

# Meaning of the Term “conspiracy” in the Law of Ukraine and Other Countries

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**Abstract.** *The article uncovers the essence of the conspiracy as a term borrowed from the European languages. It also reveals semantic and semiotic transformations that mislead the unity of understanding of the meaning of conspiracy by the foreign and Ukrainian jurists. The article determines the differences between the nature of the secret performance of the opposite forces — representatives of the criminal, subversive organizations and the state agencies that are fighting against the organized crime. The research suggests approaches to the usage of the term of “conspiracy” in legislation, taking into consideration the integration of Ukraine into the Euro-Atlantic community. In the west- European understanding “conspiracy” as a term, is the reflection of the secret activity of, specifically, illegal organizations that use a complex system of measures in order to ensure their evildoing. Adaptation of this term as an indication of the principles, bases, measures and the actions of the operative crime detection activity authorities of Ukraine and other countries of the post-Soviet region is the result of semantic confusion and overlaying of the meaning in the understanding of the differences between the nature of the secret activity of the representatives of the criminal world and the authorities that are competent to fight organized crime.*

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Quality and efficiency of the legal regulation of social relations depend on the accurate understanding of the essence and exactness of definition of the legal terms that are used in legislation and subordinate legislation. Ambiguous interpretation of terms that are used in the legal acts create the conditions for the violation of human rights and liberties, expansion of corruption, possibility for harmful activities against the state and separate citizens, justification of the criminals. Unclear definition of the legal terms disorganizes the performance of the state agencies, organizations and institutions, which often creates ground for the situations of opposition between lawfulness and reasonability.

Taking into account that the association agreement between Ukraine and the European Union<sup>1</sup> foresees tight cooperation in the areas of the fight against money laundering and terrorism financing (Article 20); illegal trafficking of drugs, precursors and psychotropic substances (Article 21); crime and corruption (Article 22); terror (Article 23), and in the area of jural cooperation (Article 24), it is necessary that the understanding of the terms that are used in the legislation of the member-states

<sup>1</sup> Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони: ратифікована 16 вересня 2014 р. Верховною Радою України та Європейським Парламентом. Association Agreement between EU and Ukraine, ratified on September 16, 2014. Урядовий портал. *Electronic source:* [http://www.kmu.gov.ua/kmu/docs/EA/00\\_Ukraine-EU\\_Association\\_Agreement\\_%28body%29.pdf](http://www.kmu.gov.ua/kmu/docs/EA/00_Ukraine-EU_Association_Agreement_%28body%29.pdf), accessed: 12.12.2014.

of the agreement is the same. First of all, this is necessary for the acts of law that regulate social relations in the sphere of the fight against crime and maintenance of national and international security.

Today, the term “conspiracy” is widely used in the Ukrainian law. As a matter of fact, the term has no definite juridical interpretation and is used employing different meanings.

The goal of the article is to reveal the essence of the term “conspiracy” as the one that was borrowed from the West-European languages into the Ukrainian language and to detect semantic and semiotic transformations that break the unity of understanding of the meaning of the term by the Ukrainian and foreign jurists.

## **The Main Part**

Contemporary life of the Ukrainian society is filled with a variety of terms that have been integrated into everyday communication among civilians and the representatives of law enforcement agencies. Among the variety of words, one can frequently hear the terms of the foreign origin, including slang and jargon terms, such as manager, merchandiser, coordinator, message and so on. Quite often the meanings of the terms may totally or partially lose the peculiarity of their original meaning, adapting to the specificity of the target area of terminological usage. One of such terms is “conspiracy”, which has been experiencing transformations of its meaning through the prism of languages, social-political paradigm and the sphere of usage, preserving, at the same time, the nuclear of its original essence throughout millennia.

The etymological analysis of this term gives a good opportunity to comprehend the meaning and the specific character of “conspiracy” as of the contemporary synonym of the terms “confidentiality”, “secrecy” and “undercover performance”. The social-historical overview of the term “conspiracy” allows looking at the transformation of this term as at the result of social-political assimilation of interpretation of terms that characterize the peculiarities of planning, organization, maintenance and implementation of law enforcement, intelligence and counterintelligence activities that are directed at the protection of interest of the state and the community from infringement.

