

damage is considered to be by a notary, not a party to the Treaty. This is very important because it allows to find out when the treaty that is determined to be invalid or which caused a party, the notary is drawn as a defendant. To address these issues you want is the systematization of judicial practice, because the law does not give a definitive answer to these questions. This problem has become one of the priorities for the legislative.

**Keywords:** notary; notary's legal responsibility; sanctions; offender; legal offense; types of notary's legal responsibility.

UDC 343.237

*Vozniuk Andrii* – PhD, Senior Fellow,  
Leading Specialist of Scientific  
Laboratory of the Problems of  
Preliminary Investigation of the  
National Academy of Internal Affairs

## **ORGANIZED FORMS OF PARTICIPATION ACCORDING TO THE CRIMINAL CODE OF UKRAINE**

*The article analyzes the current issues of criminal responsibility for crimes committed in organized forms of participation, according to the Criminal Code of Ukraine. The concept, characteristics and types of organized groups and criminal organizations, as well as some problematic issues of criminal legal qualification of crimes committed as part of organized criminal groups are regarded.*

**Keywords:** participation; organized group; criminal organization; form of participation; organized criminal association.

Organized groups and criminal organizations as the most dangerous forms of participation, threaten important public relations, put under criminal protection, including life, health, liberty, dignity, public safety, public order, and more recently, national security. Crimes committed as part of organized criminal groups are

characterized by a high degree of criminal activity, professionalism and efficiency.

According to the issues of the Ministry of Internal Affairs and the General Prosecution Office of Ukraine during the 2004–2014 years 4548 organized groups and criminal organizations were found, participants of which were 18 249 people. There was a tendency to reduce the number of detected organized groups and criminal organizations to 78,5 % (from 721st in 2004 to 155th in 2014), indicating that not only reducing of the number of such associations were made, but also the difficulty of identifying, documenting and stopping illegal activities of their members.

However, in 2014 the situation has changed. During this year, 478 offences were recorded for which criminal liability is done under the Art. 258–3 of the Criminal Code of Ukraine (Creating a terrorist group or terrorist organization) (in 2013 there was only one crime) and 457 crimes for which criminal liability under the Art. 260 of the Criminal Code of Ukraine (Creation is not provided for by law or paramilitary militias) (in 2013 there were no such offences).

The threat of crime committed by organized criminal associations should not be underestimated, paying attention to the high degree of public danger of illegal acts they committed, on the one hand, and a high level of latency – on the other.

In order to ensure effective response to organized crime in the Criminal Code of Ukraine a lot of articles were formed which define the basic skills provision crimes committed in complicity. However, the study of scientific literature and sociological research indicates insufficient quality and efficiency of criminal provisions governing the criminal responsibility of the features of organized criminal groups.

A significant contribution to the development problems of criminal evidence of organized criminal groups are researched by M. I. Bazhanov, F. G. Burchak, V. A. Vladimirov, R. R. Haliakbarova, L. D. Hauhmana, P. I. Grishaeva, Leo Demidov, V. Emelyanov, S. Yefremov, G. P. Zharovskoyi, A. A. Kvasha, G. A. Krieger, A. F. Kovitidi, M. J. Korzhanskoho, E. K. Marchuk, M. I. Miller, V. Navrotsky, P. F. Telnov, V. V. Ukrainets, M. I. Havronyuk, S. D. Shapchenka, M. D. Sharhorod, N. M. Yarmysh and others. However, threats of organized forms of participation under the Criminal Code of Ukraine left out thorough research.

Organized forms of participation under the Criminal Code of Ukraine are characterized by certain features, the study of which is the purpose of this article.

Forms of complicity in the Criminal Code of Ukraine by over crimes committed by certain associations.

Crime is recognized as being committed by a group, if it involved multiple (two or more) performers without prior agreement between them (ch. 1, Art. 28).

The crime is committed by prior conspiracy, if it is jointly committed by several persons (two or more) in advance, before the crime agreed on joint having done so (ch. 2, Art. 28).

The crime is committed by an organized group, if its preparation or commission of several people involved (three or more), previously organized themselves in stable association to commit this and other (s) crimes, united by a common plan of distribution functions of the band aimed at achieving this plan, known to all group members (p. 3, Art. 28).

A crime is committed by a criminal organization if committed by a stable hierarchical association of several people (five or more), whose members or structural parts which organized themselves by prior agreement for joint activities in order to direct the commission of grave or especially grave crimes members of the organization, or management or coordination of criminal activity of others, or the functioning of both the criminal organization and other criminal groups (p. 4. 28) [1].

In Chapter 3 and 4 of the Article 28 of the Criminal Code of Ukraine is spoken about two organized criminal association – organized group and criminal organization, as defined through the crimes committed by their members.

