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Criminal and Legal Counteraction to the Activities of Criminal Authorities: The Ukrainian Model

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■ **Abstract**. The problem of countering organised crime in Ukraine has always been in the centre of attention of both law enforcement officers and researchers. It became particularly relevant in connection with the creation of a new division of the National Police of Ukraine – the Department of Strategic Investigations and providing it with new tools to improve the effectiveness of bringing criminal figures to justice. As a result of amendments to the Criminal Code of Ukraine, the model of criminal and legal counteraction to the activities of criminal authorities has changed significantly. In particular, such concepts as "criminal community", "code-bound thief", "criminal influence", "criminal activity", "person who carries out criminal influence", and "person who is in the status of a subject of increased criminal influence" have been introduced into the legislative circulation, new acts have been criminalised – establishing or spreading criminal influence, applying for the use of criminal influence, and also organisation and assistance in holding or participating in a criminal meeting (sit-down) were separated into an independent section. The purpose of the study is to investigate the essence and content of the modern model of criminal law counteraction to the activities of criminal authorities, identify its conceptual shortcomings, and formulate proposals for improvement. During the research, a complex of scientific methods was applied – systemic, formal and dogmatic (legal and technical), comparative and legal, analysis, synthesis, induction and deduction. Special literature, provisions of the Criminal Code of Ukraine and judicial practice of their application were considered, and consultations with experts were held. Based on the findings, a holistic view of the Ukrainian model of criminal law counteraction to the activities of criminal authorities is presented, and its content is revealed. Recommendations have been developed on the interpretation and further application of Articles 255, 255-1, 255-2, 255-3 of the Criminal Code of Ukraine. The conceptual shortcomings of the model under study are identified and ways to improve it are outlined, including: 1) rejection of the criminal community as an independent form of complicity; 2) clarification of the definition of criminal influence by specifying its features and excluding unnecessary ones; 3) legislative consolidation of the term "criminal activity"; 4) rejection of the term "code-bound thief" primarily due to the fact that it concerns a person who is in the status of a subject of increased criminal influence; 5) changing the emphasis in the definition of a criminal meeting from its subjects to the purpose of this meeting

■ **Keywords**: organised crime; criminal organisation; criminal community; "code-bound thief"; criminal influence

■ Introduction

Organised crime poses a serious threat to the rights and freedoms of citizens around the world (Italy, China, Germany, USA, Turkey, Japan, etc.). Ukraine is no exception, where organised crime is a common phenomenon. Ukrainian researchers have repeatedly proved the public danger of creating and operating organised criminal associations, in particular, associated with its deep penetration into the economic and political spheres of the state [1-4]. It is no coincidence that the concept of organised crime is considered to be characterised by the idea of "serious danger" that it causes (from the standpoint of reasonableness, the restriction of fundamental human rights in criminal proceedings is particularly noticeable) [5, pp. 2116-2117].

Participants of modern organised criminal associations are mastering new technologies for committing criminal offences. For example, technologies of raiding, cybercrime, financial pyramids, the use of

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electronic money and cryptocurrencies [6-10]. "The modern criminal environment has a steady tendency to improve criminal skills, internal organisation, professionalism, technical equipment, etc." [11, p. 400]. On the other hand, a significant part of the members of organised criminal associations continue to adhere to the established rules, customs, and traditions characteristic of the criminal community of countries native to the USSR.

One of the trends of modern transnational crime is the desire of criminal structures to penetrate and succeed in the economy, politics, and management of large companies and enterprises. In the process of a fierce struggle for the right to control the profitable spheres of the economy and territory, the criminal environment is organised, the state is involved in its activities, and it penetrates the structures of power and management [11, p. 390]. In some regions of the country, a whole system of illegal relationships and relations has been formed that can compete with the legal institutions of society [12, p. 175-176].

During 2015-2019, the positions of representatives of organised crime significantly deteriorated due to miscalculations in the reform of criminal justice bodies and a significant level of corruption in the state. This has been repeatedly noticed in the studies by V.S. Batyrgareieva, A.M. Babenko [13], B.M. Holovkin [14], Yu.V. Lutsenko [15], A.A. Dudorov [16] et al. [17; 18]. It is no coincidence that a particularly dangerous form of corruption is the one that is carried out by organised crime [19].

