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Prolonged Experience in Combating Economic and Organized Crime in Ukraine (1999-2022)

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Abstract

In the research papers on victimology the academicians usually define victimization as the whole complex of all cases when an individual (a social community) suffers moral or bodily injury and damage in a crime. Under the cited above meaning “victimization” as the gene-realization of the whole vicinity realized is the most appropriate term that corresponds to the term “crime”. In a certain extent victimization is simultaneously the measure of human destructibility realized in crimes. At that business victimization levels exceed the levels of crimes registered and related to them one and a half time. At the same time the level of residential victimization totally tops the number of crimes committed against businessmen in 2 and 2,5 times. Thus the breach is the more, the better is the public's activity in combating crime and the less is its reliance in private security. Thus businessmen's anxiety about property security and extra emergency measures undertaken by them equalize the levels of victimization and crime. On the other hand, equalization of the victimization and crime levels is caused by the process of objective coalescence of business units and criminal groups and the pronounced tendencies to restricting influence of organized crime upon businessmen.

Keywords: criminal activity, illegal opening, using currency accounts abroad, parallel economy, victimization, parallel justice.

Introduction Part VII, the Special Section of the new Criminal Code of Ukraine (hereinafter CC) provides for criminal responsibility for mana-gement related crimes. The early criminal legislation considered the former as economic. The name of the cited above criminal activity and its system was changed since adoption of CC. The innovations were caused by re-comprehension of the role of Criminal Law under safeguarding economic relations in the transition to market period. As a result of reforming the economic system, changing the principles of regulating the state and law relations established under carrying out management activities Criminal Law is called for mainly combating new and earlier unknown harmful to society forms of economic behavior including illegal entrepreneurship, unfair competition and monopoly activity, credit fraud and other. Included in the new CC the provisions about responsibility for management related crimes are aimed at preserving evading taxes, takings and other compulsory payments (Art. 212, CC); illegal producing, storing, selling or transporting to sell excisable goods (Art. 204, CC); illegal producing, counterfeiting, using or selling documentary stamps or check marks produced, obtained illegally or counterfeited (Art. 216, CC). Crimes against social relations regulating bankruptcy: false bankruptcy (Art. 218, CC); bringing to bankruptcy (Art. 219, CC); concealing constant financial inability (Art. 220, CC); illegal acts under bankruptcy (Art. 221, CC). Crimes against social relations regulating trade and consumer services: fraud against customers and clients (Art. 225, CC); producing and selling unsound products (Art. 227, CC).

Crimes against social relations regulating privatization of national, municipal or enterprises' property: unlawful privatization of national, municipal or enterprises' property (Art. 233, CC); illegal operating privatization documents (Art. 234, CC); breaking compulsory terms of privatizing and subsequent using national, municipal or enterprises' property (Art. 235, CC).

The proposed system is characterized by definite orderliness and balance facilitating, by no means, applying criminal law provisions precisely and by dynamics as the system gives opportunities to improve the legislation on responsibility for management related crimes [1; 2].

Under conditions of economic and market reforms in Ukraine foreign economic activity is called upon to attract foreign capital. Liberalization of Ukrainian foreign economic relationships caused a new economic problem raised, i.e. currency outflow. By some judgment placed abroad and controlled really by legal entities and individuals hard currency amounts to tens of billions dollars. According to different data annual capital outflow comes to $ 2−2.5 billion. At that foreign trade transactions, no doubt, play key role in forming a currency outflow system. The new Criminal Code (hereinafter CC) stipulates responsibility for evading return of currency proceeds and illegal opening and using currency accounts abroad.

Under Article 207, CC officials of enterprises, establishments and organizations, irrespectively of the property forms, or individuals engaging in economic activities without founding legal entities are liable for willful evading returning to Ukraine currency proceeds from exported goods (services) or other values acquired there from as well as for willful concealing of the cited proceeds, goods or other values by any means on the terms provided for by the law.

Article 208, CC provides for liability for illegal opening and using individual currency accounts abroad under violating the lawful procedure by a Ukrainian national permanently residing in Ukraine as well as currency accounts of legal entities in Ukraine by officials of enterprises, establishments or organizations or by a third person on their behalf and also for committing the above activities by individuals engaging in business activities without founding legal entities.

On the assumption of the above provisions and the object of perpetration the subject in these crimes is currency proceeds and currency accounts of enterprises, establishments, organizations or individuals opened without permission of National Bank of Ukraine. Currency proceeds of economic subjects are the sum of currency earnings from goods [1; 3].

The gaps of the former Criminal Code as well as the shortcomings in law enforcement caused economic crime remaining latent. Tax evasion became “a favorite sport”. Credit fraud is a contract crime now. Crime among businessmen poses a threat to national security. Another reality of Ukraine is that organized criminal groups are monopolizing definite legal business branches, economic and social control (better to say anti-social) under businessmen.

Government fails in regulating economic relations. As a result the cited gap is bridged by shadow mechanisms of "parallel economy", "parallel banking system", "parallel justice", in which under world experience and Ukrainian reality organized criminal groups play considerable part. Collapse and ineffectiveness of social control, oligarchic ways to combat business-related crimes entail serious consequences: mass involving businessmen into shadow and improving organization and stability of organized criminal groups. Under the cited above circumstances, as a rule, businessmen are simultaneously victims and participants of criminal activities. Such dualism is caused by the totality of social and psychological factors. Businessmen strive for uncontrolled enrichment. Criminal groups and the power strive for enriching at the expense of businessmen [4].

