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## DEFINITION OF THE CONCEPT “ORGANISED CRIME”: A CRIMINOLOGICAL ASPECT

**Abstract.** The *purpose of the article* is to analyse domestic and foreign approaches to the definition of the concept “organised crime” as a criminological category and the study of the essence of this socio-legal phenomenon. In order to achieve the purpose, the following task has been set: to review various scientific and criminological approaches to understanding organised crime, to identify the most successful of them and to propose the author’s perspective on the concept, which successfully combines both criminological and criminal-legal aspects.

**Results.** The article defines the concept of organised crime, in particular the criminological aspect of such a definition. The article establishes that an effective response to organised crime is directly related to the development and formation of an optimal definition of this social and legal phenomenon, which would simultaneously consider both criminal-legal aspects and criminological ones. The author reveals different scientific and criminological approaches to the definition of “organised crime”. The article underlines that organised crime is a complex phenomenon of public life with many levels and complex structure. This phenomenon has arisen against the background of the desire of part of society to change, necessarily in an illegal, criminal way, the legal order in the interests of personal enrichment, obtaining maximum profit and actual authority over a certain region or sphere of life.

**Conclusions.** To sum up, organised crime is a stable, independent, hierarchical organisation of criminal environment, characterised by a clear structure, coordinated criminal actions, criminally liable as provided by legal regulations, long-term goals and the aim to gain permanent significant profits, turning their own trading into “illegal entrepreneurship” and significant risks for the state well-being due to the symbiotic connection of criminal networks with corrupt officials. Organised crime in the current Ukrainian reality is becoming extremely widespread, resulting in an insufficient understanding of this social and legal phenomenon. Given its significant threat to the democratic principles of life in the State, it is required to take a more detailed approach to organised crime, and to disclose its essence, considering the criminological aspects.

**Key words:** organised crime, criminal organisations, corruption, illicit enterprise, money laundering, criminology.

### 1. Introduction

It is well known that organised crime is an extremely negative phenomenon, which has arisen in the course of the evolution of social relations and due to a purposeful destructive influence on the whole complex of State institutions, it has gradually become one of the most acute and serious problems of mankind in the 21<sup>st</sup> century. Despite the common stamps and clichés that shape the image of organised crime as a diverse group of repeat offenders with a criminal past and a maximally antisocial way of life, the latter are increasingly represented by the so-called “white collar workers”, closely

connected with political and business circles. Such migration from a purely criminal field to a formally legal one, allowed big businessmen and officials to actively use criminal schemes as a certain leverage to achieve their own goals.

Ukraine also suffers greatly from the destructive pressures of organised crime, because people feel cheated for years ahead as a result of total mutual responsibility and the inequitable distribution of resources. Moreover, in domestic realities, organised crime is characterised by a high differentiation. For example, O.Yu. Busol argues that organised crime in the capital mainly concerns construction and real estate, in Dnipro

or Donetsk, focuses on clan wars with a high proportion of contract killings and blackmail, while Odessa, criminal history of which dates back to ancient times, is still “well” known for smuggling, prostitution, illegal trafficking of drugs and weapons (Busol, 2019, pp. 60–61). In this regard, it seems logical that the Head of the National Police of Ukraine, in his report on the results of the agency’s work in 2019, identified the fight against organised crime as a priority for 2020.

As of today, most domestic criminologists argue that an effective response to organised crime is directly related to the development and formation of an optimal definition of this social and legal phenomenon, which would simultaneously consider both criminal-legal aspects and criminological ones. However, despite a sufficient number of relevant studies, including serious monographic works, it seems difficult to provide an exhaustive interpretation of the definition of “organised crime”.

To a large extent, this situation has been affected by a number of gaps specific to Ukrainian criminology. For example, N.Ye. Miniailo notes that the term under study is actively used without proper methodological substantiation of its essence (Miniailo, 2015, p. 75). Moreover, we should not ignore the general problem of Ukrainian legal doctrine, which manifests itself in the systemic trend to excessive vagueness of the terminological apparatus when legal language turns into a certain cipher for secret communication.

Given that the effectiveness of response to organised crime is directly dependent on an understanding of the content of the phrase, the relevance of this work does not require additional arguments.

The study of organised crime was studied in the works by scientists, such as: O.M. Bandurko, Ye.M. Blazhivskiy, V.D. Hvozdetzkyi, V.V. Holina, I.M. Danshyn, O.M. Dzhuzha, A.I. Dolhov, V.M. Dromin, O.M. Lytvynov, N.Ye. Miniailo, S.V. Morozenko, V.V. Remskyi, M.I. Havroniuk, I.S. Yakovets, and others.