It is impossible to ignore the changes in the Criminal Code of Armenia [20] and Georgia [21] related to the creation of special grounds for criminal liability of "code-bound thieves" and other criminal figures, which caused, among other things, the movement of these subjects of criminal influence from these countries to the territory of Ukraine. In this regard, there is a need to improve criminal legal tools for countering national forms of organised crime, and adequate forms and methods of their activities.

The purpose of the study is to investigate the modern Ukrainian model of criminal law counteraction to the activities of criminal authorities, in particular, disclosure of its essence, content, identification of shortcomings, and formulation of proposals for improvement on this basis.

■ Materials and Methods

To achieve these goals, a set of scientific methods was used: systematic – in the process of a comprehensive study of the system of elements of the current model of criminal law counteraction to the activities of criminal authorities in Ukraine; formal and dogmatic (legal and technical) – during the analysis of legal constructions of crimes provided for in Art. 255, 255-1, 255-2, 255-3, 256, 257 the Criminal Code of Ukraine, and the definition of the content of legal terms used in the work; comparative and legal – within the framework of comparing the signs of the criminal community as one of the modern forms of organised crime in Ukraine with the signs of various forms of organised crime in other states.

Consultations were held with experts (5 operatives of the Department of Strategic Investigations and 4 investigators of the Main Investigation Department of the National Police of Ukraine in Kyiv during February-October 2021) to ascertain the current state in the field of combating organised crime in Ukraine.

The application of methods of analysis, synthesis, induction and deduction allowed building a logical structure of the study, which includes the following blocks: 1) a brief description of the criminal community as one of the national forms of organised crime in Ukraine and the place of criminal authorities in it; 2) the main additions to the grounds for criminal liability of criminal figures; 3) the need for new criminal law tools; 4) the basic elements of the Ukrainian model of criminal law counteraction to the activities of criminal authorities; 5) conceptual flaws of criminal law tools in countering the activities of criminal authorities. The study used publicly available special scientific literature, materials of judicial practice from the Unified State Register of Court Decisions, and provisions of the Criminal Code of Ukraine.

■ Results and Discussion

Criminal community as a national form of organised crime in Ukraine and the place of criminal figures in it

Modern organised crime operating in Ukraine has different forms of manifestation, among which a special place is occupied by the *criminal community*, characterized by certain features of organised, recidivist, and professional criminal activity. Its participants have formed certain rules, adhere to established traditions, created an extensive infrastructure, and also carry out effective cooperation with representatives of organised criminals in other countries. A special danger of such a community is that bringing individual members and their associations to criminal responsibility does not entail its liquidation, since one criminal figure is replaced by another, which continues to organise, coordinate or facilitate criminal illegal activities in a certain territory. In part, this can explain the fact that, despite the efforts of the authorities to eliminate this form of organised crime, it continues to operate successfully outside the post-Soviet states.

The criminal community, as the most well-known national form of organised crime in Ukraine (for comparison, in Japan it is the Yakuza, and in America and Italy it is the mafia), has several special features that allow identifying it among other forms of organised crime. Firstly, at the top of the hierarchy of the criminal

community are "code-bound thieves" (literally called "thieves in law" or "thieves", "criminals covered by the code"). They are subject to "enforcers" ("polozhentsy", "smotryaschie") and other criminal figures. A criminal figure is a person who is trusted in the criminal environment, enjoys respect among criminals and has a significant influence on them. This can be either a "code-bound thief", "enforcer" or a person who is not in such informal statuses. Secondly, the main function of the criminal community is to organise, control, and coordinate criminal and illegal activities in a certain territory and/or in a certain area. Control of ordinary crime is a specific feature of the mafia, and not of other forms of organised crime [23]. Representatives of the criminal community try to control various types and forms of crime in a certain territory. Thirdly, the economic basis of this form of organised crime is the presence of a "common fund", which is formed by appropriate contributions from both legal and illegal activities and is used for the needs of the criminal world (for example, support for convicts in detention centres). Fourthly, the criminal world has established certain customs and traditions that have undergone a significant transformation over time, but are mostly observed among representatives of the community and other criminal offenders. Many "code-bound thieves", like chameleons, were able to adapt to the new business situation, but for a significant part of them, the traditional thieves' code and concepts remain important [24]. Fifthly, the criminal community has a collegial management body – the meeting, which resolves the most important issues related to criminal and illegal activities.

