

ADAPTATION OF UKRAINIAN LEGISLATION TO INTERNATIONAL STANDARDS REGARDING THE COMBAT OF ORGANIZED CRIME

ADAPTAÇÃO DA LEGISLAÇÃO UCRANIANA ÀS NORMAS INTERNACIONAIS RELATIVAS AO COMBATE AO CRIME ORGANIZADO

LARYSA ARKUSHA

National University «Odesa Law Academy», Odesa, Ukraine
larisa7arkusha@gmail.com

OLEKSANDR TORBAS

National University «Odesa Law Academy», Odesa, Ukraine
torbas.oleksandr@gmail.com

VIKTOR ZAVTUR

National University «Odesa Law Academy», Odesa, Ukraine
vzavtur93@gmail.com

TETIANA MELNYCHUK

National University «Odesa Law Academy», Odesa, Ukraine
t.melnychuk@onua.edu.ua

MYKHAILO SEREBRO

National University «Odesa Law Academy», Odesa, Ukraine
mykhailoserebro@gmail.com

YURII CHERNYSH

National University «Odesa Law Academy», Odesa, Ukraine
yriichernysh2023@gmail.com

Abstract: The article is devoted to the problems of adapting the legislation of Ukraine on combating organized crime to international standards in this sphere. It was emphasized that problem will remain relevant for post-war Ukraine for a long period of time, because it is organized crime can potentially become the mechanism that will try to undermine the foundations of national security and pose a threat to Ukrainian statehood. Therefore, building an effective system for preventing these crimes is vitally important for Ukraine in the context of ensuring its security and economic growth. It was proved that the preventive block of legislation on combating organized crimes is the weakest. The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Liability for Crimes Committed by a Criminal Community" has been criticized for its vagueness and evaluative nature, which is unacceptable in the field of criminal repression. As a result, it is proposed to develop and adopt the Law of Ukraine "On Combating Organized Crime", which will be based on the concept (definition) of organized crime as an object of preventive influence, which would meet the international standard of the UN Convention against Transnational Organized Crime and be consistent with the norms of the Criminal Code of Ukraine.

Keywords: Organized crime. Combating organized crime. Prevention of organized crime. International cooperation in the field of combating organized crime.

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Corresponding author:

larisa7arkusha@gmail.com



Resumo: O artigo é dedicado aos problemas de adaptação da legislação da Ucrânia sobre o combate ao crime organizado às normas internacionais neste domínio. Foi enfatizado que o problema continuará a ser relevante para a Ucrânia do pós-guerra durante um longo período de tempo, pois é o crime organizado que pode potencialmente tornar-se o mecanismo que tentará minar os alicerces da segurança nacional e constituir uma ameaça para o Estado ucraniano. Por conseguinte, a construção de um sistema eficaz de prevenção destes crimes é de importância vital para a

Ucrânia no contexto de garantir a sua segurança e crescimento económico. Ficou provado que o bloco preventivo da legislação de combate aos crimes organizados é o mais fraco. A Lei da Ucrânia "Sobre Emendas a Certos Actos Legislativos da Ucrânia em matéria de Responsabilidade por Crimes Cometidos por uma Comunidade Criminal" tem sido criticada pela sua imprecisão e natureza avaliativa, o que é inaceitável no campo da repressão criminal. Como resultado, propõe-se desenvolver e adoptar a Lei da Ucrânia "Sobre o Combate ao Crime Organizado", que se baseará no conceito (definição) de crime organizado como objecto de influência preventiva, o que iria ao encontro do padrão internacional da Convenção das Nações Unidas contra o Crime Organizado Transnacional e seria consistente com as normas do Código Penal da Ucrânia.

Palavras-chave: Crime Organizado. Combater o crime organizado. Prevenção do crime organizado. Cooperação internacional no domínio do combate ao crime organizado.

1. Introduction

In the modern world, organized crime remains an extremely destructive phenomenon for all spheres of life, to overcome which the efforts of the entire world community are directed.

Researchers state that in post-Soviet countries that have undergone fundamental socio-political transformations, the problem of organized crime has become a systemic part of management at all levels, which under certain circumstances can cause public dissatisfaction and political instability (Busol, 2019).

It is obvious that this problem will remain relevant for post-war Ukraine for a long period of time, because it is organized crime can potentially become the mechanism that will try to undermine the foundations of national security and pose a threat to Ukrainian statehood. Therefore, building an effective system for preventing these crimes is vitally important for Ukraine in the context of ensuring its security and economic growth.

