

ABSTRACT

The article summarizes the experience of the implementation of measures to protect justice from potential threats by authorized subjects and the peculiarities of their interaction in the USA, Canada, France, England, Wales and Italy in order to solve the issue of increasing the efficiency of the work of the newly created state body with law enforcement functions – the Judicial Protection Service of Ukraine, and as well as improving the order of its interaction with the National Police and other bodies of the Ministry of Internal Affairs of Ukraine.

It is suggested, that the provision of criminological protection of justice should be understood as activities related to the formation of an effective system of countering criminogenic influences and criminal offenses against justice to ensure its independence and the practical affirmation of the principle of the rule of law during the implementation of judicial proceedings, in particular, regarding the granting of powers to the subject determined to ensure the security of justice to terminate and prevention of offenses and crimes; his interaction with other subjects in the system of combating criminal offenses against justice; early detection and countermeasures against possible threats.

It was established that for improving the implementation of this criminological function in Ukraine, the foreign experience of involving private security companies in the practice of delegating the relevant powers to police officers, and the interaction of special authorized subjects of ensuring the security of justice are of interest and require further scientific research.

Keywords: *criminological protection, justice, potential danger, Court Security Service.*

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THEORETICAL APPROACHES TO THE RESEARCH OF COMBATING CRIMINAL OFFENSES COMMITTED BY ORGANIZED GROUPS AND CRIMINAL ORGANIZATIONS

Володимир Єфімов, Дмитро Санакоєв. ТЕОРЕТИЧНІ ПІДХОДИ ДОСЛІДЖЕННЯ ПРОТИДІЇ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ, ЩО ВЧИНЯЮТЬСЯ ОРГАНІЗОВАНИМИ ГРУПАМИ ТА ЗЛОЧИННИМИ ОРГАНІЗАЦІЯМИ. На сьогодні в європейських країнах упроваджується комплексний (інтеграційний) підхід, що поєднує запобіжні і репресивні заходи. Саме вони охоплюються терміном «протидія». Чому саме цей термін, а тому що, це загальне родове поняття, яке охоплює діяльність, спрямовану на мінімізацію протиріч та чинників, які породжують або сприяють злочинності, на скорочення окремих видів злочинів шляхом недопущення їх вчинення на різних стадіях злочинної поведінки (заходи запобігання злочинності), а також адекватні заходи реагування на вже скоєні злочини (репресивний підхід). Однак багато в чому погляди вітчизняних вчених на теоретичному рівні збігаються із позиціями зарубіжних учених. Тим не менш до цього часу проблемою в Україні залишається впровадження наукових розробок і рекомендацій у практику діяльності суб'єктів протидії організованій злочинності, прийняття нормативних актів.

Щодо аналізу злочинності, то він застосовується як ефективний запобіжний засіб, який забезпечує цілий ряд методів і заходів для розуміння глибини сутності складних відносин між підозрюваною особою, злочинною діяльністю та обставинами, що сприяли їй. Такий аналіз злочинності

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використовується на практиці для запобігання і стримування як усієї злочинності, так і різних її видів. Застосування оперативного аналізу в ході досудового розслідування і стратегічного аналізу в межах формування напрямків правоохоронної політики відіграє дуже важливу роль. Що стосується, насамперед, тактичного аналізу, то надзвичайно доречно, щоб аналітики злочинності брали участь у складному розслідуванні із самого початку або тоді, коли складність процесу стає очевидною.

Ключові слова: *запобігання, протидія, організована злочинність, термінологічні та стратегічні поняття, порівняльний аналіз, правоохоронці України, європейські країни, запобіжна стратегія аналізу злочинних моделей.*

Relevance of the study. Organized criminal groups and criminal organizations are focused on the provision of illegal goods and services, as well as on penetration into legal activities using a wide variety of methods, including corruption and violence, there is a need to develop new strategies in the field of crime prevention, which, narrowing the capabilities of such organizations, will simultaneously increase the level of vulnerability of economic systems in relation to such penetration. It is these aspects of prevention of organized crime, including those of a transnational nature, that arouse keen interest among researchers [1, p. 182].

