

UDC 343.985
DOI: 10.56215/0122272.17

Features of Intelligence-Gathering Counteraction to Crimes Related to Gambling Business

Diana B. Serhieieva¹, Zoriana M. Toporetska²

¹Taras Shevchenko National University of Kyiv
02000, 60 Volodymyrska Str., Kyiv, Ukraine

²National Academy of Internal Affairs,
03035, 1 Solomianska Sq., Kyiv, Ukraine

■ **Abstract.** The relevance of the study is conditioned by the fact that the authors comprehensively investigated the issues of intelligence-gathering counteraction to crimes related to gambling business, after the legalisation of gambling in Ukraine in 2020. The study clearly identified and described all the elements of the system of countering these crimes: crime prevention, crime detection, and response to crimes. The purpose of the study is to investigate the features of intelligence-gathering counteraction to crimes related to gambling in order to increase the effectiveness of counteraction to such crimes. To achieve this goal, the study used general scientific and special legal methods: the general dialectical method of scientific cognition of phenomena and their ties; formal and legal (dogmatic or legal and technical); system and structural; comparative law; generalisation. The system of intelligence-gathering counteraction to crimes related to gambling business includes: crime prevention, crime detection, and response to crime. Prevention of gambling-related crimes includes actions and intelligence-gathering measures for general and individual prevention. Detection of crimes related to gambling is carried out by operational units during intelligence-gathering activities to identify and suppress predicate crimes. Response to identified crimes includes documenting criminal activity and transferring materials to the appropriate investigative unit for making a decision on the initiation of criminal proceedings. The authors propose specific mechanisms for intelligence-gathering counteraction to crimes related to gambling

■ **Keywords:** intelligence-gathering activities; gambling establishment; gambling; corruption crimes; legitimisation of proceeds from crime; operational units

■ Introduction

The Law of Ukraine “On State Regulation of Activities on Organising and Conducting Gambling” No. 768-IX of July 14, 2020 [1] allows gambling in Ukraine. By the end of 2020, the authorised body of state regulation and control over gambling – the Commission for regulating gambling and lotteries – was established, and in 2021, the issuance of licenses for organising and conducting various types of gambling began. At the beginning of 2022, more than 30 licenses were issued for organising and conducting gambling in Ukraine: 8 casino licenses, 12 for slot machine halls (each

gives the right to open up to 5 halls), 3 for organising and conducting betting activities, and 15 online casino sites were launched [2].

The legalisation of gambling has also contributed to changes in the structure of crime and the emergence of crimes related to gambling. Gambling-related crimes include the following types of criminally punishable acts, the method or means of committing or concealing which is the organisation and conduct of gambling, while the gambling organisers themselves are not always complicit in such crimes, and sometimes do not know about them.

Thus, all over the world, gambling is one of the tools for legalising corruption proceeds, proceeds from crime, and the commission of other crimes. Such high risks of gambling always determine its specific legal regulation by the state according to a special management model with enhanced monitoring and control over gambling.

■ Suggested Citation:

Serhieieva, D.B., & Toporetska, Z.M. (2022). Features of intelligence-gathering counteraction to crimes related to gambling business. *Scientific Journal of the National Academy of Internal Affairs*, 27(2), 17-28. doi: 10.56215/0122272.17.

■ *Corresponding author

■ Received: 04.03.2022; Revised: 20.05.2022; Accepted: 30.06.2022

At the same time, as of 2022, the monitoring system in Ukraine still does not work, since the state system of online monitoring has not been put into commercial operation, and state control over the gambling market is also not carried out, since all control measures have been stopped for the period of martial law. All this contributes to the development of gambling-related crime, which leads to an increase in the overall crime rate.

The emergence of new ways of committing crimes using gambling requires the development of new forms of means and methods of countering such crimes, which determines the relevance of this study, because the prevention, detection, and documentation of such crimes due to their high latency is quite complex and requires scientific provision of operational workers with knowledge about the features of crimes related to gambling.