A number of scientists have dedicated their work to the research of the phenomenon of the term “conspiracy” and its meaning in the criminal, operational-search, intelligence and counterintelligence activities. Among the scientists are I. Zubach, V. Matsuk, V. Jefimov, V. Usenko, M. Pal'kin, M. Gribov, A. Venediktov, S. Petrijajev, V. Bakhin and many others.

In the professional activity of law enforcement agencies the term “conspiracy” is used for the indication of the process of making the information that holds state secrets classified. The etymology of this term illustrates “conspiracy” as a certain deal, which is made secretly. The word “conspiracy” was borrowed from West-European languages: (German — *konspiration*, English and French — *conspiration*), which means “come to the secret agreement, conspiracy, deal”<sup>2</sup>. The derivative

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<sup>2</sup> Латинско-русский словарь. Moscow: Рус. яз.-Медиа. 2003, p. 188; Великий сучасний англо-український українсько-англійський словник. Donetsk: ТОВ ВКФ «БАО», 2008, p. 116.

words are: conspirator (Lat. *cōspīrātor* — the one that uses conspiracy)<sup>3</sup>, conspirational (Lat. *cōspīrātus* — secret; connected with conspiracy, underground, for example: address, organization)<sup>4</sup>, conspirating (the one that provides secrecy) and to conspire (make secret). In the contemporary Ukrainian language semantics of the word "conspiration" is being interpreted in the following way: 1) Strict maintenance and preservation something in secret, 2) system and method, that are used by the underground organization for the maintenance of its activity in secret<sup>5</sup>; 3) methods that are used by the illegal, underground organization in order to keep its activity classified, 4) keeping in secret (transitional meaning)<sup>6</sup>; 5) measures, employed by the illegal organization with the purpose to preserve its activity in secret; 6) secret aim, conspiracy<sup>7</sup>.

English dictionaries, dictionaries of the source-language of the borrowing, the word "conspiration" is not used, as it is considered to derive from the word "conspiracy", which can be translated into the Ukrainian language as — "a secret deal (to commit the crime)"<sup>8</sup>. In the same way, American textbooks of "Criminal Justice" and "Criminology" interpret "conspiracy" as a deal between two or more individuals to commit a crime<sup>9</sup>. At the same time, the word "conspiracy" acquires the meaning of the criminal activity in the form of planning and execution of a crime, and is an object of the principle of "*Actus Reus*". This means that it is a part of a crime, commitment of which foresees criminal punishment. Thus, if a conspiracy has not been executed it is counted as an attempt to commit a crime as a deliberate and negligent action or inaction, which has led to harmful consequences and requires criminal responsibility<sup>10</sup>. Analogically, the Ukrainian legislation "conspiracy" acquires the meaning of a legal category, which holds the category of the criminal act. For example, Article 4 of the Criminal Code of Ukraine holds the following: "Planning of a crime is a search or arrangement of means or tools, search for accomplices or conspiracy to commit a crime, elimination of obstacles, and other deliberate creation of conditions for the execution of a crime". Also, Article 109 of the Criminal Code of Ukraine states that "Actions, committed with the purpose of violent change or overthrow of the constitutional order, or seizure of the state power, and the conspiracy to commit such actions are punished by the imprisonment for the period from five to ten years".

Thus, the original meaning of the word "conspiration" possesses exclusively the character of the criminal action and is used as the term for the identification

<sup>3</sup> Voight Lydia et al. *Criminology and Justice*. New York: McGraw-Hill. 1994, p. 103.

<sup>4</sup> Сучасний словник іншомовних слів. Kharkiv: Веста: Видавництво «Ранок», 2-nd-ed. 2008, p. 308.

<sup>5</sup> Словник іншомовних слів. Київ: Наукова думка. 2000, p. 290.

<sup>6</sup> Сучасний словник іншомовних слів. Kharkiv: Веста: Видавництво «Ранок», 2-nd-ed. 2008, p. 308.

<sup>7</sup> Тлумачний словник чужомовних слів українській мові. Правопис. Граматика. Київ: Криниця, 1999, p. 239.

<sup>8</sup> Columbia Encyclopedia. Paul Lagasse (Ed.). Wisconsin: Columbia University Press, 2000; The Encyclopedia Americana. Vol. 7, 1998; Gifis S.H, Dictionary of Legal Terms. New York: Barron's, 2008.