Recent publications review. Many leading Ukrainian and foreign scientists paid attention to the issues related to the fight against organized crime, taking into account international experience. Searching for ways to improve the principles of countermeasures organized crime at different times was studied by many scientists, in particular: Yu. Antonyan, M. Babaev, O. Bandurka, O. Busol, V. Vasylevich, M. Verbenskyi, A. Vozniuk, V. Golina, B. Golovkin, A. Hryshchenko, I. Danshin, O. Zhuzhi, A. Dolgovoi, O. Dolzhenkova, A. Doroshenko, V. Dryomin, A. Zelinskyi, V. Yemelyanova, O. Kvashi, Ya. Kondratieva, M. Kornienko, O. Kostenko, O. Kulik, O. Litvak, O. Litvynova, V. Luneva, T. Melnychuk, F. Reshetnikova, A. Savchenko and others. Applied aspects of preventing manifestations of organized (especially transnational) crime were also investigated by M. Grebenyuk, H. Zorin, L. Kanevskyi, N. Minyailo, G. Pozhdayev, I. Pshenichnyi, E. Rasiuk, O. Tankevich, D. Khizhnyak, V. Ustinov, V. Uschapovskyi.

Confirmation of the interest of scientists in the study of organized crime is the list of used literature, and this is only a small part of the array of various publications and other sources. However, the question of determining modern features of combating organized crime, taking into account international experience, remains relevant and requires further research.

The article's objective is definition of hypothetical approaches to terminological and strategic concepts regarding the prevention and counteraction of organized crime, as well as providing characteristics of a comparative analysis of approaches to the policy of combating organized crime by law enforcement officers of Ukraine and European countries.

Discussion. As we begin the discussion on preventing and countering organized crime, let's consider hypothetical approaches to terminological and strategic concepts. A number of terms are used in the criminological literature, as well as in various regulatory acts, to describe various aspects of specific activities aimed at influencing crime and reducing its volume.

The term "struggle" was widely used and most often used since Soviet times and almost until the beginning of the new century. We support the opinion that it is not good enough to define, especially in the criminological aspect of society's response to crime. The term "struggle" reflects a confrontation, in the process of which one of the parties to the struggle becomes the winner, the other – the defeated [2].

In recent years, the terms "prevention" and "counteraction" have started to be used more often in scientific works, as well as in regulatory and legal acts. Crime prevention is a set of various types of activities and measures in the state, aimed at improving social relations with the aim of eliminating negative phenomena and processes that generate crime or contribute to it, as well as preventing the commission of crimes at various stages of criminal behavior [3].

The term "prevention" is applied to one of the types of crime prevention, the essence of which is prevention of development, minimization of the negative impact of criminogenic determinants that cause crime and its individual types, the use of various measures that reduce the likelihood of potential crimes in advance or the formation of antisocial motivation.

Regarding the term "counteraction", we support the opinion that this concept belongs to the class of generalized ones, reproduces the general essence, which consists in doing resistance. It can be used to reproduce the general impact on crime, but only one-sidedly ("oppose") reflects the latter and does not contain an unambiguous reflection of the concept of crime prevention, that is, it cannot be used as something that is essentially identical to the concept of "prevention", even when it is used in broad meaning [2].

The concept of "warning" should be considered as a manifestation of russianism and not a sufficiently accurate translation of the term "preduprezhdenie" from the russian Ukrainian language. The term "control" is also widely used in the legislation of various countries and international documents. Crime control is considered as an activity to stabilize crime rates at a socially acceptable level (or below this level), which pursues the goal of reducing crime and its individual types. Also, crime control is considered as an active activity to stabilize crime rates at a socially acceptable level (or below this level), which aims to reduce the amount of crime. Such activity is considered as an element of the socio-economic policy of the state, which is aimed at eliminating the general social causes of crime and reducing its indicators [4, p. 127].