Substantiation of the need for new criminal legal instruments

Regarding the need to find new legal tools to counteract criminal authorities, it should be noted that on the one hand, the Criminal Code of Ukraine has grounds for bringing them to criminal responsibility both for creating a criminal association and participating in it (for creating a gang, criminal organisation, leading these criminal associations, participating in them), and for participating in crimes committed in complicity or alone. Therefore, in the conditions of high-quality criminal and criminal procedure legislation, as well as the absence of corruption in judicial and law enforcement agencies, it is possible to implement this. At the same time, unfortunately, researchers have repeatedly focused on the shortcomings of certain provisions of the criminal procedure legislation, which allow delaying the investigation of criminal proceedings, and ultimately closing them or passing acquittals [25-29]. The provisions of the Criminal Code of Ukraine also have certain shortcomings, but they are not critical. The level of corruption in the state is also significant, as already noted.

On the other hand, even in the absence of these legislative shortcomings and corruption of state bodies, there are certain gaps in the criminal law regulation of countering organised crime. Since the entry into force of the Criminal Code of Ukraine (September 1, 2001), it has always had grounds for criminal liability of members of organised criminal associations that generally met international standards. However, they were not sufficient for a complete and objective criminal an dlegal assessment of the activities of "code-bound thieves", "enforcers" and other criminal figures, related not to the commission of a certain crime, but to the influence on criminal activity in a certain territory or in a certain area. Until the criminalisation of the establishment and dissemination of criminal influence (Article 255-1 of the Criminal Code of Ukraine), there were no grounds "for bringing them to criminal responsibility for coordinating, facilitating, or inducing criminal activity. "For example, a "code-bound thief" or another criminal figure could not be brought to criminal responsibility for resolving disputes that arise between persons from the standpoint of unwritten "laws", "concepts", when he acted as a "justice of the peace", and determined the validity of claims, and made decisions on punishing the perpetrators, etc. Admittedly, if his actions did not contain elements of another criminal offence (extortion, coercion to performance or non-performance of civil obligations, etc.), there were no grounds to bring to criminal responsibility persons who contribute to criminally illegal activities by maintaining and ensuring the filling of the "common fund", persons who coordinate the commission of criminal offences in a certain territory (for example, grant permission to individual subjects and criminal associations to engage in illegal activities). The latter may not even know who, when, where, in what way, and against whom will commit a crime or criminal offence, which actually makes it impossible to bring them to justice as accomplices" [30, p. 268-269].

Therefore, the new criminal law bans have significantly strengthened the arsenal of law enforcement officers in countering organised crime. However, they should not be idealised, because the "community of code-bound thieves" can adapt to a changing environment. Even the harshest state repression is not enough to eliminate the mafia. Mussolini failed to destroy the Sicilian Mafia, just as Stalin failed to eliminate the "code-bound thieves". An effective policy against organised crime should go beyond repression and address the elimination of social and economic reasons for the existence of such organisations" [31]. "It is no coincidence that the emergence of criminal organisations is conditioned by the inability of weak states to ensure the safety of their citizens and provide them with the necessary services" [32].

Main additions to the grounds of criminal liability of criminal authorities and basic elements of the Ukrainian model of criminal law counteraction to the activities of criminal authorities

In order to improve the grounds for criminal liability of criminal authorities, amendments were made to the Criminal Code of Ukraine [22]. Firstly, a new form of complicity has been introduced – a criminal community (an association of two or more criminal organisations), its creation and management have been criminalised. Secondly, the following persons are recognised as special subjects of crime: "1) a person who carries out criminal influence; 2) a person who is in the status of a subject of increased criminal influence; 3) a "code-bound thief". Thirdly, the deliberate establishment or dissemination of criminal influence in society is criminalised (Article 255-1 of the Criminal Code of Ukraine), in particular, in temporary detention centres, pre-trial detention centres, or penitentiary institutions (qualifying feature). Fourthly, it criminalises the appeal to a person who can deliberately exert criminal influence for the guilty person, in particular, to a person who is in the status of a subject of increased criminal influence, including in the status of a "code-bound thief", for the purpose of applying such influence (Article 255-3 of the Criminal Code of Ukraine)." Fifthly, illegal actions in relation to a criminal meeting (sit-down) are singled out in a separate Article 255-2 of the Criminal Code of Ukraine, and participation in it is criminalised.