<sup>9</sup> Reid S.T, *Crime and Criminology*. Boston: McGraw-Hill, 2000, p. 257.

<sup>10</sup> Voight Lydia et al., *Criminology and Justice*. New York: McGraw-Hill, 1994, p. 27.

of the activity of underground and illegal organizations. At the same time, taking into account the interpretation of the foreign and domestic sources, the word “conspiracy” should be used for the identification of the secret activity, system, measures, methods and the character of specifically criminal, illegal and underground elements. In other words — individuals and entities of illegal activity that holds secret character.

Such position is being stressed on in some of the foreign scientific sources, where attention is paid not to the type of crime as such, but to the nature of the organization and the character of the criminal group which has executed it or is planning it<sup>11</sup>. Thus, for the interpretation of the phenomenon of the organized crime the word “conspiracy” is used for the indication of secret illegal activity of organized criminal groups in the states of Mississippi and Missouri of the United States of America. In comparison with other states, such as: California, Delaware, New Mexico, Ohio and Tennessee, USA, the word “conspiracy” is not used, and it is only pointing out that the activity of some groups is beyond the law and criminal<sup>12</sup>. Insignificant differences in the approach to the definition of such phenomenon as organized crime may be connected with the meaning of the nature and the activity of the organized crime within specific states, or the focus is made in the presence of specifically secret criminal activity.

Despite the fact that the essence of the original meaning of the word “conspiracy” holds negative background it is frequently used in the theory of operative crime detection activity and the criminal process as a synonym of such terms as “secrecy”, “secrecy mode”, “confidentiality” “secrecy of investigation” and “undercover activity”<sup>13</sup>. Hence, within the frames of operative crime detection activity the term “conspiracy” is being interpreted as “one of special principles, which involves keeping in the secret undercover search, intelligence and counterintelligence measures, usage or technical and operative-technical equipment of information gathering”<sup>14</sup>. This definition is quite close to the legal definition of operative crime detection activity. However, in the Law of Ukraine “On operative crime detection activity” the term “conspiracy” is not used: “Operative crime detection activity — is a system of public and secret search, intelligence and counterintelligence measures that are taken with the usage of operative and operative-technical means”<sup>15</sup>. Here, secrecy is defined with the word “secret”, which is defined as unavailable for the general public or open discussion<sup>16</sup>. Generally, the term “secrecy” can be interpreted as an action or measures that are performed without announcement of their implementation, or provision of general access to the information about their results. This means that the information

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<sup>11</sup> Voight Lydia et al., *Criminology and Justice*. New York: McGraw-Hill, 1994, p. 434.

<sup>12</sup> *Ibid.*

<sup>13</sup> Zubach I.N, Негласность как правовой феномен в уголовном процессе Украины. *Міжнародний науковий журнал. Науковий огляд*, 2014, No. 7, Vol. 8, p. 79.

<sup>14</sup> Юридична енциклопедія. Shemshuchenko Y.S (Ed.) et al. Kyiv: Українська енциклопедія, 2001, p. 269.

<sup>15</sup> Matsuk V.J et al., Науково-практичний коментар Закону України: Про оперативно-розшукову діяльність. 01.05.2011. Kyiv: Професіонал, 2011, p. 11.

<sup>16</sup> Zubach I.N, Негласность как правовой феномен в уголовном процессе Украины. *Міжнародний науковий журнал. Науковий огляд*, 2014, No. 7, Vol. 8, p. 80.

about the facts and principles of the secret activity are not to be disclosed and are secret.

Thus, in the Criminal Procedure Code of Ukraine undercover investigation (search) activities are defined as "a type of investigation (search) activities, information the facts and methods of their performance remain undisclosed, except in cases defined by the Code". Thus, within the legal frames, the principle of undisclosed activity of the competent, legally defined agencies is being crystallized specifically within the term "secret". At the same time, the usage of the term "conspiracy" would produce the flavor of illegal activity.