In this regard, it is necessary to investigate whether there is a difference in the concepts of "crime control" and "crime prevention"? In the field of combating organized crime in European countries, two main approaches can be distinguished: repressive and preventive, or traditional and non-traditional.

The traditional (repressive) approach is primarily related to the proper functioning of the criminal justice system. It covers: 1) properly developed independent criminal legislation, especially regarding money laundering and confiscation of proceeds of crime; 2) procedural legislation, primarily that which concerns cooperation in the field of legal aid (for example, cooperation within the framework of the European Justice); 3) means and resources that allow adequate investigation in this category of cases (specialized central agencies for combating dangerous organized groups) [5].

There is no absolute demarcation between repressive approaches or interventions implemented by the criminal justice system and purely preventive activities. A repressive approach is aimed at individuals or specific groups. This is influence through punishment, as well as confiscation of the proceeds of crime. Tax legislation can also be counted among the mechanisms of this approach. The scientist believes that repressive measures are simultaneously precautionary (preventive) [5]. For example, the fight against illegal migration is a preventive measure to prevent the further distribution of drugs, if the migrant intends to enter the country specifically for such work. Therefore, the return of such a person to the country of residence is the best preventive measure.

Money laundering controls or confiscation of the proceeds of crime help increase the likelihood of detection and conviction of organized criminals, deprive them of the "goods" obtained through crime, and thus prevent future losses from their activities. Therefore, it is necessary to be careful with the term "prevention", since, as was studied in the works of European scientists, this term covers both ordinary law enforcement activities (arrests, confiscation) and a wider range of actions aimed at destroying criminal markets or favorable opportunities for their development. Preventive measures include social and situational prevention – changing the environment to reduce criminal activity. It also involves training, coordination and concerted action between different administrative bodies. In recent years, more and more attention has been paid to special prevention measures.

So, there is a debate among scientists about the use of terms, and most importantly, about the content of this or that concept. More and more foreign criminologists recognize, and the policy of individual states is increasingly based on the pragmatic concept of "harm reduction" instead of the overly broad concept of "general social crime prevention". Continuing the discussion on preventing and combating organized crime, we will try to analyze the approaches of the policy of combating organized crime by law enforcement officers of Ukraine and European countries.

The organization of crimes is the result of the interaction of such favorable opportunities: on the one hand – the criminal, his abilities and skills and the criminal community, on the other – efforts in the field of formal control (control by means of criminal, administrative law or lack of such control). Therefore, it is a dynamic process that involves the ability of the criminal to adapt (or, conversely, the lack of such adaptation) [5] to changes in the surrounding environment, including the opportunities provided by the legal commercial environment, such as the presence of automobile, sea transport, firms with car repair, financial institutions.

There are many examples of criminal organizations adapting to police preemptive tactics. The leadership of such groups, for example, developed their strategies to counter electronic surveillance or simply calculated the benefits and potential losses. If the criminals could not adequately oppose the efforts of the law enforcement officers, they switched to other criminal activities (for example, robberies, assaults). Therefore, organized groups can change the types of criminal activity. All this should be taken into account when developing preventive measures.

From the point of view of positivist criminology, counteraction strategies can be developed for a short-term perspective (in fact, they are aimed at reducing the negative impact of crime conditions, in other words, favorable opportunities) and long-term (significantly reducing the level of crime in the future by improving the structure of society and relationships within it, that is, influencing reasons).

Measures against organized crime should prevent the direct activity of criminal organizations. For this purpose, efforts are aimed at identifying and neutralizing criminals by finding and arresting them, collecting evidence necessary to prosecute and imprison them. No less important are the actions aimed at destroying the criminal organizations themselves, since transnational criminal organizations have ample opportunities to replenish their ranks, even if several authorities of the criminal group are deprived of their liberty, others usually take their place; therefore, if the organization itself is not really threatened, such measures can only lead to the fact that the "change of personnel" in the criminal group will accelerate and opportunities for "promotion" will appear [6].