The Ukrainian model of criminal law counteraction to the activities of criminal authorities includes the following components:

1. Recognition of organised group, gang, criminal organisation, and criminal community as independent *forms of complicity*, and *criminalisation in certain types of crimes of creation of these criminal associations and participation in them.* The Criminal Code of Ukraine [22] criminalises such actions related to organised criminal associations as the creation and management of a gang, criminal organisation, and criminal community, and participation in a gang and a criminal organisation (participation in a criminal community is not recognised as a separate form of the objective side of the crime). Such a step by the legislator provides an opportunity to bring criminal authorities to responsibility not only for committing criminal offences as part of a criminal association (for example, robbery or extortion) but also for actions in relation to such an association (creation, leadership, participation). This is a very important tool in cases where it is impossible to prove the participation of criminal figures in individual crimes committed by a gang, criminal organisation, or criminal community. To bring a person to criminal responsibility for participating in a criminal association, it is not necessary to prove his participation in certain crimes committed by this association. After all, a member of a gang, criminal organisation or criminal community can provide other accomplices with tools and means, remove obstacles, ensure the life of the association, but not take part in specific crimes. In such circumstances, there are grounds to bring him to criminal responsibility for participating in a criminal association.

2. Identification of qualified crimes in the relevant structures *special subjects* – a person who carries out criminal influence, a person who is in the status of a subject of increased criminal influence, a "code-bound thief", an official. These also include "enforcers" and criminal figures who do not have the above-mentioned informal statuses. "A person who carries out criminal influence is a person who, through authority, other personal qualities or capabilities, promotes, encourages, coordinates, or exercises other influence on criminal activities, organises or directly distributes funds, property, or other assets (proceeds from them) aimed at ensuring such activities. Under a person who is in the status of a subject of increased criminal influence, including in the status of "code-bound thief", "it is necessary to understand a person who, due to authority, other personal qualities or capabilities, carries out criminal influence and coordinates the criminal activities of other persons who carry out criminal influence (Note 2 to Article 255 of the Criminal Code of Ukraine)" [22]. To recognise a person as being in the status of a subject of increased criminal influence, including in the status of "code-bound thief", it is necessary to prove: 1) the implementation of criminal influence by this subject; 2) the coordination of criminal activities by this subject of other persons who carry out criminal influence.

3. Criminalisation of *socially dangerous acts related to criminal activity* – "Establishing or spreading criminal influence" (Article 255-1 of the Criminal Code of Ukraine) and "Applying for the use of criminal influence" (Article 255-3 of the Criminal Code of Ukraine) [22]. "Criminal influence should be understood as any actions of a person who, due to authority, other personal qualities or capabilities, contributes, encourages, coordinates or exerts other influence on criminal activities, organises or directly distributes funds, property or other assets (income from them) aimed at ensuring such activities (Note 1 to Article 255 of the Criminal Code of Ukraine)" [22]. Criminal influence may consist in the following actions: appointment of "enforcers"; resolution of conflicts between convicted, previously convicted, and other persons; distribution of funds or other material goods between convicted persons; organisation and holding of meetings in penitentiary institutions; establishment of protection for persons committing criminal offences, etc. Criminal influence is combined with the commission of crimes against property (theft, robbery, extortion), illegal deprivation of liberty or abduction of a person, actions that disorganise the work of a penitentiary institution, illegal actions with narcotic drugs, etc.

It is important to pay attention to the fact that the legislator criminalised both the deliberate establishment or spread of criminal influence in society (Article 255-1 of the Criminal Code of Ukraine) [22], and the appeal to a person who knowingly for the guilty can carry out criminal influence, in particular to a person who is in the status of a subject of increased criminal influence, including in the status of a "code-bound thief", in order to apply such influence (Article 255-3 of the Criminal Code of Ukraine) [22]. In fact, the latest criminal law ban is designed to prevent the facts of turning to criminal authorities to solve personal problems. As commonly known, solving the problems of citizens within the legal framework is the prerogative of state bodies. Therefore, such appeals for help to subjects of criminal influence contribute at least to the popularisation of the criminal world, increase its profits and level the purpose of the state, and discredit it in the eyes of citizens. Researchers are right that the criminal world competes with the state, and the state should have absolute hegemony in the arena of law and order [33]. Some researchers identify the weakness of the national state as a key reason for the spread of organised crime [34; 35].