The level of threat posed by organized crime is evidenced by the fact that the obligation to fight this phenomenon is mentioned in the Preamble of the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part (Association Agreement between Ukraine and the EU). This document mentions the main directions of cooperation between Ukraine and the EU in this area, which, in particular, include: 1) the fight against various forms of transnational organized crime and terrorism (Article 3); 2) joint implementation of an effective and preventive policy to combat illegal migration, the illegal transportation of illegal migrants across the state border and human trafficking, including methods of combating organized criminal groups that carry out the illegal transportation of illegal migrants across the state border and human trafficking, and as well

as the protection of victims of such crimes (Clause "b" Part 2 of Article 16); 3) exchange of information regarding terrorist groups and organized groups that support them (Part 2 of Article 23). Cooperation between Ukraine and the EU in the field of combating crime and corruption involves solving such problems as: illegal transportation of illegal migrants across the state border, trafficking in people and firearms, and illegal drug trafficking; smuggling of goods; economic crimes, in particular crimes in the field of taxation; corruption in both the private and public sectors; falsification of documents; cybercrime (Article 22).

Granting Ukraine the status of a candidate for EU membership presupposes further deepening of international cooperation in the fight against organized crime. Along with this, Ukrainian legislation regulating the fight against organized crime is quite outdated and does not meet modern challenges. This fact is recognized at the state level. In the Strategy for Combating Organized Crime, approved by the Decree of the Cabinet of Ministers of Ukraine dated September 16, 2020 № 1126-p (Strategy), among the main threats of organized crime in Ukraine, the lack of a systematic approach to combating organized crime, the inadequate level of cooperation of law enforcement agencies in the relevant field is indicated. Outdated and unbalanced regulatory and legal support for the fight against organized crime, imperfection of the procedure for monitoring the criminogenic situation, lack of a consolidated objective methodology for assessing the threats of organized crime, the use of outdated forms and methods of combating such a phenomenon leads to aggravation of problems related to organized crime and the low level of effectiveness in combating it.

Accordingly, today there is an urgent need to reform Ukrainian legislation regulating the fight against organized crime and bring it into line with international standards in this area. The purpose of this work is to formulate separate proposals for possible solutions to this problem.

2. Literature review

For the purpose of protecting the rights and freedoms of a person and citizen, the interests of society and the state from threats related to organized crime, as well as for the purpose of implementing the National Security Strategy of Ukraine, approved by the Decree of the President of Ukraine dated May 26, 2015 № 287, the Organization Convention On of the United Nations against transnational organized crime and

obligations undertaken by Ukraine under the Association Agreement between Ukraine and the EU, developed and approved by the order of the Cabinet of Ministers of Ukraine previously mentioned Strategy (On approval of the Strategy for Combating Organized Crime, 2020). This Strategy formulates the directions of development the system of combating organized crime and the mechanisms of implementation state policy in the relevant field in modern conditions, and a separate goal of the Strategy is declared to be "the formation of state policy in the field of combating organized crime by introducing international standards" (On approval of the Strategy for Combating Organized Crime, 2020).

Also, in accordance with the Strategy "organized crime poses a direct threat to national security", in connection with which, but unfortunately only after two years, the Decree of the Cabinet of Ministers of Ukraine in September 27, 2022, № 850-r approved the Plan of measures for the implementation of the Strategy (On the approval of the Action Plan for the implementation of the Strategy for Combating Organized Crime, 2022), in which a separate article defines the need to ensure effective international cooperation in the fight against organized crime, namely "with the International Criminal Police Organization - Interpol, the EU Agency for Cooperation in the Field of Law Enforcement (Europol) and other international partners..." (On the approval of the Action Plan for the implementation of the Strategy for Combating Organized Crime, 2022).

It is possible to fully support the point of view of O.M. Dzhuzha who believes that the organization of strategic opposition to organized crime should include the following elements: a) definition of goals (perspective and phased); b) creation of extra-departmental state bodies to combat the criminal community, which have an organizational structure, adequate tasks and are not inferior to criminal clans in the degree of protection (against blackmail, physical violence and corruption); c) ensuring priority in the material support of bodies fighting organized crime; d) transition to a state policy that complicates the activity and development of organized crime as much as possible (creation of control structures, development of the legislative framework, ideology, priorities of industrial and economic activity, etc.) (Dzhuzha, 2018).