The present research of business victimization demonstrates that under the development of the Ukrainian State, the improvement of social control system and the transformation of a considerable number of criminal groups from "gangs" of racketeers into secret and, very often, legalized economic entities engaging in business activities, the vector of victimization of business has changed: from mass criminal extortion to mass legalized "extortion" by abuse of power. The merging of criminal and power institutions facilitate the cited above process. Assimilating businessmen with crime and corruption in general the amalgamation of businessmen and criminal groups and laundering of money through business entities also limit victimization of businessmen to some extent. On the other hand, the growth of criminal business activities causes merging of business and crime and homeostatic process of interdependencies and interrelations between organized crime and business. At that it is a question of symbiosis and supplementing each other - victimization of business and organized crime. Nourishing organized crime business is assimilated with the former. In its turn, organized crime legalizes itself by business. The cited mechanism of interpenetration and inter-supplement is more affective when a businessman can benefit more by interacting with organized crime, rather than with government [4; 5].

About 3% of the entrepreneurs interviewed only consider that organized criminal groups exist in the region of their business activities and impede their work. 77% hesitate to answer. Only 20% suppose that such criminal groups are not in their region. The high percentage of the hesitating respondents may be caused by the fact that the entrepreneurs don't want to describe their criminal protectors. Along with the cited above the following facts are demonstrative: 17%

of the entrepreneurs consider the region of their business activities safe completely as to the level anti-crime protection, 60% − rather quiet and only 23% − dangerous. However, for the purposes of property and private security and protection from criminal encroachments 27% entrepreneurs concluded contracts with State Security agencies, 21% employed private security agencies, 25% set up their own security service, 27% protected the estimates with grating, 43% protected the estimates with security signaling. Businessmen in trade more often strike bargains with private security agencies − totally 53%. The cited above tendencies are an alarm factor that in certain extent indicative of presence of criminal ties and interdependence of business and crime. Taking into account that organized criminal groups keep the private security agencies under control we can assume the high level of latent victimization there. A security agency or market administration "legally" takes a tribute for providing with safe trade or property protection and so on. Thus in spite of the low level of threatens to business activities according to the data of the cited survey, victim perception of businessmen is high enough. It is explained by the anxiety about the general level of crime in general and the connection of some businessmen with legalized entities, which are in fact shelter for one, or another "security" criminal organized activity [4; 6].

According to the preliminary data the main forms of criminal victimization are property thefts including private one, involvement in corruption through conversion centers and entities parallel to economic institution, and by fraud and sometimes extortion. At least 4% suffered assault and battery; 5% − extortion; 0.2% bodily harm; 12% − theft of private property; 9% − fraud. The motive was conditioned by skepticism toward the law enforcement capabilities or by insufficient damage done. The results of the survey are also evident that unfortunately the government and some power institutions mainly facilitate today business victimization. The cited circumstance causes involving a considerable number of businessmen in illegal activities of organized criminal groups. The government doesn't protect and make businessmen highly corruptive. The results of the survey prove the former. 60% businessmen participated in the anonymous poll confessed that they had to give bribes to officials (in most cases − nearly 40% − to tax administration officials). 25% denied answering the question. Only 15% stated that they had not to give bribe. To our mind, the last figure is too high. The reason is probably that a number of businessmen are aware of law consequences, i.e. liability for giving a bribe. The answer to the question about suggestive ways to deter organized criminal groups is also demonstrative. In opinion of most businessmen the law enforcement are well informed about leaders and members of criminal groups, “They know who they must imprison but they don’t”. The facts that businessmen don’t rely upon effective law enforcement and the country is infected by corruption are evident that “anemia” more and more affects businessmen. It is a troublesome factor facilitating criminalization of business [4; 7].

Conclusions Making the conclusions we want to outline the following: Business victimization mostly depends on the economic status of businessmen and the interests taken by criminal groups in someone’s business activities; The indicator of business victimization (suffering extortion) is indicative of the fact that as a rule businessmen are engaged in illegal business (prostitution, alcohol and tobacco trade); The involvement of businessmen into criminal activities passes two stages. On the first stage, under the market relations’ development a businessman was considered “milch cow” for organized criminal groups like gangs. On the second one, under merging organized criminal groups and governmental and administration agencies, businessmen more often get under pressure of authorities and their corrupt officials; “Protection shelter” and “extortion” suffered by businessmen are of total character as law enforcement officers and private security agencies that keep the respective segments of market under control implement the cited above methods rather than organized criminal groups do; Legalized great part of their activities organized criminal groups focus on developing and exploiting parallel banking system (conversion centers), laundering money through shame firms, establishing firms - accumulators which are granted with tax privileges and assist their client to evade taxes, credit fraud, prevailing at markets segments of product export and import, smuggling; Taking into account that the cited above economic activities by criminal groups need maintaining permanent relations with law enforcement officers and broadening sphere of influence, the battle for power redistribution and the corruption of certain officials is still underway. Under that businessmen victimity is just increasing as the “tribute” press and the involvement in criminal economic turnover cause businessmen depending on criminal groups in finance management, foreign and liquid product trade and parallel justice.

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