4. Criminalisation of *assistance to members of criminal organisations and concealment of their criminal activities* (Art. 256 of the Criminal Code of Ukraine). This assistance must necessarily not be promised in advance. By its nature, it is involvement in a crime under Article 255 of the Criminal Code of Ukraine. Assistance to members of criminal organisations and concealment of their criminal activities can only be committed in a certain way: by providing premises, storage facilities, vehicles, Information, documents, technical devices, money, securities (for example, providing a storage facility for storing firearms and ammunition or money received from the sale of narcotic drugs, providing information about the presence or absence of law enforcement officers on the territory to avoid exposing persons engaged in illegal amber mining).

The implementation of other actions that are not promised in advance to create conditions that contribute to their criminal activities is to provide assistance to members of criminal organisations in carrying out their criminal activities in any other way. This act in practice was manifested in the storage of documents of the organiser of a criminal organisation, providing assistance in the creation and operation of a fictitious legal entity. Art. 256 of the Criminal Code of Ukraine [22] most often qualify the actions of persons who provide assistance to representatives of the "DPR" and "LPR" (for example, provide information about the movement, location, fortifications and weapons of the armed forces, personal data of military personnel, information about the dead and wounded among military personnel; provide construction equipment for the construction of fortifications; serve at roadblocks; provide illegally detained people with work and food; hold certain positions in the authorities of the "DPR" and "LPR"; transport armed members of these formations).

5. Criminalisation of *organisation, assistance in holding or participating in a criminal meeting (sit-down)* (Article 255-2 of the Criminal Code of Ukraine) [22]. The specified meeting with the participation of representatives of criminal organisations, organised groups, and persons engaged in criminal influence is held for the purpose of planning crimes, material support or coordination of criminal activities, including the distribution of proceeds from crime, or spheres of criminal influence. A criminal meeting (sit-down) is a kind of collegial management body of criminal associations and individual criminals, whose participants periodically meet to make a decision on punishing violators of "thieves' codes", considering disputes, appointing "enforcers", distributing spheres of criminal influence, proceeds from crime, "coronation" of criminal authorities, deprivation of rank of "code-bound thieves", etc. This meeting can be held under the cover of an anniversary, wedding, funeral, etc.

6. Installation of *a special type of exemption from criminal liability for participation in criminal organisations* in case of voluntary notification of the creation of a criminal organisation or participation in it and active assistance in its disclosure (Part 6 of Article 255 of the Criminal Code of Ukraine) [22]. This rule provides an opportunity to involve in cooperation with law enforcement agencies participants of a criminal organisation who provide assistance in uncovering and investigating the creation of a criminal organisation, leading it, participating in it, including participation in certain criminal offences of its participants in exchange for exemption from criminal liability.

7. Recognition of *a circumstance aggravating the punishment of committing a criminal offence by a group of persons by prior agreement* (Part 2 or 3 of Article 28 of the Criminal Code of Ukraine) [22]. Its consolidation in the law on criminal liability is probably conditioned by the fact that the commission of a crime in these forms of complicity usually indicates a greater degree of public danger of the committed crime. A similar circumstance exists in foreign criminal legislation, in particular in the CIS countries, Vietnam, Lithuania, Norway, the Czech Republic, Sweden, Finland, etc. This is quite natural, because Part 2 of Article 3 of the EU Council Framework Decision on combating organised crime of October 24, 2008, states that each member state takes the necessary measures to ensure that the commission of crimes provided for in Article 2 within a criminal organisation can be recognised as an aggravating circumstance [36]. Interpretation of Part 2 of Article 67 of the Criminal Code of Ukraine [22] indicates that the court must always take this circumstance into account when assigning a sentence

as aggravating the punishment. This circumstance is applied to each participant of a criminal association, considering the nature and degree of public danger of the crime committed.

Therefore, the modern criminal law model of countering the activities of criminal authorities provides an opportunity to carry out a fairly complete and comprehensive criminal law assessment of the acts committed by them, including the actions of persons who apply to these subjects to solve certain problems. There is also the possibility of using individual participants of criminal organisations to expose the organisation as a whole and bring to criminal responsibility its organisers and ordinary participants. As of January 1, 2022, the Unified State Register of Court Decisions for the period 2020-2021 contains: 8 sentences under Article 255 of the Criminal Code of Ukraine, 1 sentence under Article 255-1 of the Criminal Code of Ukraine, 1 sentence under Article 255-3 of the Criminal Code of Ukraine, and not a single sentence under Article 255-2 of the Criminal Code of Ukraine [22]. Given the above, it is worth paying attention to some problems that to a certain extent affect the effectiveness of the application of this model, related to the unsatisfactory quality of new criminal law norms. It is necessary to agree that "the lack of the rule of law and legal gaps encourage organised criminal groups to thrive" [37].