The conclusions of law enforcement officials and scientists (e.g., A. V. Movchan, R. S. Yablonskyi) regarding the state of the law enforcement system against organized crime in Ukraine, which has suffered serious problems as a result of the actual destruction of an effective system built over more than twenty years, needs special attention: a system of trained full-time and freelance workers, a data bank of operational information etc.,

thanks to the liquidation of special units for the fight against organized crime in 2015. It should also be noted that the "SOCTA Ukraine" information and analytical system, which is referred to in the Strategy, is not an analogue of the domestic AIPS "Scorpion", which was used by the special units of the Ministry of Internal Affairs and was closed after their liquidation (Movchan, Yablonskyi, 2021) .

It is also possible to support the point of view of O.M. Polyakov regarding the use of organized crime by the special services of the Russian Federation against Ukraine, which requires special training and systematic work of the law enforcement system, especially in conditions of martial law (Polyakov, 2021).

This also applies to the current lack of specialized units for combating organized crime (Dotsenko, 2019), which proved their effectiveness in the 1990s and were able to restrain the rampant organized crime in various spheres of life in Ukraine under difficult conditions. The outlined problems require additional research and coverage taking into account modern conditions.

3. Results and Discussion

3.1. International standards for combating organized crime: an overview

The issue of combating organized crime has always worried the international community both at the level of law enforcement agencies and at the level of state leadership. Thus, according to official data, in 2019 alone, organized crime caused damage to 1% of the EU GDP, i.e. 139 billion euros (The EU's fight against organised crime. European Council Council of the European Union). The UN Office on Drugs and Transnational Organized Crime emphasizes that "transnational organized crime affects every region and every country around the world, fighting this transnational threat is one of the most important global tasks of the international community". Thus, world community is interested not only in the fight against such crime itself, but also in the development of effective tools for combating organized crime.

The most significant international document in the field of combating organized crime is the United Nations Convention against Transnational Organized Crime (United Nations Convention against transnational organized crime and the Protocols Thereto, 2000). "The Convention has enabled governments to prevent and combat transnational organized crime more effectively, using a common system of criminal law methods and international cooperation. It requires member states to strictly enforce laws against the

most common crimes, especially those committed by organized crime groups. By ratifying this Convention, states undertake to criminalize money laundering, corruption, and prevent obstruction of impartial and fair justice" (Legan, 2021).

The UN Convention against Transnational Organized Crime of 2000 is supplemented by its protocols: Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; Protocol against the Smuggling of Migrants by Land, Sea and Air; Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

In the EU, assessing the risks of organized crime (The EU's fight against organised crime. European Council Council of the European Union), 10 priority areas for combating organized crime were identified (Serious and organized crimes threat assessment. Crime in the age of technology, 2017):

1. High risk criminal networks
2. Cyberattacks
3. Trafficking in human beings
4. Child sexual exploitation
5. Migrant smuggling
6. Drug trafficking
7. Fraud, economic and financial crimes
8. Organized property crime
9. Environmental crime
10. Firearms trafficking.

The EU Strategy to tackle Organized Crime 2021-2025 was developed precisely to counter such risks and in the communique it was noted that "the transnational threats and evolving modi operandi of organized crime groups operating offline and online call for a coordinated, more targeted and adapted response. While national authorities operating on the ground are on the frontline in the fight against organized crime, action at the Union level and global partnerships are paramount to ensure effective cooperation as well as information and knowledge exchange among national authorities, supported by a common criminal law framework and effective financial means. Furthermore, organized crime is emblematic of the link between internal and external security. International engagement on countering organized crime, including further steps to develop partnerships and cooperation with countries in the immediate neighborhood and beyond, is needed to address this transnational challenge" (Communication from the Commission to the

European parliament, the Council, the European economic and social committee and the Committee of the regions on the EU Strategy to tackle Organized Crime 2021-2025).

In fact, all international conventions and various instructions regarding the fight against organized crime state that the basis of the fight is to ensure high-quality cooperation between countries, because organized crime has long since become transnational. According to the one scientific work "success in addressing transnational organized crime hinges on multilateral cooperation. However, existing cooperation regimes are ineffective at countering the rapid changes in the organized crime landscape and countries increasingly tend to turn to national solutions. The diminishing support for multilateral cooperation means the international criminal justice system has become disjointed, insufficient and reactive". The authors of the article indicate the existence of five scenarios for future international cooperation to fight international crime: "1. Together forecasts a situation where states forge the political will and willingness to refashion the existing cooperation mechanisms. 2. Unbound reflects a world in which states increasingly rely on bilateral or regional cooperation frameworks, possibly leading to new cooperation zones. 3. Going alone anticipates states preferentially using unilateral actions to achieve their aim, bypassing existing cooperation mechanisms and agreements. 4. Retreat sees the accelerated use of informal cooperation arrangements or alternatives – to the potential detriment of the rule of law and human rights. 5. Renewal posits that states could be compelled to reimagine the international cooperation regime and undertake radical reform efforts, including establishing a binding arbitration mechanism to resolve bilateral disputes" (Yvon Dandurand and Jessica Jahn, 2021).