The studies from various branches of legal science are devoted to the investigation of problematic issues of state regulation of gambling business. International researchers have studied the criminality of pathological players, and crimes related to gambling have been considered from the standpoint of the nature and causes of crime related to gambling. J. Banks & D. Waugh [3, p. 339] considered the systematisation and main features of crimes related to gambling, and also analysed the relationship between pathological players and their propensity to crime. A. Adolphe, L. Khatib, C. van Golde, S.M. Gainsbury & A. Blaszczyński [4, p. 395] investigated the instrumental relationship between problem gambling and player crime. J.N. Arthur, R.J. Williams, & Y.D. Belanger [5, p. 49], studied the relationship between legal gambling and crime.

In particular, S. Chernyavsky & O. Juzha [6, p. 157] have investigated the issues of countering economic crimes as part of the system of ensuring the economic security of the state. L.V. Lefterov [7, p. 89] considered issues of countering cybercrime, in particular, fraud on the Internet. V.O. Dopilko, & R.V. Yavdoshchuk [8, p. 90] examined legal means of countering smuggling. M. Shcherbakovsky, & R. Stepaniuk [9, p. 117] inspected the problems of countering corruption crimes, focusing on the main mistakes of law enforcement agencies during intelligence-gathering activities and criminal proceedings, which affect the proof of corruption facts. M.A. Pogoretsky [10, p. 36] paid much attention in general to the issues of investigative activity and the use of its results in criminal proceedings when counteracting certain types of crime, in particular, fraud with financial resources. O. Tarasenko, & A. Shevchishen [11, p. 105] focused on the use of intelligence tools in pre-trial investigation.

At the same time, the issues of countering crimes related to gambling in the course of intelligence-gathering

activities have not been comprehensively considered, which determines the relevance of this study.

The purpose of the study is to investigate the features of crimes related to gambling and develop a system of intelligence-gathering counteraction to them to provide practitioners with effective means of countering crime. To achieve this goal, the following tasks were set:

- carry out classification and determine the specifics of crimes related to gambling;
- investigate the system of intelligence-gathering counteraction to crimes related to gambling business, and characterise its elements;
- provide recommendations on the specifics of applying certain elements of intelligence-gathering counteraction to crimes related to gambling.

■ Materials and Methods

The authors used general scientific and special methods to achieve the purpose and consider the objectives of the study. The general dialectical method of scientific cognition of phenomena and their links is used to investigate the mechanism of criminal activity related to gambling and its reflection in the environment, and to study the forms, methods, and means of intelligence-gathering counteraction to these crimes.

The formal legal (dogmatic or legal and technical) method was used to study and interpret the norms of legislative acts that regulate the issues of legal regulation of gambling and intelligence-gathering activities. Special legal methods were also used, the system and structural method was used to determine the features of crimes related to gambling and group such crimes into a certain system by individual characteristics. The comparative law method was used to contrast the norms of legislative acts of various branches of law regulating gambling, crime, and intelligence-gathering activities.

The method of generalisation allowed consistently bringing certain facts together and formulating reasonable conclusions of scientific research aimed at improving the effectiveness of intelligence-gathering counteraction to crimes related to gambling.

The theoretical basis of the study is the laws and regulations of Ukraine regulating the issues of gambling, intelligence-gathering counteraction to crime, recognition of certain acts as crimes, and studies by Ukrainian and foreign researchers in this area.

■ Results and Discussion

Classification and features of crimes related to gambling. Crimes related to gambling are grouped according to certain characteristic features of the mechanism of criminal activity. Such characteristic features make certain changes in the environment, manifested in special traces, which determines the features of intelligence-gathering counteraction to such crimes.

Crimes related to gambling include such crimes that are committed or hidden using the sphere of gambling, in particular: articles 366-2 (declaration of false information), 368 (acceptance of an offer, promise or receipt of illegal benefits by an official), 368-5 (illegal enrichment), 369-2 (abuse of influence), which are hidden due to the concealment of the facts of obtaining illegal benefits under the guise of winning a gambling game or lottery; 209 (legitimation (laundering) of property received, 222 (fraud with financial resources), which provide for the provision of false information about income in the form of gambling winnings; and a number of other crimes that can be committed by players in gambling establishments by prior agreement with employees of gambling establishments or without such – articles 190, 191, 212, 212-1 of the Criminal Code (CC) of Ukraine [12].