Conceptual shortcomings of criminal law instruments in countering the activities of criminal authorities

The analysis of the literature indicates that there are serious flaws in the relevant grounds for criminal liability:

1. Certain components of new criminal legal instruments are *impractical and too difficult to use.* This refers to *the criminal community* given the difficulties of documenting it, the excessive burden on the work of law enforcement agencies, and the possibility of involving its participants for creating a criminal organisation, leading it, or participating in it. In addition, A. Kvasha draws attention to the potential difficulties in qualifying the actions of members of the criminal community [38]. The design of *a subject of increased criminal influence is too complex to use.* In order to bring to criminal responsibility a person who is in the status of a subject of increased criminal influence, including in the status of "code-bound thief", it is necessary to document and bring to criminal responsibility two or more persons who carry out criminal influence, and then prove the fact of coordinating their criminal activities [39, p. 185].

Participants of the meeting are recognised as *representatives of criminal organisations or organised groups and persons engaged in criminal influence*. The use of the term "representative of a criminal organisation or organised group" means that in order to prove the existence of representation, first of all, it will be necessary to prove the existence of a criminal organisation or organised group. But the existence of such associations can be confirmed if their members are convicted.

2. Separate terms are *clearly vague and inaccurate.* This will lead to different interpretations of them and complicate the application of relevant criminal prohibitions. At the very least, this refers to the concept of criminal influence, based on which the person who carries out criminal influence is also determined. It contains not only evaluative, but also indefinite terms – "due to authority, other personal qualities or capabilities", "other influence on criminal activity". Admittedly, researchers are right that such an approach, despite the unsatisfactory state of law enforcement and judicial activity, leads to arbitrariness and unlimited judicial discretion [38, p. 398].

3. *There is no definition of such terms as "criminal activity" and "code-bound thief".* There is no unity in the views of researchers on their content and in the theory of criminal law. If the criminal law category "code-bound thief" is actively discussed in scientific circles [40-43], then the concept of "criminal activity" is less developed in the theory of criminal law. In addition, the terms "code-bound thief" and "criminal activity" before the amendments to the Criminal Code of Ukraine had a more criminological meaning than criminal law.

4. *The possibilities of a special type of exemption from criminal liability under Part 6 of Article 255 of the Criminal Code of Ukraine are limited* by participation in a criminal organisation. The prerequisite for this criminal legal incentive can only be such a form of the objective side of the crime as participation in a criminal organisation. However, in practice, such participation is almost always combined with the commission of other criminal offences, and therefore, full exemption from criminal liability based on Part 6 of Article 255 of the Criminal Code of Ukraine is out of the question. Although, the question arises whether it is advisable to talk in such situations about the complete exemption from criminal liability of participants in criminal organisations.

■ Conclusions

Based on the study results, an idea of the essence of the Ukrainian model of criminal law counteraction to the activities of criminal authorities is formulated, its potential opportunities and vulnerabilities are revealed.

1. This model includes the following elements:

1) recognition of such organised criminal associations as an organised group, gang, criminal organisation, and criminal community as independent forms of complicity;

2) establishment of criminal liability for such acts: a) creating an organised criminal association (criminal

organisation, gang), leading it, participating in it; b) establishing or spreading criminal influence; c) applying for the use of criminal influence; d) organising, assisting in holding or participating in a criminal meeting (sit-down); e) assisting members of criminal organisations and concealing their criminal activities;

3) recognition as special subjects of crimes of an official and representatives of the criminal world – a person who carries out criminal influence, a person who is in the status of a subject of increased criminal influence, a "code-bound thief";

4) establishment of a special type of exemption from criminal liability of participants of a criminal organisation for participation in it in the event of positive post-criminal behaviour (voluntary notification of the creation of a criminal organisation or participation in it and active assistance in its disclosure);

5) provision of the possibility of imposing a more severe punishment in the event of committing a criminal offence by an organised group due to the recognition of this circumstance as aggravating the punishment.

This model covers the maximum possible range of subjects who carry out organised criminal activity, contribute to its development or are otherwise involved in it; includes a detailed differentiation of criminal liability for their committed acts; contains grounds for criminal law incentives to cooperate with law enforcement agencies in solving a criminal organisation.