3.2. Combating organized crime in Ukraine: state of legislative support

Activities related to the fight against organized crime in Ukraine are regulated by the specific Law " On the Organizational and Legal Basis of Fighting Organized Crime " (On organizational and legal foundations of combating organized crime, 1993). The Law contains a definition of the concept of organized crime as a set of criminal offenses committed in connection with the creation and activity of organized criminal groups, defines the system of bodies engaged in the fight against organized crime, as well as measures to ensure the fight against it.

The name, structure, and content of this 1993 law do not correspond to the modern realities of the state, trends, and the fight against organized crime, so it needs to be repealed, and the normative support for the fight against organized crime needs radical

updates, taking into account exemplary preventive local and foreign practices, as well as Ukrainian transnational ties organized crime and European integration aspirations of our state.

Analysis of the legislation and practice of combating organized crime in Ukraine shows that the preventive block of legislation is the weakest. Social control lags behind, and most measures are retroactive for various reasons. The generalization of criminological indicators of organized crime according to the official statistical reporting of the Office of the General Prosecutor of Ukraine indicates a relatively insignificant share of organized crime among all committed crimes. In 2021, crimes related to organized crime accounted for only 1.3%. The threshold, which does not exceed 2% in general, is the trend of the last 5 years.

However, the period from 2016 to 2021 was marked by a gradual increase in the level of organized crime. The number of identified organized criminal groups increased from 136 groups, which committed 1,043 crimes in 2016, to 499 groups, which committed 4,318 crimes in 2021. The average annual increase was 5.5%. At the same time, the overall level of crime in Ukraine during the same period had negative dynamics, an annual decline of 9% on average. The specific weight of criminal organizations among all identified organized criminal groups has also increased. In 2016, it was only 2%, in 2021 it was registered at 9%. It is obvious that the real criminogenic situation is much more complicated than the statistical reporting on the results of the work of law enforcement agencies in the field of combating organized crime reflects.

According to the Global Index of Organized Crime 2021, Ukraine was among the countries with one of the highest crime rates, ranking 3rd among 44 European countries, and one of the lowest stability rates, ranking 41st among 44 European countries, which is related (according to the experts of the index) to a relatively low ability and willingness of the government to fight organized crime in an open, transparent and effective way (Global Organized Crime Index 2021).

The large-scale war in Ukraine is a high-risk factor for the development of organized crime and an extreme situation in which the usual methods of investigation and countermeasures do not work properly. The growth and strengthening of organized crime syndicates from around the world has always been closely related to some form of chaos - social, political or economic. Therefore, the legal and organizational support for combating organized crime in Ukraine requires rapid changes and proactive norms with increased deterrence and preventive effect.

In 2020, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Liability for Crimes Committed by a Criminal Community" (On Amendments to Certain Legislative Acts of Ukraine Regarding Liability for Crimes Committed by a Criminal Community, 2020) was adopted. The corresponding Law amended the Criminal Code of Ukraine and criminalized such acts as establishing or spreading criminal influence (Article 255-1 of the Criminal Code of Ukraine), organizing, assisting in conducting or participating in a criminal assembly (Article 255-2 of the Criminal Code of Ukraine), applying for the use of criminal influence (Article 255-3 of the Criminal Code of Ukraine), as well as increased criminal liability for the creation, management of a criminal community or criminal organization, as well as participation in it (Article 255 of the Criminal Code of Ukraine).

The law is too vague and evaluative in nature, which is unacceptable in the field of criminal repression. The norms of the Law, in particular "the spread of criminal influence in society", "the subject of increased criminal influence", "appeal for the purpose of applying influence" are abstract, make the corpus delicti blurred and disorient the law enforcement officer, expand interpretation at their own discretion, which provokes increased risks, including corruption.