The next component of activities for neutralizing organized criminal organizations covers the termination of their activities by complicating the opportunities for impunity and the use of various countries as "safe havens", as well as by depriving criminal organizations of property obtained by them as a result of illegal activities, and its seizure and confiscation. This is one of the most important areas that can be applied in the fight against organized crime, as it limits the ability of such organizations to reinvest funds in legitimate business and engage in bribery and corruption.

From our point of view, the strategic goal of combating organized crime is the detection, investigation, and disclosure of specific crimes, as well as the destruction or dispersal of major criminal organizations, the return of funds, property, and other assets obtained by them as a result of criminal activity to the country's budget (compensation of losses from their activities), reduction, elimination of imbalances and contradictions that caused or helped development, the spread of this or that criminal formation, the complication of the involvement of new persons in criminal activity and the prevention of the spread of spheres of influence of oligarchic-criminal organized communities on the political system, spiritual, economic, and social spheres of society.

The problem of combating organized criminal activity has its own specifics, and many generally accepted and widespread general preventive measures cannot be applied in solving this problem. To a large extent, this is explained by the fact that organized crime is not just a separate type of crime, but is a substructure of society with its own orderly system of protection against exposure. In addition, taking into account its available astronomical monetary resources, the possibilities of bribing representatives of criminal justice bodies and institutions reach the widest scope in some post-Soviet countries, including Ukraine. And the direct participation of representatives of the criminal world in the political and economic sphere of state functioning complicates progressive transformations and aspirations, which involve reaching the level of generally recognized European standards of living. Therefore, the primary measures aimed at reducing the pressure of organized crime are those that can be attributed to general social prevention. However, criminologists have the least influence on this activity. Therefore, only the pressure of the civil society and its various segments can lead not only to the declaration of political will, but also to its real transformation into nationwide actions to correct the existing situation in combating organized crime in Ukraine.

Concluding the discussion on preventing and countering organized crime, let's move on to the preventive strategy of analyzing criminal patterns and crime trends. This strategy covers the collection, collation, analysis and dissemination of crime data for use in proactive (preemptive) policing. The BPS has looked at how well crime is treated in countries such as Belgium and the United Kingdom. It was concluded that crime analysis can become a powerful tool for preventing and countering organized crime. It is predicted that crime analysis and its results will be in demand by criminal justice agencies. Crimes committed by organized communities are not random, isolated, and unique events. Crime analysis is based on the assumption that all crimes can be grouped into groups that have both common features and distinctive features. In essence, analysis is a system by which information gathered about crime incidents and the people involved in those incidents is routinely used to prevent and deter crime and to understand the actions of offenders. Information obtained through systematic data analysis can be used to improve management efficiency and operational measures.

Operational (tactical) and strategic analysis is used to study criminal patterns. According to standard definitions, there is a difference between the two. Operational analysis is usually

aimed at short-term tasks. Strategic analysis is aimed at information support for decision-making at a high level and determination of long-term policy.

Crime analysis is used as an effective preventive measure, which provides a range of methods and measures to understand the depth of the essence of the complex relationship between the suspect, the criminal activity and the circumstances that contributed to it. This analysis of crime is used in practice to prevent and deter both all crime and its various types. The use of operational analysis during pretrial investigation and strategic analysis within the framework of the formation of law enforcement policy directions plays a very important role.

Primarily for tactical analysis, it is extremely appropriate for crime analysts to be involved in a complex investigation from the outset or when the complexity of the process becomes apparent. For strategic analysis, a matter of primary importance is a clear statement of the goal. In order to prepare a high-quality strategic analysis report, you need to answer some of the main questions: – when? – what was reported? – who? – how is it done? – and why?

It should be remembered that the risk caused by organized crime in a separate region, country, may depend on several factors: 1) on the dangerousness of the group; 2) from the vulnerability of the legal (legitimate) economy; 3) from the volume (degree) of the illegal economy; 4) from the geographical location; 5) from the effectiveness of legislative enforcement, which depends on the impact of programs to combat organized crime.