2. In addition to its absolute advantages, the model of criminal law counteraction to the activities of criminal authorities has serious drawbacks, which, although, allow it to be applied in practice, do not allow it to be done effectively enough. Among them:

1) inappropriate and too complex for use of provisions on the criminal community, a person who is in the status of a subject of increased criminal influence and participants in the meeting (representatives of criminal organisations or organised groups and persons who carry out criminal influence);

2) clear uncertainty, inaccuracy, and vagueness of the terms "due to authority, other personal qualities or capabilities", "other influence on criminal activity", underlying the definition of criminal influence and a person who carries out criminal influence;

3) uncertainty of the terms "criminal activity" at the legislative level;

4) limitation of a special type of exemption from criminal liability by participation in a criminal organisation provided for in Part 1 of Article 255 of the Criminal Code of Ukraine.

3. Considering the above, it is possible to predict certain difficulties in using the studied criminal legal tools when proving the illegal activities of criminal authorities as the elite of the criminal world (they have considerable experience, try not to leave traces of crime, skillfully disguise them, know the techniques and methods of law enforcement agencies, have corrupt connections in public authorities, etc.).

4. Among the promising areas of improvement of the Ukrainian model of criminal and legal counteraction to the activities of criminal authorities, the study highlights the following:

1) exclusion from the Criminal Code of Ukraine of the provision on the criminal community;

2) improvement of the definition of criminal influence by specifying its features and excluding unnecessary ones;

3) addition of the Criminal Code of Ukraine with the definition of criminal activity;

4) exclusion from the Criminal Code of Ukraine of the term "code-bound thief";

5) improvement of the regulation on the criminal meeting by changing the emphasis from its subjects to the purpose of this meeting.

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Кримінально-правова протидія діяльності кримінальних авторитетів: українська модель

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■ **Анотація**. Проблема протидії організованій злочинності в Україні завжди перебувала в центрі уваги як правоохоронців, так і вчених. Особливої актуальності вона набула у зв'язку зі створенням нового підрозділу Національної поліції України – Департаменту стратегічних розслідувань та наданням йому нових кримінально-правових інструментів для підвищення ефективності притягнення до відповідальності кримінальних авторитетів. Унаслідок внесення змін до Кримінального кодексу України суттєво змінилася модель кримінально-правової протидії діяльності кримінальних авторитетів. Зокрема, у законодавчий обіг введено такі поняття, як «злочинна спільнота», «вор у законі», «злочинний вплив», «злочинна діяльність», «особа, яка здійснює злочинний вплив», «особа, яка перебуває у статусі суб'єкта підвищеного злочинного впливу», криміналізовано нові діяння – встановлення або поширення злочинного впливу, звернення за застосуванням злочинного впливу, а також виокремлено в самостійну статтю організацію, сприяння в проведенні або участь у злочинному зібранні (сходці). Метою статті є дослідження сутності та змісту сучасної моделі кримінально-правової протидії діяльності кримінальних авторитетів, виявлення її концептуальних вад і формулювання пропозицій щодо вдосконалення. Під час дослідження застосовано комплекс наукових методів – системний, формально-догматичний (юридико-технічний), порівняльно-правовий, аналіз, синтез, індукція та дедукція. Вивчено спеціальну літературу, положення Кримінального кодексу України та судову практику їх застосування, проведено консультації з експертами. За результатами дослідження представлено цілісне уявлення про українську модель кримінально-правової протидії діяльності кримінальних авторитетів, розкрито її зміст. Напрацьовано рекомендації щодо тлумачення та подальшого застосування ст. 255, 255-1, 255-2, 255-3 Кримінального кодексу України. Виявлено концептуальні недоліки досліджуваної моделі та окреслено шляхи її вдосконалення, серед яких: 1) відмова від злочинної спільноти як самостійної форми співучасті; 2) уточнення визначення злочинного впливу шляхом конкретизації його ознак і виключення зайвих; 3) законодавче закріплення терміна «злочинна діяльність»; 4) відмова від терміна «вор у законі», передусім з огляду на те, що він стосується особи, яка перебуває в статусі суб'єкта підвищеного злочинного впливу; 5) зміна акцентів у визначенні злочинної сходки з її суб'єктів на мету цього зібрання

■ **Ключові слова**: організована злочинність; злочинна організація; злочинна спільнота; «вор у законі»; злочинний вплив