The introduced changes violate the principle of legal certainty, which was repeatedly emphasized by the ECtHR. In the case "Novik v. Ukraine" (Case "Novik v. Ukraine". Application № 48068/06) European Court of Human Rights noted that "when it comes to deprivation of liberty, an extremely important condition is to ensure the general principle of legal certainty. The requirement of "quality of the law" within the meaning of paragraph 1 of Art. 5 of the Convention means that when national law provides for the possibility of deprivation of liberty, such law must be sufficiently accessible, clearly formulated and predictable in its application in order to exclude any risk of arbitrariness" (paragraph 19).

The concept of "thief in law" reflects the value system of criminals and is an element of the criminal subculture, which is used by members of the criminal world in informal communication and is not inherent in the rule-making technique. And its legalization contributes to the popularization of the criminal subculture and in no way increases the effectiveness of combating organized crime in Ukraine, on the contrary, it significantly complicates the process of proving the presence/absence of such a form of complicity as a criminal community, the presence/absence of influence and the degree of its insignificance or suspension. "Thief in law" is an informal status in the criminal

hierarchy, it is not regulated by any acts and cannot be documented. There are no criteria for identifying a person as a "thief in law" inherent in the rule of law outside the norms of the criminal subculture. Recognizing a person as a "thief in law" contributes to criminal stigmatization and contradicts the criminal law's purpose of punishment to correct the person. Similar comments can be made regarding the subcultural concept of "criminal gang" (Article 255-2 of the Criminal Code).

In justifying the need for changes, the legislator referred in particular to the experience of Georgia (Explanatory note to the draft law of Ukraine "On Amendments the Criminal Code of Ukraine Regarding Liability for Crimes Committed by a Criminal Community, 2019), confirmed by the practice of the European Court of Human Rights. Thus, in the Case "Ashlarba v. Georgia", the High Court ruled that Georgia's criminalization of a person's activities in the "world of thieves" as a representative of a "criminal syndicate", as well as ignorance of the criminality of the status "thief in law" does not violate Article 7 ("No punishment without law") of the Convention on the Protection of Human Rights and Fundamental Freedoms.

Despite the certain proximity of the origins of organized crime in Ukraine and other post-Soviet countries caused by the Soviet legacy, borrowing foreign experience, in particular Georgia, in solving the problem of countering organized crime in Ukraine cannot happen automatically, without taking into account the peculiarities of the criminogenic situation in Ukraine and the domestic system of criminal legislation .

The Criminal Code of Ukraine does not limit the range of criminal offenses that can be committed by organized criminal groups. This possibility is provided by the General part of the Criminal Code and clauses 3 and 4 of Art. 28 of the Criminal Code, determining the signs of an offense committed by an organized group and criminal organization. In this case, the law enforcer qualifies the actions according to the relevant article of the Special Part of the Criminal Code and Part 3 or 4 of Art. 28 of the General Part. How to qualify the commission of a crime by a criminal community referred to in Art. 255 of the Criminal Code, it is not clear, there are no general norms.

In order to recognize acts as criminal offenses, grounds are required, in particular, significant public danger and relative mass, which makes the threat real. When adopting this law, neither the authors nor the approvers of the law provided sufficient arguments or evidence of mass socially dangerous activities of persons whom they consider "persons of increased criminal influence" or "thieves in law", and accordingly, the need for criminalization remained unproven and unfounded.

In 2015 the specialized unit, the Office for Combating Organized Crime within the structure of the Ministry of Internal Affairs of Ukraine, was liquidated. The initiators of the liquidation pointed to "fundamental changes in organized crime, which in the form it was at the end of the 20th century, practically ceased to exist, transforming into new forms of criminal activity that cover all socially important spheres, and signs of organization in the activities of criminal groups are currently evident when solving many criminal offenses" (Explanatory note to the draft Law of Ukraine No. 5196, "On Amendments to Some Legislative Acts of Ukraine Regarding the Reform of Internal Affairs Bodies, 2014).

The emergence of the subcultural status of "thief in law" is associated with the stratification of the criminal professional environment and, according to various scientific assessments and journalistic publications, is attributed to the 20-30s of the 20th century. Therefore, it is surprising that, according to the authors of the liquidation of special units to combat organized crime, the forms or types of organized crime of the 20th century died out not only in their original resurrection in 2020, but also in the need for criminalization by other authors within the framework of another draft law.

3.3. Criminal proceedings regarding crimes committed by organized criminal groups

Crimes committed by criminal groups technically aren't different from any other, and the methods of gathering evidence are uniform for all criminal offenses. Scientists studying the investigation of crimes committed by organized criminal groups point out only the tactical features of conducting investigative (search) actions: inspection, search, interrogation, etc.