The purpose of the article is to analyse domestic and foreign approaches to the definition of the concept “organised crime” as a criminological category, and the study of the essence of this socio-legal phenomenon. In order to achieve this purpose, the following task has been set: to review various scientific and criminological approaches to understanding organised crime, to identify the most successful of them and to propose the author’s perspective on the concept, which successfully combines both criminological and criminal-legal aspects.

## 2. The content of the concept “organised crime”

Modern scientific literature abounds with definitions of “organised crime”, numbering more

than four dozen unique approaches. At the same time, the keynote of all opinions in this regard is the mandatory caution of the extreme threat of organised crime to the democratic foundations and constitutional order of the state. For example, Doctor of Law, Professor I.M. Danshyn proposes to consider organised crime as a stable association of criminal environment, characterised by a structured, focused on long-term criminal activity aimed at gaining stable, substantial profits and posing significant risks to public welfare through the symbiotic relationship of criminal networks with corrupt officials (Holina, 2009, p. 239). In addition, the author argues that organised crime is an autonomous phenomenon, outside the scope of group or repeat crime known to criminal law. Similarly, the Russian researcher A.I. Alekseev argues, noting that the systematisation of the commission of criminal acts, stability, coherence, hierarchy and clarity in the distribution of responsibilities among members of a criminal group enable to regard organised crime as a qualified form of complicity of criminal organisations (groups), distinguishing it from common group crime where crime is a committed by several perpetrators without prior agreement or prior arrangement (Alekseev, 2005, pp. 189–190). Evidently, somewhat different opinions on the comparison of organised and group crime exist. For example, O.O. Kvasha believes that organised crime is a form of group crime with a number of specific features (Kvasha, 1999, p. 9). However, such conclusions look a certain artificial narrowing of the essence of organised crime as a social and legal phenomenon and characterise the feature of “being organised” on the part of technical and managerial functionality, which is inherent in any group with a role distribution.

It also seems somewhat erroneous to equate organised crime with the criminal activities of organised criminal groups, such as gangs, networks of robbers or representatives of classic and notorious racketeering. According to V.D. Hvozdetzkyi, the latter reproduce a specific degree of organisation of the criminal world, while organised crime is the highest form of implementation of criminal practices, covering not only the criminal component of social life, but also the political, economic and official. Using corruption as a driving force and “energy catalyst”, organised crime penetrates deeply into the state apparatus, the institutions of civil society and, pursuing an exclusively self-serving goal, forms a stable, hierarchical antisocial phenomenon with a firm foundation of perverse values (Hvozdetzkyi, 1997, pp. 12–16). In other words, organised crime is the tip of the iceberg under the conditional name “crime” (the highest degree of this generic concept).

Furthermore, relying on the analysis of the domestic criminological vector of thinking on this topic, such as the works by P.O. Melnyk, it should be noted that a significant feature of organised crime is the possibility of reverse criminalisation. It is implied that a certain social community, which has been originally formed without a criminal purpose, for a number of reasons, resorts to collective criminal activity and demonstrates the violation of traditional channels of criminalisation in the usual pattern, in the form of the evolution of successive criminal acts to the formation of a criminal organisation, which manifests itself in the algorithm: social organisation – criminal actions of individuals (with the subsequent transformation into an organised crime) (Melnyk, 2018, p. 70). Eloquent examples can be a hypothetical situation where an organised criminal group, composed of a notary, a specialist of the Department of the Ministry of Justice of Ukraine and several other citizens will commit actions on appropriation of social benefits of pensioners from the temporarily occupied territories or a situation where the leadership of a state enterprise in collusion with private entities (persons) implements theft of state wealth (gas, oil or amber). In both cases, the original non-criminal social institution, through the criminal actions of individuals, becomes an organised criminal society has all the characteristics of organised crime.

Going back to the definition of the term “organised crime”, proposed in works by I.M. Danshyn, it should be noted that it is objectively imperfect. The main criticism of the proposed definition is no comment on the mandatory existence of an appropriate article of the Criminal Code of Ukraine for any manifestation of criminal activity. Given that the criminological aspects of organised crime are closely related to criminal legal ones, ignoring one of them may lead to errors in understanding the very content of the phenomenon.

Therefore, the interpretation of organised crime as a phenomenon of public life with many levels and complex structure, which has arisen against the background of the desire of part of society to change, necessarily in an illegal, criminal way, the legal order in the interests of personal enrichment, obtaining maximum profit and actual authority over a certain region or sphere of life (Zakaliuk, 2007, p. 184). In general, organised crime is characterised by a combination of members of the criminal world with shadow economic structures, leaders taking on managerial and ideological functions, as well as a high level of secrecy.