It has become quite usual that scientists observe conspiracy as one of the principles of operative crime detection activity of law enforcement agencies<sup>17</sup>. Zubach I.N. suggests understanding conspiracy as an active activity of individuals who execute operative functions of keeping in secret the information of restricted distribution. Also, conspiracy is viewed as an activity, which holds exclusively organizational-tactical character and as an executive aspect of the maintenance of the secret mode, which is a part of secrecy<sup>18</sup>.

In operative crime detection activity undercover measures are the means for crime combating that require certain conditions and grounds for their implementation. More than that, in the criminal justice undercover activity or measures, specifically undercover investigative (search) actions, is executed in special cases and exclusively in criminal cases investigating serious offenses and felonies. In this view, the polarity of the two terms "conspiracy" and "secrecy" is quite obvious. While "conspiracy" is a system of measures directed at the maintenance of the illegal activity of some individuals who are targeted to do harm or gain something, "secrecy" — is a system of measures, information of execution of which is kept in secret and is directed to fight illegal and criminal activity. For example, undercover investigative (search) actions restrict the constitutional rights of the Ukrainian citizens, but the grounds and conditions for the execution of these actions are determined by the Ukrainian legislation.

At the same time, conspiracy possesses the signs of illegal activity, execution of which, including facts and methods, is held in secret from the general public and these secret actions have no legal basis. That is why, the terms "conspiracy" and "secrecy" should be separated as synonyms, because they hold different meanings and background. "Secrecy" is used to reveal the truth and combat "conspiracy".

Quite neat is the conclusion of M.L. Gribov and A.A. Venediktov on the identical nature of the terms "conspiracy" and "conspiracy". They insist that their meanings are close if translated from Latin. In fact, in the criminal world individuals unite their efforts (conspire) to commit something harmful. Hence, "conspiracy" in the linguistic aspect is a barbarism, which can be found in the foreign language (for example, English) and substitutes a certain term in the target language (Ukrainian). That is

<sup>17</sup> Jefimov V.V, *Забезпечення державної таємниці в оперативно-розшуковій діяльності*. Науковий вісник Дніпропетровського державного університету внутрішніх справ, 2011, No. 4, pp. 412–418; Usenko V.F, *Конспірація в роботі з нелегальним апаратом*. Науковий вісник НАВСУ, 2003, No. 4, pp. 208–215; Pal'kin M.V, *Принципи діяльності кримінальної міліції*. *Право і Безпека*, 2012, No. 1, pp. 164–168.

<sup>18</sup> Zubach I.N, *op. cit.*, p. 82.

why, very often the word “conspiracy” reflects a criminal and political secret deal. Quite neat is also the remark that the final goal of the conspiracy is the result, which is targeted against the individuals, from whom the fact of common activity is hidden<sup>19</sup>. The meaning of conspiracy in this case holds the elements that require secrecy, specifically: hide the plans to commit certain actions that are targeted against proprietorship, existing social, economic, interpersonal and other conditions in order to reach the matter of conspiracy.

Conspiracy, as well as conspiracy, requires the creation of a complex system not only of the methods of work, but also the system of interrelations between its participators<sup>20</sup>. Participators of the conspiracy may have a hierarchic awareness of the details of the criminal activity as well as of other members of the illegal organization. In the world of crime conspiracy may also require physical elimination of some of the members of the conspiracy, if necessary.<sup>21</sup>

It should be noted that foreign and domestic sources observe conspiracy as the way to avoid punishment through systematic and strict fulfillment of conditions, under which information about the fact and participators of planning or execution of a crime will remain hidden from strangers, who are not the members of the conspiracy. The model of the organization of criminal groups is usually formed like the agencies of intelligence, as a certain system, which consists of separate elements. In the case of disclosure or the elimination of one of the elements (criminal luster, an individual) or failure — the system must have the possibility to recover quickly and without heavy losses<sup>22</sup>. With this purpose, every member of the criminal group must adhere to certain unwritten rules to keep the activity in secret, as well as intention and information, which can possess an operative interest to the appropriate state authorities. Thus, in the operative crime detection activity the information is reflected in appropriate documents, with a specific order, conditions of archiving and destruction. Peculiarities of the criminal activity do not include archiving information about the planning and execution of a crime by means of physical carriers. That is why, any piece of information, which requires hidden distribution requires that its members follow the rules of the “secret deal” or, speaking the language of the original — “conspiracy”. It should be also noted that the coordination between the elements of the criminal community is performed through direct or indirect communication, using literal or scrambled forms. In other words, they simply conspire. Speaking about the operative crime detection activity, hidden exchange of information, that fall under the restriction of distribution, is regulated and the information is distributed in the legislatively prescribed order.