At the same time, we consider this approach to be erroneous, because the lack of clear normative regulation of the investigation of this category of criminal offenses does not allow to ensure the specialization of the investigation. It is also necessary to take into account the fact that these criminal offenses cannot be combined into a separate group based on the object of the illegal encroachment, because it is necessary to highlight the specifics of the offense, the quality of training and the level of organization of the persons who commit such crimes. European experience shows that organized crime (especially transnational) can commit completely different types of criminal offenses, sometimes even simultaneously. In this regard, we believe that the criminal procedural legislation of Ukraine should take into account the peculiarities of the investigation of such crimes.

The Law of Ukraine "On the Organizational and Legal Basis of Fighting Organized Crime" defines such measures to ensure the fight against organized crime as: 1) use of undercover employees; 2) the use of members of organized criminal groups in the fight against organized crime; 3) use of special technical means in the fight against organized crime. Such measures are applied in accordance with the procedure provided for by the Law of Ukraine "On Operational-Investigative Activity" and the Criminal Procedural Code of Ukraine.

In accordance with Ukrainian legislation, operative activities and criminal proceedings are separate. Operational search activity is a system of overt and covert search and counter-intelligence activities carried out using operational and operational-technical means. Information obtained in the course of investigative activities may be the basis for the initiation of a pre-trial investigation. Accordingly, in the future, criminal prosecution will be carried out by the means provided for by the Criminal Procedure Code of Ukraine.

Even a superficial analysis of the relevant legislation of Ukraine proves that the means of criminal prosecution of members of organized criminal groups are dominated by hidden investigative (search) measures. The Criminal Procedural Code of Ukraine contains general provisions and the procedure for conducting hidden investigative (search) actions, which Ukrainian legislator understands as such investigative (search) actions, information about the facts and methods of which are not subject to disclosure, except for the cases provided for by the Criminal Procedural Code of Ukraine. The main condition for the legality of their conduct, which was also confirmed by the precedent practice of the ECtHR, is the impossibility of obtaining information about the criminal offense and the person who committed it in another way. Of course, information about the possibility of organized criminal groups committing acts containing signs of criminal offenses falls under this criterion.

Along with this, the normative regulation of the procedure for carrying out individual secret (investigative) investigative actions remains imperfect.

So, for example, organized criminal communities quite often use bank accounts (including legal entities) to finance their activities to carry out criminal activities. Taking into account the fact that bank information is protected by law, it is almost impossible to promptly receive information about the transfer of funds from such accounts. The legislator provided special hidden investigative (search) action, which is called "Monitoring of bank accounts", the task of which is to control any accounts that may be relevant in criminal proceedings. At the same time, this type of action can be conducted only in

proceedings under investigation by Anti-Corruption Bureau and Bureau of Economic Defense.. We believe that this type of action will allow investigators from other pre-trial investigative agencies to identify ways and means of financing organized criminal communities. In this regard, it is proposed to amend Art. 269-1 of the Criminal Procedural Code of Ukraine and to allow this type of hidden action in relation to any category of criminal offenses regardless of their jurisdiction.

Article 272 of the Criminal Procedural Code of Ukraine provides for the possibility of conducting such hidden investigative (search) action as the performance of a special task to uncover the criminal activity of an organized group or criminal organization. Such procedural action involves obtaining information, things and documents that are important for a pre-trial investigation by a person who, in accordance with the law, performs a special task, participating in an organized group or criminal organization, or is a member of the specified group or organization, who cooperates on a confidential basis with pre-trial investigation bodies. At the same time, Art. 272 of the Criminal Procedural Code of Ukraine in its current version does not take into account the possibility of performing a special task to expose the criminal activity of a criminal community, the criminal responsibility for the creation of which is provided for in Art. 255 of the Criminal Code of Ukraine. Therefore, it is proposed to state:

- name of Art. 272 of the Criminal Procedural Code "Performance of a special task to uncover the criminal activity of an organized group, criminal organization or criminal community",

- Part 1 of Art. 272 of the Criminal Procedural Code "In the course of a pre-trial investigation, information, things and documents may be obtained by a person who, in accordance with the law, performs a special task, participating in an organized group, criminal organization or criminal community, or is a member of the specified group, organization or community, and on confidential conditions cooperates with pre-trial investigation bodies",

- Part 4 of Art. 272 of the Criminal Procedural Code "The execution of a special task cannot exceed six months, and if necessary, the period of its execution is extended at the request of an employee of the operative unit, in agreement with the investigator, the head of the pre-trial investigation body or the prosecutor for a period that does not exceed the period of the pre-trial investigation."