Analysis of crime (intelligence information) is recognized by criminal prosecution authorities as a useful tool and has been successfully used for more than 25 years, primarily by Interpol, Europol, and private agencies. The main task of this analysis is to help law enforcement officers, politicians and people who make decisions about countering crime in overcoming uncertainty, as well as ensuring timely aversion of threats and analytical support of operational activities.

Conclusions. Thus, it can be concluded that a comprehensive (integration) approach combining preventive and repressive measures is being implemented in European countries today. They are covered by the term "antidote". Why exactly this term, and because it is a general generic concept that covers activities aimed at minimizing contradictions and factors that generate or contribute to crime, at reducing certain types of crimes by preventing their commission at various stages of criminal behavior (crime prevention measures), as well as adequate response measures to already committed crimes (repressive approach). However, in many respects, the views of Ukrainian scientists at the theoretical level coincide with the positions of foreign scientists. Nevertheless, until now, the implementation of scientific developments and recommendations in the practice of the subjects of combating organized crime and the adoption of normative acts remains a problem in Ukraine.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

Today, a comprehensive (integration) approach combining preventive and repressive measures is implemented in European countries. They are covered by the term "antidote". Why exactly this term, and because it is a general generic concept that covers activities aimed at minimizing contradictions and factors that generate or contribute to crime, at reducing certain types of crimes by preventing their commission at various stages of criminal behavior (crime prevention measures), as well as adequate response measures to already committed crimes (repressive approach).

However, in many respects, the views of domestic scientists at the theoretical level coincide with the positions of foreign scientists. Nevertheless, until now, the implementation of scientific developments and recommendations in the practice of the subjects of combating organized crime and the adoption of normative acts remains a problem in Ukraine. As for the analysis of crime, it is used as an effective preventive measure, which provides a number of methods and measures for understanding the depth of the essence of the complex relationship between the suspect, the criminal activity and the circumstances that contributed to it. This analysis of crime is used in practice to prevent and deter both all crime and its various types. The use of operational analysis during pretrial investigation and strategic analysis within the framework of the formation of law enforcement policy directions plays a very important role. Primarily for tactical analysis, it is extremely appropriate for crime analysts to be involved in a complex investigation from the outset or when the complexity of the process becomes apparent.

Keywords: *prevention, counteraction, organized crime, terminological and strategic concepts, comparative analysis, law enforcement officers of Ukraine, European countries, preventive strategy of analysis of criminal patterns.*

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OBSERVANCE OF THE PRINCIPLE OF THE PRESUMPTION OF INNOCENCE DURING THE APPLICATION OF THE CRIMINAL LEGAL PROHIBITION DEDICATED TO ILLICIT ENRICHMENT

Андрій Граб. ДОТРИМАННЯ ПРИНЦИПУ ПРЕЗУМПЦІЇ НЕВИНУВАТОСТІ ПІД ЧАС ЗАСТОСУВАННЯ КРИМІНАЛЬНО-ПРАВОВОЇ ЗАБОРОНИ, ПРИСВЯЧЕНОЇ НЕЗАКОННОМУ ЗБАГАЧЕННЮ. Однією з важливих гарантій дотримання прав підозрюваного та обвинуваченого у кримінальному процесі та обов'язковою складовою справедливого, повного та неупередженого судового розгляду є презумпція невинуватості. Будучи широко закріпленим як на міжнародному рівні так і в національному законодавстві України, вказаний принцип, за найменших підстав вважати його порушенням в тій чи іншій статті Кримінального кодексу України, закономірно є причиною визнання такої статті неконституційною, тобто такою, що не відповідає нормам Основного Закону України.

Покажемо в цьому контексті є визнання Конституційним Судом України статті 368-2 Кримінального Кодексу України «Незаконне збагачення» неконституційною Рішенням від

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