The analysis of scientific and journalistic sources allows observing the phenomenon of the term “conspiracy” not only from the position of its literal meaning,

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<sup>19</sup> Gribov M.L, Venediktov A.A, Конспірація злочинної діяльності. *Боротьба з організованою злочинністю і корупцією (теорія і практика)*, 2010, Issue 22, p. 24.

<sup>20</sup> Pal'kin M.V, Принципи діяльності кримінальної міліції. *Право і Безпека*, 2012, No. 1, pp. 164–168.

<sup>21</sup> Petrjajev S.Y, Характеристика форм фальшивомонетництва та осіб, що його вчиняють. *Вісник НТУУ «КПІ». Політологія. Соціологія. Право: збірник наукових праць*, 2011, No. 1 (9), p. 234.

<sup>22</sup> Bakhin V.P, Карпов N.S, Сучасна злочинність і удосконалення засобів боротьби з нею. *Боротьба з орг. злочинністю і корупцією (теорія і практика)*, 2002, No. 5, p. 123.

and suggests certain polysemy of this term. Looking at the conspiracy from the position of a term and phenomenon in detail, it would be reasonable to look at it closely as at a complex system of measures and methods that maintain the activity of criminal groups.

Fast development of the information technologies, developing professionalism of the criminals, complexity of the conspiracy structure of the criminal groups, steady connection between their members allow conspiracy, as a system that creates secrecy for the criminal activity, to become stronger in quantity and quality. Conspiracy in the criminal world foresees the creation of well-designed legends, frequent change of secret addresses, production of cover documents, usage of advanced communication equipment<sup>23</sup>, usage of information technologies that allow archiving and scrambling information, creation of fake entities, personal information theft and so on. In addition, we should also mention misinformation<sup>24</sup>, imitation, change of appearance and undercover penetration as the methods of conspiracy.

Conspiracy, as a negative phenomenon and the one that aimed to produce harm in this or that way, conditions illegal character of that social group, which is its entity. In order to create the conditions for the execution of the conspiracy criminals need to employ conspiracy — measures that would ensure that intentions, methods and information about the participators of the conspiracy are kept secret.

Quite obvious is that the methods of making activity of illegal organizations and law enforcement authorities secret may be analogical. At the same time they are directed against each other. The main thing here is the nature of the activity. The point is that while illegal social groups, that perform their activity secretly (conspiratorially) and illegally, agencies that perform operative crime detection activity — undercover (secretly), on the basis of legislative and other regulatory documents. Taking into account that in the original conspiracy is a secret deal, directed at the creation of negative consequences against the object of the conspiracy and maintenance of the possibility to execute the evil intent, it should not be mixed with such synonyms as confidentiality, secrecy and undercover procedures. Despite the fact that conspiracy possesses the meaning of the mentioned terms-synonyms, it keeps the characteristic of an illegal activity that is aimed to produce harm. Undercover, secret procedures and confidentiality are, on the contrary, possess the meaning of keeping something in secret for the sake of community and the state.

Defining the genesis of conspiracy in the human history, Gribov M.L. remarks that the word "conspiracy", as a general term, experienced the transformation of its meaning in the twentieth century. He suggests that meaning and symbolism of this term stopped being the attributes of, specifically, illegal organizations. Hence, during the period of USSR "conspiracy" was legislatively assigned as one of the methods of work of operative teams of the police. It was also assigned as the element of performance of the state (absolutely legal) authorities. More than that, contemporary Ukrainian legislation and subordinate acts the term "conspiracy" is also being used as the element of the performance of state agencies that are

<sup>23</sup> Petrjajev S.Y, *op. cit.*, p. 234.