In Art. 275 of the Criminal Procedural Code Ukraine contains provisions on the use of confidential cooperation in criminal proceedings. Investigator has a right to use

information obtained as a result of confidential cooperation with other persons, or to involve these persons in conducting hidden investigative (search) actions in cases provided for by the Criminal Procedural Code of Ukraine. However, it is appropriate to clarify the title of the article as "Using the results of confidential cooperation", because the existing wording creates grounds for considering the investigator as an entity that can establish and maintain confidential cooperation. The specified function generally goes beyond the competence and authority of the investigator, and accordingly, when trying to apply it to leaders and members of organized criminal communities, it poses a danger. Thus, part 1 of Art. 275 of the Criminal Procedural Code of Ukraine should be formulated in the following wording: "During hidden investigative (search) actions, investigator has the right to use information obtained as a result of confidential cooperation of operational units with the subjects of criminal proceedings and with other persons, or to involve these persons in conducting hidden investigative (search) actions in the cases provided for by this Code".

As a general rule, hidden investigative (search) actions under the criminal procedural legislation of Ukraine are applied exclusively by the decision of the investigating judge. The regulation of this aspect was changed only during the martial law in Ukraine. The legislator authorized the head of the prosecutor's office to make such a decision in the event that, under martial law, the investigating judge will not have an objective opportunity to exercise the relevant authority.

Article 250 of the Criminal Procedural Code of Ukraine establishes a special mechanism, which provides for the possibility to initiate hidden investigative (search) actions on the basis of the resolution of the investigator, the prosecutor before the resolution of the investigating judge in the event that there are urgent cases related to saving people's lives and preventing the commission of a serious or especially serious crime provided for in Chapters I, II, VI, VII (Articles 201 and 209), IX, XIII, XIV, XV, XVII of the Special Part of the Criminal Code of Ukraine. Currently, the Criminal Procedure Law provides for the possibility of carrying out in this manner only two investigative (search) actions - monitoring a person and establishing the location of radio equipment (radio-electronic means).

However, it is obvious that in the conditions of martial law in Ukraine, such a measure may not be sufficient for the timely diversion and criminal prosecution of members of organized criminal groups. Therefore, it will be appropriate to provide for the possibility to carry out in accordance with Art. 250 of the Criminal Procedural Code of

Ukraine all hidden investigative (search) actions not related to interference in private communication.

4. Conclusion

The regulatory and legal protection against organized crime in Ukraine is quite outdated and does not meet modern realities and international standards in this area. The legislation regulating criminal prosecution, although it contains significant legal and technical shortcomings, is generally relevant to international practices. At the same time, without an adequate preventive mechanism, it does not allow the criminal justice system to counter the threat posed by organized crime.

In this regard, it is possible to formulate certain proposals regarding the approximation of Ukrainian legislation in the field of combating organized crime to international standards.

1. It is proposed to develop and adopt the Law of Ukraine "On Combating Organized Crime". The text of the new profile law proposes:

- to develop a concept (definition) of organized crime as an object of preventive influence, which would meet the international standard of the UN Convention and be consistent with the norms of the Criminal Code of Ukraine;
- to approve the standards for assessing threats of serious crimes and organized crime, assessing risks and damage, as well as forecasting organized crime, taking into account the territorial and branch distribution;
- to define a system of countermeasures against organized crime;
- determine the system of bodies for combating organized crime with mandatory clear specification of functions in order to distinguish and eliminate duplication;
- to provide norms regarding the order of interaction and communication of these bodies with definition of forms and methods;
- provide reporting and monitoring of the effectiveness of the bodies authorized to counter organized crime;
- to implement a risk management system in the fight against organized crime in the event of emergency situations (pandemics, wars, nuclear threats, etc.);
- establish cyber security standards;
- determine the measures of victimological prevention and safe behavior, as well as the specifics of the treatment of victims of organized crime;

- provide for rules on the application of an administrative approach to combating organized crime, taking into account the Ukrainian legal system (in particular, on preventing persons involved in criminal activities from using legal administrative infrastructure for criminal purposes, including, where appropriate, procedures for obtaining permits, access to tenders and subsidies, access to active suffrage, government positions, etc.);

- to determine witness protection standards;

- provide norms for increasing public awareness of the threat and intensifying participation in countermeasures;

- determine priorities and forms of international cooperation.