According to O.M. Dzhuzha, organised crime is a complex of criminal acts, systemically connected with each other and committed

by participants of strong, hierarchical criminal structures, coordinating their activities in order to maximise the profits from their trading in the area or territory controlled by such entities (Dzhuzha, 2006, p. 165).

It should be noted that despite the real threat to the national security of Ukraine from the activities of organised crime and its objective existence, during the lively discussions around the interpretation of the concept of “organised crime”, more and more doubts about the appropriateness of the very term arise. Some researchers argue that there are a number of strong grounds for refusing to use the phrase “organised crime”. First, organised crime as a social construct is hardly perceptible (it obviously exists, but is mostly in an amorphous state); second, disorganised crime cannot exist at all, because the feature of organisation is inherent in any system (social, biological, economic, etc.) by default; third, in modern realities, the activities of criminal structures are so closely connected with public and private institutions that it is quite difficult to determine exactly where “organised crime” ends and “social reality” begins (Ortynskiy, 2004, p. 146). However, in the author’s opinion, to consider organised crime as an ordinary, routine concept is a dead end, since the statistical data and practical activities of law enforcement bodies clearly demonstrate the existence of coordinated criminal activity in Ukrainian life, which is constantly improving, rapidly adapting to changes, disseminating its criminal influence on various spheres of life and is gradually being legalised, undermining the foundations of national security.

### **3. Criminological characteristics of organised crime**

The Nobel laureate J.M. Buchanan’s perspective that organised crime could even be useful in a certain proportion is a rather specific understanding of organised crime. This seemingly seditious opinion was explained by the scholar in terms of the economic analysis of crimes. The fact of the matter is that the production monopoly is axiomatically considered as a constraint on the efficiency of the market of goods and services due to the reduction of supply. At the same time, this applies more to essential and important goods. With regard to negative products, the monopoly of their production can have positive consequences, as output (supply) is reduced. Therefore, organised crime, as a criminal monopoly, can reduce the number of individual criminal manifestations, ensuring a constant level of criminality in society. Organised crime is inevitably linked to a tough criminal discipline, minimising various types of gang feuds, which, under certain conditions, meets in the public interest. In addition,

in a sense, organised crime protects the trade interests of citizens, resolves social conflicts and provides for the accumulation of primary capital (subsequently legalised, invested in business, that is, in fully legal enterprises) taking over some public functions (Buchanan, 1999). However, the opposite effect is also possible, when organised crime implies solely criminal activities, which demonstrates the flaws of the researcher's opinions.

By the way, the consideration of organised crime as a kind of trading or a certain business is not so rare for domestic criminology. It is not uncommon for organised crime to be seen as a form of risky entrepreneurship that adapts as much as possible to legal social institutions. In general, this approach is logical, because representatives of organised crime commit not only criminal acts, but also other actions designed to ensure the smooth functioning of a criminal organisation, such as the establishment of legal firms, business. Moreover, criminal groups have a large number of schemes for the investment of criminal proceeds in the legal sphere, which enable to form an image of good and respectable entrepreneurs (Shatov, 2019, p. 150). Therefore, the criminological characteristic of modern organised crime such as formality manifests itself in the existence of commercial structures in criminal networks. Now, the leaders of organised criminal groups have up to a dozen law firms, using their rights and smoothly entering the international arena. With this in mind, both criminal and non-criminal elements can be found in organised crime (Khristyuk, 2010, p. 109).

Organisation should be recognised as another strong criminological feature of organised crime. S.O. Yefremov, in his reflections, goes even further, calling criminal organisation the priority, determinant and almost the only feature that allows to group individual criminal acts into a certain aggregate. Organisation is one of the criteria that demarcates the activities of organised criminal groups from situational groups that resort to criminal activity by prior conspiracy (Yefremov, 2003, pp. 59–60). However, on the other hand, the characteristic of organisation is inherent in other types of crime, reflecting a high level of organisational and managerial level within the criminal group. For example, it is difficult to deny that some degree of organisation is involved in economic or professional crime. This does not automatically enable to classify the manifestations of such criminal acts as global organised crime. Therefore, N.Ye. Miniailo underlines that along with the characteristic of organisation for organised crime, it is necessary to have corruption connections and selfish motives. In this context, it is fundamentally important that the corruption link should be permanent (i. e., corrupt

officials are in constant contact with the criminal world) and not limited to individual acts of bribery (Miniailo, 2016, p. 163). To give a fuller picture of organised crime, the following features should be added: high level of latency, top-down hierarchy, existence of certain rules of conduct, application of intelligence techniques, large-scale money management, recruitment of new members of criminal groups, establishment of control over banking activities, money laundering and, finally, creation of the "light" image in the information field, usually through the mass media.