<sup>24</sup> Gribov M.L, Venediktov A.A, *op. cit.*, p. 25.

authorized to perform operative crime detection and counterintelligence activity. For example, in the Article 4 in the Law of Ukraine "On counterintelligence activity" and Article 3 of the Law of Ukraine "On state customs service of Ukraine" conspiracy is assigned as one of the principles of work that holds public and secret forms and methods of performance; in the point 1 of the Article & of the Law of Ukraine "On counterintelligence activity" — as one of the functions of counterintelligence functions; in the Article 3 of the Law of Ukraine "On State Security Service" — as one of the bases if the activity of the State Security Service; in point 1.3 of the Section II of the Order of the Ministry of science and education of Ukraine № 981 from 04.09.2014 "On the approval of Rules of guaranteeing access to the public information in the Ministry of science and education of Ukraine" and point 48 of the Order of States Security Service № 302 from 29.05.2004 "On the changes to the List of data that fall under the state secret" — as the characteristic of the documents that contain data of restricted access, or created to ensure undercover purposes; in paragraph 9 of the Article 9 of the Law of Ukraine "On intelligence authorities of Ukraine" — as the element of the activity of the intelligence authorities; in the paragraph 4 of the Article 4 of the Law of Ukraine "On the external intelligence Service of Ukraine" from 14.10.2004 — as the characteristic of the creation of separate organizations; in the paragraph 1 of the Article 9 of the Protocol between the Administration of the State customs service of Ukraine and the Federal security service of the Russian Federation "On cooperation in operative crime detection activity in cross-border issues" from 18.04.2007 and in point 5 of the Ordinance of the Cabinet of Ministers of Ukraine № 1169 from 26.09.2007 "On the approval of the Rules of receipt of the approval of the court to perform measures, that temporally restrict human rights and the usage of personal information" — as one of the requirements to the character of the activity and exchange of information.

Thus, the term "conspiracy" has adapted to the everyday usage among the synonyms with a similar meaning, assimilating with their meaning in various semantic paradigms. Despite the fact that "conspiracy" has integrated into everyday professional usage, within the frames of regulation of operative crime detection, intelligence and counterintelligence activities among the law enforcement authorities and is legislatively assigned in the documents of domestic and international value, its meaning remains "tarnished" by its autochthonous meaning.

## **Conclusions and Further Perspectives of the Research**

In the west- European understanding "conspiracy" as a term, is the reflection of the secret activity of, specifically, illegal organizations that use a complex system of measures in order to ensure their evildoing. Adaptation of this term as an indication of the principles, bases, measures and the actions of the operative crime detection activity authorities of Ukraine and other countries of the post-Soviet region is the result of semantic confusion and overlaying of the meaning in the understanding of the differences between the nature of the secret activity of the representatives of the criminal world and the authorities that are competent

to fight organized crime. In this view, taking into account that one of the current priorities of Ukraine is the integration into Euro-Atlantic community its legislation and international agreements should be adapted to the understanding of the meanings of terms secrecy and conspiracy of the west-European world. Special attention should be paid to the sections on the international cooperation. We hope that such an approach to the mutual understanding of the international cooperation in the sphere of fighting with the organized crime will foster the integration of Ukraine into Euro-Atlantic community.

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**Streszczenie.** Artykuł porusza istotę pojęcia „konspiracja”, jako terminu zapożyczonego z języków europejskich. W niniejszej pracy autorzy poruszają również kwestie transformacji semiotycznych i semantycznych, które uniemożliwiają poprawne zrozumienie koncepcji konspiracji przez ukraińskich jurystów. Omówiono także różnice pomiędzy naturą tajnych działań przez dwie przeciwstawne strony — organizacje kryminalne mające na celu podważenie istniejącego porządku, z jednej strony, oraz organy państwowe zwalczające przestępczość zorganizowaną. Badania ukazują również możliwe podejścia do stosowania terminu „konspiracja” w ustawodawstwie, mając na uwadze proces integracji Ukrainy z państwami społeczności Europejsko-Atlantyckiej.

**Резюме.** Раскрыта сущность конспирации как термина заимствованного в украинский из западноевропейских языков и выявлены семантические и семиотические трансформации, которые дезориентируют единство понимания его содержания зарубежными и отечественными юристами. Определены различия между природой тайной деятельности противоположно направленных сил — представителей преступных, подрывных организаций и государственных органов по борьбе с преступностью. Предложены подходы к употреблению термина «конспирация» в законодательстве, учитывая интеграцию Украины в евроатлантическое пространство.