Analysis of the provisions of the Criminal Code of Ukraine and the Resolution of the Supreme Court of Ukraine of the 23d of December 2005 № 13 «On the practice of courts of criminal cases concerning crimes committed steady criminal associations» [2] gives a reason to believe that organized criminal associations are divided into general and special. To the general an organized group should be included and criminal organization as defined to the article 28 and 255 of the Criminal Code of Ukraine. Organized groups and criminal organizations under the Art. 143, 181, 257, 258–3, 260 and 392 of

the Criminal Code of Ukraine are special because they are in addition to the common signs of organized groups and criminal organizations under Art. 28 and 255 of the Criminal Code of Ukraine, are characterized by special features provided by dispositions Art. 143, 181, 257, 258–3, 260 and 392 of the Criminal Code of Ukraine.

Thus, in several articles of the Criminal Code of Ukraine criminal liability for creating special kinds of criminal association and participate in them is established. Thus, in Art. 143 of the Criminal Code of Ukraine the responsibility for participating in multinational organizations involved in violation of the law or transplantation of human tissue is provided; Art. 181 of the Criminal Code of Ukraine – for the organization and leadership of the group, whose activities carried out under the pretext of preaching religious beliefs or performance of religious rites and connected with causing harm to human health or sexual debauchery; Art. 257 of the Criminal Code of Ukraine – for organizing armed gangs to attack on enterprises, institutions, organizations or individuals, as well as participation in such gang or exerted its attack; Art. 258–3 of the Criminal Code of Ukraine – the creation of a terrorist group or terrorist organization, the leadership of such a group or organization or participation in it, as well as organizational or otherwise support the establishment or activity of a terrorist group or terrorist organization; Art. 260 of the Criminal Code of Ukraine – the creation provided by law Ukrainian military or armed groups, participating in their activities, these management units, financing and supply them weapons, ammunition, explosives or military equipment, participation in the composition of these forces in the attack on the company, institutions, organizations or individuals; Art. 392 of the Criminal Code of Ukraine – for the organization to spread terror in penal institutions prisoners attack on the administration of an organized group, active participation in such a group.

Legal nature of some of these groups is controversial because the legislator explicitly set to some form of complicity under Art. 28 of Criminal Code of Ukraine, should include a particular criminal association.

Exploring organized criminal associations can not avoid the fact that the investigation of crimes committed in these forms of

participation, complicated some problematic issues of criminal law qualification.

1. The Criminal Code of Ukraine undefined concept of «organized group» and «criminal organization». In Ch. 3, 4. Art. 28 of the Criminal Code of Ukraine the meaning of the offence is just regarded, committed by an organized group and criminal organization. However, the notion of an organized criminal association and its members committed a crime are not identified because among them there are important differences.

The study of foreign experience gives reason to believe that the criminal law of some countries (Russia, Armenia and Kyrgyzstan) secured only the definition of a criminal organization or crime committed by a criminal organization, and secondly (Republic of Belarus, Moldova, Azerbaijan) – both terms are defined in level law.

Different issues of organized criminal association and crime commition, in our view, is, first of all, the minimum number of participants. If an organized group consists of three or more people or a criminal organization – with five or more persons, a crime committed by these associations necessarily participate under three or more or five or more people. Other members who directly committed the offence, should be aware of this crime and take part in it as an organizer, instigator or accomplice, but not necessarily be performers. For example, according to ch. 1, Art. 30 of the Criminal Code of Ukraine performer of an organized group or criminal organization shall be criminally liable for any crimes committed by an organized group or criminal organization if they are covered by its intent. In addition, due to the fact that, according to ch. 5. Art. 29 of the Criminal Code of Ukraine accomplices not be criminally liable for committed acts, if it is not regarded by their intent, they are responsible for acts committed, if it is regarded by their intent.

Therefore there is a questionable definition in Part. 3. Art. 28 of the Criminal Code of Ukraine offence committed by an organized group, as having committed a stable union of three or more persons, and in ch. 4. Art. 28 of the Criminal Code of Ukraine offence committed by a criminal organization, as having committed a stable hierarchical association of five or more people.

Investigating different concept and purpose is different. If an organized group created to commit to this or that offence and

criminal organization – in order to direct the commission of grave or especially grave crimes members of the organization, management and coordination of criminal activity or other persons, or the functioning of both the criminal organization and other criminal groups, the crimes committed by these associations may be intended the commission as usual a specific crime.

Besides, a criminal organization created to commit grave or especially grave crime, but crimes committed by a criminal organization can be of any seriousness. Thus, participants who commit a criminal organization offence of minor or moderate severity should qualify for Part. 1, Art. 255 as participation in a criminal organization or crime committed by this association.

To summarize, it is necessary to emphasize that the crime committed by an organized group or criminal organization, and by association has important differences. Therefore, in view of their importance to the enforcement of the Criminal Code of Ukraine should be separately identified the concept of «organized group», «criminal organization», «crimes committed by an organized group» and «crimes committed by a criminal organization».

Crime committed by criminal organization is a crime of any seriousness committed by a participant (participants), provided that the other participants (all or most) aware of it.