2. The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Liability for Crimes Committed by a Criminal Community" of 2020 should be repealed as it violates the principle of legal certainty and does not correspond to the current state of organized crime in Ukraine.

References

- Busol O. Yu. (2019) 'Organized crime in Ukraine: state and problems of implementation of state policy in the field of combating this phenomenon', *Legal journal of the National Academy of Internal Affairs*, 2 (18), pp. 60-71. P. 60
- Case "Novik v. Ukraine"(2018). Application № 48068/06, Decision of the European Court of Human Rights. http://zakon4.rada.gov.ua/laws/show/974_442
- European Commission (2021). Communication from the Commission to the European parliament, the Council, the European economic and social committee and the Committee of the regions on the EU Strategy to tackle Organized Crime 2021-2025. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0170>
- Dotsenko O.S (2019). The modern system of subjects of combating organized crime in Ukraine. *Legal scientific electronic journal*, No. 4, pp. 111-115. http://lsej.org.ua/4_2019/31.pdf
- Dzhuzha O.M. (2018) 'The experience of foreign countries in the offensive strategy of combating organized crime'. *Legal journal of the National Academy of Internal Affairs*, No. 2 (16), pp. 13-21.
- Verkhovna Rada of Ukraine (2019). Explanatory note to the draft law of Ukraine "On Amendments the Criminal Code of Ukraine Regarding Liability for Crimes Committed by a Criminal Community", Kyiv. December 2, 2019. <https://itd.rada.gov.ua/billInfo/Bills/CardByRn?regNum=2513&conv=9>
- " Verkhovna Rada of Ukraine (2014). Explanatory note to the draft law of Ukraine No. 5196, "On Amendments to Some Legislative Acts of Ukraine Regarding the Reform of Internal Affairs Bodies". Verkhovna Rada of Ukraine, Kyiv. November, 11 2014. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=1550&skl=9
- Global Organized Crime Index 2021 (2021). <https://ocindex.net/country/ukraine>
- Verkhovna Rada of Ukraine (2021). Law of Ukraine No. 3341-XII "On organizational and legal foundations of combating organized crime". Kyiv. <https://zakon.rada.gov.ua/laws/show/3341-12#n139>
- Verkhovna Rada of Ukraine (2020). Law of Ukraine No. 671-IX "On Amendments to Certain Legislative Acts of Ukraine Regarding Liability for Crimes Committed by a Criminal Community", Kyiv. June 4, 2020. Available at: <https://zakon.rada.gov.ua/laws/show/671-20#Text>
- Legan I. M. (2021) International cooperation in the sphere of prevention and counteraction of transnational crime. Chernihiv: Chernihiv Polytechnic University.
- Movchan A.V., Yablonskyi R.S. (2021) 'Actual problems of improving the system of combating organized crime in Ukraine', *Social and legal studies*, Vol. 4 (14), pp. 69-75
- Order No. 1126-r. On approval of the Strategy for Combating Organized Crime. Cabinet of Ministers of Ukraine. September 16, 2020. Kyiv. <https://zakon.rada.gov.ua/laws/show/1126-2020-p#n7>
- Order No. 850-r. On the approval of the Action Plan for the implementation of the Strategy for Combating Organized Crime. Cabinet of Ministers of Ukraine. September 27, 2022. Kyiv. Available at: <https://zakon.rada.gov.ua/laws/show/850-2022-p#Text>

Polyakov O.M. (2021) 'Combating organized crime, which is used by foreign special services, in particular the Russian Federation, to carry out subversive activities against Ukraine'. *Scientific Bulletin of the International Humanitarian University. Ser.: Jurisprudence*, No. 53. pp. 115-119.

Serious and organized crimes threat assessment (2017). Crime in the age of technology https://www.europol.europa.eu/cms/sites/default/files/documents/report_sota2017_1.pdf

European Council (2021). The EU's fight against organized crime. <https://www.consilium.europa.eu/en/policies/eu-fight-against-crime/>

United Nations (2004). United Nations Convention against transnational organized crime and the Protocols Thereto. <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

United Nations (2021). UNODC STRATEGY 2021–2025. <https://www.unodc.org/unodc/en/strategy/full-strategy.html>

Yvon Dandurand and Jessica Jahn (2021). The Future of international cooperation against transnational organized crime. The undoing or untoc? <https://globalinitiative.net/wp-content/uploads/2021/10/GITOC-The-future-of-international-cooperation-against-transnational-organized-crime.pdf>