Characteristic features of crimes related to gambling are the presence of a mercenary motive, connection with the concealment of other criminal activities using gambling; usually committed by prior agreement with representatives of the legal organiser of gambling (licensee), etc.

The authors of this study propose to divide the crimes defined above into the following groups:

- legitimisation of corrupt income using gambling;
- legitimisation of income obtained by criminal means (arms and drug trafficking, smuggling, human trafficking) using gambling;
- other crimes related to the organisation and conduct of gambling (fraud, computer crimes).

Broad discretionary powers of officials and insufficient effectiveness of preventive functions to prevent corruption (preventing conflicts of interest, strengthening the role of the public, random verification of declarations, increasing the transparency of public service) an important role is assigned to repressive functions and the effectiveness of criminal prosecution of criminals [13].

When receiving corrupt income, a person usually plans a way to hide this fact and create a version of the legal origin of such income. To do this, a person can visit a gambling establishment or purchase a lottery ticket to create the appearance of winning a significant amount of funds. Unfortunately, today the Unified State Register of Declarations of Persons Authorised to Perform the Functions of the State or Local Government is closed for the period of martial law. However, a few years ago, the authors considered in detail the example when a people's deputy of Ukraine declared three lottery winnings for large amounts within a month, and another people's deputy declared lottery winnings for more than one million UAH [14].

To establish such facts, operational units can get acquainted with the documents of the lottery operator or gambling organiser, which record the

facts of winnings for a certain period. For example, for a lottery operator, such documents are records of drawing panels, which record the fact that a winning game combination falls out for a certain draw, and accounting documents confirming the fact of payment of a certain amount of winnings. At the same time, gambling organisers keep personal reports on the accrual and payment of taxes on winnings, regardless of the amount of winnings, and therefore, when paying winnings, the gambling organiser receives personal information of the player and the taxpayer code, and also submits such information in the tax report for quarter 1DF. Lottery operators keep depersonalised tax reports, so it will be impossible to get personal information about the player, but it is advisable to compare information about the date of payment of winnings to the lottery player, its amount, and whether such amounts of winnings were recorded as lottery winnings on a certain date.

Legitimation of other income obtained by criminal means through the use of gambling provides for the legitimisation of funds received from criminal activities through winnings in gambling establishments, in particular: arms trafficking, drug trafficking, human trafficking, smuggling, tax evasion, etc. Such actions are qualified under Article 209 (legitimation (laundering) of property obtained by criminal means); Article 222 (fraud with financial resources) of the CC of Ukraine.

On the part of gambling organisers, such crimes are usually accompanied by forgery of documents, that is, drawing up and issuing a false certificate of winnings for a certain amount. To establish this fact, it is necessary to get information from the gambling organiser about the visit of a gambling establishment on a certain date by a specific person, because visitors are identified in gambling establishments. In addition, operational units can also check the information whether a win of this amount or several winnings for the total amount in the gambling establishment fell out. Now this information should also be available in the online systems of gambling organisers, and after the introduction of the state online monitoring system into commercial operation, this information will be available to the Commission for Regulation of Gambling and Lotteries, which is the authorised body of state regulation and control over gambling.

Other crimes related to the organisation and conduct of gambling include crimes whose method of commission is related to the functioning of the gambling business. Such crimes may be acts provided for in Article 212 of the CC of Ukraine (tax evasion – payment of wages as winnings or payment for work performed or services rendered in cash) and 212-1 of the CC of Ukraine (evasion of payment of SSC) and other insurance premiums, Article 190 of the CC of

Ukraine (fraud committed by casino players), commission of crimes against property by gambling – dependent players – articles 191, 185, 186 of the CC of Ukraine, computer crimes.