2. Criminal and law features of organized crime groups in some cases do not have legislative provisions as determined by such notions. This applies, in particular, stability, hierarchy prior organization and other things. In the theory of criminal law, these signs are interpreted in different ways, making them difficult to use during qualifying crimes. Two features – stability and hierarchy disclosed in the Resolution of the Supreme Court of Ukraine «On the practice of courts of criminal cases related to crimes committed steady criminal associations» of 23 December 2005 p. № 13 [2]. However, these definitions, in our opinion, are imperfect, unspecified, and sometimes controversial criminal law because they do not allow to distinguish an organized group of a criminal organization.

Currently, there is a need for the development of the new law «On Combating organized criminal associations», which must, above all, clearly and in detail regulate criminal signs of organized criminal groups and rules of qualification of crimes committed by their

members [3, 175–177]. This need stems from the fact that the Criminal Code of Ukraine can not determine in detail all signs of organized criminal groups, and their interpretation in the resolution of the Supreme Court is advisory and does not have the force of law. In addition, the Law of Ukraine «On the organizational and legal framework to combat organized crime» and «On Combating Terrorism» does not contain substantive provisions reveal signs of an organized criminal association.

This model of criminalization of organized crime groups is selected in some foreign countries. For example, in Georgia operates the «Law of Georgia on organized crime and racketeering» of December 20, 2005 № 2354-RS, which establishes specific provisions qualify the crime committed in organized forms of participation. The purpose of this law is to help prevent and fight against the thieves 'world, racketeering and organized crime, as well as against members of the thieves' world to protect the private, public and state interests. Such a legal act («Act cease illegal acts membership gangs») is used in Japan.

3. In the theory of criminal law there is a conflict in determining the purpose of a criminal organization. According to ch. 4. Article 28 Criminal Code of Ukraine, the purpose of the offence committed by the criminal organization is a joint activity with the objective of committing grave or especially grave crimes members of the organization or management or coordination of criminal activity of others, or the functioning of both the criminal organization and other criminal groups. However, according to ch. 1, Art. 255 of the Criminal Code of Ukraine, the aim of creation of a criminal organization is committing a grave or especially grave crime and gang – attack on enterprises, institutions, organizations or individuals. Thus, the total of the Criminal Code of Ukraine determined purpose is much broader than in the Special Part. In addition, mixed in ch. 4. Article 28, and ch. 1, Art. 255 of the Criminal Code of Ukraine stipulates the minimum number of crimes for which the commission created a criminal organization.

4. Unclear criterias for the delimitation of the offence committed by an organized group of crime committed criminal organization. Criminal organization differs from organized groups by following features: 1) a minimum number of participants (in an organized group – three or more, and in a criminal

organization – five or more people); 2) the purpose of the association (if an organized group created to commit at least two crimes, criminal organization – for direct commission of grave or especially grave crimes (serious or particularly serious crime) or management or coordination of criminal activity others or the functioning of both the criminal organization and other criminal groups); 3) characteristic only of a criminal organization hierarchy. In general, only the latter feature makes it possible to distinguish a group of organized criminal organization, as the purpose of committing grave and especially grave crimes (grave or especially grave crime) and quantitative composition of the (five or more) can be true for organized groups.

5. The legislation is not fixed nature of a number of criminal organizations, including gang (art. 257 of the Criminal Code of Ukraine), a terrorist group (art. 258–3 of the Criminal Code of Ukraine), no statutory or paramilitary militias (Art. 260 of the Criminal Code of Ukraine) and so on. Therefore, it is not clear which form of complicity under Art. 28 Criminal Code of Ukraine, they should be classified.

6. Unresolved and controversial issues are other qualifications crimes committed in organized forms of participation, including: 1) to qualify as a crime committed by a member of a criminal organization that is not the intent regarded other participants; 2) covered or dispositions century. 255, 257, 258–3, 260 Criminal Code of Ukraine crimes committed as part of the association; 3) functions which should be considered accomplices of action organizer, accomplice or instigator, under articles of the Criminal Code of Ukraine; 4) qualify as action by organized criminal associations that participated in the commission of a crime, but is not considered a member of the association; 5) what is meant by the equipment of a banditry and weapons that may indicate the presence of this feature; 6) qualified as crimes committed during the transformation of complicity and more.

Conclusions made in the article do not claim to completeness and can serve as a basis for further research issues of criminal responsibility for crimes related to the creation of organized criminal groups and participating in them.



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UDC 343.91:391.91

*Fedchenko Maria* – Student of the Research Institute of Law and Psychology of the National Academy of Internal Affairs;

*Maznychenko Yuri* – PhD, Associate Professor, Associate Professor of Criminal Sciences Research Institute of Law and Psychology of the National Academy of Internal Affairs

## ON THE CLASSIFICATION CRIMINAL TATTOOS

The article is devoted to the study of such social phenomena as crime subculture, in particular, one of its most negative manifestations – criminal tattoos.

The authors by analyzing the most common types of tattoo systematized scientific knowledge in the criminal segment of the criminal subculture. During the development of this problem have taken into account some scientific approaches known domestic scientists-criminalists on the classification of criminal tattoos.

It is shown that from the point of view of obtaining relevant forensic information about the identity of the criminal, are important