. Thus, the adoption of such a document would help to fight organised crime by joining forces and modernising existing legislation, thereby preventing the criminalisation of society and ensuring the conscientious and legitimate conduct of political and economic activities.

In turn, it should be noted that in modern Ukrainian legal doctrine there is a concept of both the commission of a crime by an organised group and a criminal organisation, with a different terminological definition of the latter (Nevedomaya, 2017). The vast majority of researchers apply the term "organised group", used by the legislator in Part 3 of Article 28 of the Criminal Code of Ukraine, however, other terms are found in the scientific literature: "criminal organisation", "organised grouping", "organised criminal group". The latter are synonymous terms with a broader content, which cover varieties of organised criminal associations. As for an organised group and a criminal organisation, grammatical analysis shows that the noun "group" and the adjective "organised" indicate the main property of such a group – its organised nature. As is known, a group can be not only criminal but also socially positive (social group, collective, etc.) (Vakulyk et al., 2020). In turn, a criminal organisation is a more accurate concept for determining the group committing the crime, i.e., the group is criminal and is characterised by an organised nature (Us, 2018; Volodina et al., 2020).

The concept of an organised group, defined in the Criminal Code of Ukraine, allows distinguishing the following objective signs characterising this form of complicity: 1) involvement of (three or more) subjects of the crime (quantitative feature); 2) community of activity; 3) persistence (Demidova, 2019). The intent of the participants of an organised group can be characterised by subjective signs. Such subjective signs include: 1) mutual awareness of the crime being committed; 2) consistency of actions of members of an organised group (Komziuk&Orlovskiy, 2020). The intellectual part of the intent of the participants of an organised group characterises their mutual awareness of the joint commission of a crime and the foresight of the possibility or inevitability of a criminal result of joint activity (Horbachova et al., 2020).

Since Article 28 of the Criminal Code of Ukraine establishes forms of complicity, proposals should be supported to change the "Commission of a crime by a group of persons, a group of persons by prior agreement, an organised group, or a criminal organisation" to "Forms of complicity in a crime". In addition, it is necessary to legislate the definition of "organised group", "criminal organisation", "crime committed by an organised group or criminal organisation", and

"participant in an organised group or criminal organisation". An organised group should be considered a stable, pre-organised, controlled association of two or more persons created to commit crimes. Whereas criminal organisation is proposed to be considered a stable hierarchical association of three or more persons or two or more groups (structural parts), previously organised to commit one or more crimes (Shevchuk, 2020; Panov et al., 2021; Cherniavskiy et al., 2019; Pavlova, 2021).

A crime should be recognised as committed by an organised group or a criminal organisation if it was committed by one or more members of such associations on behalf of an organised group or criminal organisation, by a person or persons who are not considered its members but only participating in individual crimes committed by an organised criminal association. A person who intentionally takes part in the activities of these associations must be considered a participant in an organised group or criminal organisation. These are members of organised criminal associations – persons who are part of the association and participate in all or most of the crimes committed by its members and persons who are not part of the permanent membership but commit individual crimes along with its participants.

Conclusions

Summing up the material reviewed and analysed in the framework of the study, it is necessary to note a number of relevant provisions. For example, the problem of organised crime considered in this study has a number of destructive consequences for the state and negative consequences in general. In addition, based on the available data, there is an upward trend, conditioned by an insufficient struggle at the level of individual states the increased activity of criminal organisations. The inevitable consequence of these processes is the implementation of some kind of ideological, semantic sabotage in terms of moral and moral-value orientations of the population, which gradually causes distrust in the authorities (including law enforcement agencies) and can also manifest in a decrease in the level of legal awareness of society and the emergence of legal nihilism.

Within the framework of this study, an appropriate characteristic was given, according to which it is possible to consider organised crime pernicious for historically established institutions and destructive in general. The material presented in this study may be of interest to specialists in legal counteraction to organised crime both at the international and state levels. It would also be interesting for various kinds of experts and consultants who directly influence the adoption of certain decisions in the field of legal proceedings. Notably, the study

raised a number of problems, the resolution of which should be paid attention to in further studies. The problems include the need to develop scientific proposals to solve problems arising in connection with the activities of criminal organisations, considering the long-established national specific features of a number of states. In this regard, it is worth paying attention to the application of an interdisciplinary approach that can guarantee effective results in solving the above problems. The above refers to the interaction of criminal law, criminology, and other social sciences, including, for example, ethnography. The involvement of other disciplines contributes to the fulfilment of a greater number of tasks, which would have a positive impact on the development of practical solutions in the field of countering criminal organisations.

Moreover, the conducted study has shown that in the legal doctrine of Ukraine, the criminal concept of "commitment of a criminal offence by an organised group" is ambiguous: on the one hand, it is considered a social phenomenon (a real, conscious, volitional complex act of creating an organised group for the purpose of committing a crime or joining it at the stage of organising such a criminal association or a conscious, volitional act committed by a person as part of an organised group at the stage of its functioning). On the other hand, it should be interpreted as a criminal law phenomenon, the signs of which or with the help of another terminology ("criminal offences committed by an organised group") are fixed by the legislator in the General and Special parts of the Criminal Code of Ukraine. An analysis of the current legislation indicates that today it requires improvement. Based on the results of the study, proposals were to improve the provisions of criminal law that disclose the forms of complicity in a crime.

The proposed conclusions and proposals are not exhaustible and can only serve as a basis for further studies on the problems of criminal liability for the creation of criminal organisations and the commission of criminal offences by them.

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