Upon the works by foreign criminologists regarding the definition of the term "organised crime", it should be noted that the dominant perspective is a consolidated one, that is, organised crime is equated with business, illegal entrepreneurship. O.Yu. Shostko writes that American criminology considers organised crime as a network of complex criminal structures similar to those of large corporations that exist under their own laws, seek total control at the regional or national level and control entire spheres of social life, trying to maximise profits through a number of criminal operations (Shostko, 2006, p. 183). Some American scientists even suggest replacing the term "organised crime" with the term ("illicit enterprise"). This proposal is explained by the fact that criminal organisations, in fact, work in the same way as legal holdings, ensuring the demand of the population for illegal, prohibited goods, using analogous organisational models. The American perspective is supported by the Dutch criminologists, who point out that the concept of "organised crime" is not conceptually defined, and therefore it is more appropriate to use a "criminal enterprise". Similar suggestions are found in the scientific and law enforcement field in the UK and Germany.

It should be noted that, in foreign law application, each case of criminal activity is determined to be organised crime individually by the relevant law enforcement authorities. For example, in Poland the final classification of the act is entrusted to the court, while the "criminal association" is considered from two perspectives: general criminal and economic.

#### 4. Conclusions

To sum up, in the author's opinion, the most logical definition of the concept of "organised crime", which simultaneously consider both criminological and criminal-legal aspects is as follows: organised crime is a stable, independent, hierarchical organisation of criminal environment, characterised by a clear structure, coordinated criminal actions, criminally liable as provided by legal regulations, long-term goals and the aim to gain permanent significant profits, turning their own trading into "illegal

entrepreneurship” and significant risks for the state well-being due to the symbiotic connection of criminal networks with corrupt officials.

In conclusion, it should be noted that the concept “organised crime” in the current Ukrainian reality is becoming extremely widespread,

resulting in an insufficient understanding of this social and legal phenomenon. Given its significant threat to the democratic principles of life in the State, it is required to take a more detailed approach to organised crime, and to disclose its essence, considering the criminological aspects.

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## ВИЗНАЧЕННЯ ПОНЯТТЯ «ОРГАНІЗОВАНА ЗЛОЧИННІСТЬ»: КРИМІНОЛОГІЧНИЙ АСПЕКТ

**Анотація.** *Метою статті* є детальний аналіз вітчизняних та іноземних підходів до визначення поняття «організована злочинність» як кримінологічної категорії та дослідження сутності цього соціально-правового феномену. Задля досягнення поставленої мети необхідно виконати такі завдання: здійснити огляд різних науково-кримінологічних підходів до розуміння організованої злочинності, визначити найбільш вдалі з них та запропонувати авторське бачення цього терміна, яке вдало поєднувало би в собі як кримінологічні, так і кримінально-правові аспекти.

**Результати.** Статтю присвячено визначенню поняття «організована злочинність», зокрема його кримінологічному аспекту. У статті встановлено, що ефективна протидія організованій злочинності прямо пов'язана з розробленням і формуванням оптимального визначення цього соціально-правового явища, яке одночасно враховувало би як кримінально-правові, так і безпосередньо кримінологічні аспекти. Автором розкриваються різні науково-кримінологічні підходи до визначення поняття «організована злочинність». У статті також звертається увага на те, що організована злочинність являє собою складний феномен суспільного життя з багатьма рівнями та складною структурою. Цей феномен виник на тлі прагнень частини соціуму змінити правову впорядкованість (причому неодмінно в незаконний, кримінально караний спосіб) в інтересах особистого збагачення, отримання максимальної наживи та фактичної влади над певним регіоном чи сферою життя.

**Висновки.** Унаслідок проведеного дослідження визначено, що організована злочинність – це стійке, самостійне, ієрархічно побудоване об'єднання кримінального середовища, яке характеризується чіткою структурою, злагодженими злочинними діями, за які нормативно-правовими актами передбачена відповідна кримінальна відповідальність, довготривалими цілями та переслідує мету у вигляді здобуття постійних, значних доходів, перетворюючи власний промисел на «нелегальне підприємництво», а також передбачає суттєві ризики для державного благополуччя з вини симбіотичного зв'язку кримінальних кіл із корумпованими посадовцями. Організована злочинність у сьогоденних українських реаліях наповнюється екстремально широким змістом, наслідком чого є недосконале розуміння зазначеного соціально-правового явища. Необхідно якомога детальніше підходити до питань, пов'язаних з організованим криміналітетом, з огляду на його суттєву небезпеку щодо демократичних засад життя в державі та розкривати його сутність із неодмінним урахуванням кримінологічних аспектів.

**Ключові слова:** організована злочинність, злочинні організації, корупція, нелегальне підприємство, легалізація доходів, кримінологія.

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