Almost half of the scams committed using computer technology, in particular phishing (and farming, which is a hidden variant of phishing), are committed through various fraudulent sweepstakes and lotteries [15]. Bank payments also practise replacing the MCC payment code on terminals – “black” acquiring, due to this payment is accepted for “video games”, “sweepstakes” instead of indicating the real purpose of the payment – “gambling” (“The game is getting dark”). Such crimes can be committed only with the participation of esquires, which allow to make such a change in payment codes in payment systems [10, p. 40].

Tax evasion using gambling is implemented in countries where there is a certain amount of non-taxable winnings in a gambling establishment. Thus, the draft law No. 2713-D is awaiting consideration by the parliament, which is proposed to exempt from taxation income in the form of winnings in the amount of up to UAH 65,000 [16].

The bodies that are authorised to identify and investigate corruption crimes, and provided for in Article 209 of the CC of Ukraine according to Article 126 of the CPC of Ukraine are the National Anti-Corruption Bureau and the State Bureau of Investigation, depending on the status of the subject who commits the crime, and in relation to crimes provided for in articles 212, 212-1, 222 of the CC of Ukraine – Financial Investigations Service, which is provided for in Article 216 of the CPC of Ukraine [17]. Intelligence-gathering activities for these crimes are carried out by the relevant divisions of these bodies: the National Anti-Corruption Bureau of Ukraine – detectives, operational-technical, internal control; the State Bureau of Investigation – operational, operational-technical, internal control, personal security; the Financial Investigations Service of Ukraine – divisions of detectives, operational-technical units.

System of intelligence-gathering counteraction to crimes related to gambling. A well-established opinion is that countering crime by its nature is a law enforcement activity, which is considered as a multifunctional and diverse concept that covers almost all spheres of state activity [18]. The process of responding to a committed crime forms an independent system of measures that are applied in a certain sequence [19]. The authors of this study agree with M.L. Gribov & A.M. Chernyak [18], that the anti-crime system includes blocks for crime prevention, crime detection, and crime response.

The Constitution of Ukraine [20] in a number of Articles (29, 31, 34, 39) uses the term prevention

of crimes. This term covers all preventive activities of law enforcement agencies, while the detection and suppression of crimes does not refer to preventive activities, because it means that the crime has already been committed (even at the stage of preparation or attempted crime, criminal activity is already taking place).

Crime prevention literally means activities that prevent the commission of crimes. The main purpose of preventive activities is to prevent the commission of crimes, reduce their number and thereby reduce the scale of crime [21].

Given the above, the authors agree that the prevention of crimes of a certain type includes general prevention (identification of the causes and conditions that contribute to the commission of certain crimes) and individual prevention – prevention of crimes (identification of persons who are trying to commit a crime, and the implementation of certain measures to them in order to prevent the implementation of their plans).

Thus, operational general prevention includes actions to identify the causes and conditions that contribute to the commission of a certain type of crime, that is, preventing the formation of criminal intent in the future in persons who are prone to committing criminal offences or in persons who use certain reasons and conditions. Such reasons and conditions may be gaps in the current legislation, lack of proper state control over the sphere of gambling or certain types of it, certain gambling establishments, imperfection of the system of identification and admission of players in a certain gambling institution, motivating a person to use them, as a result of which a criminal intention to commit a certain crime related to gambling is formed.

Now such reasons and conditions that contribute to the commission of crimes related to gambling are: the lack of a state system of online monitoring, the suspension of control measures for the period of martial law, violation of the procedure for identifying visitors to a gambling establishment, negligence in the registration of accounting and tax accounting documents regarding the recording of operations for accepting a bet and paying winnings in a gambling establishment, incorrectness, late entry of data into the online systems of gambling organisers about all operations for accepting a bet, returning a bet, paying winnings or any other operations. Intelligence-gathering measures for general preventive crimes related to gambling can be:

- holding meetings with gambling organisers (including on the basis of the regulator – the Commission for Regulation of Gambling and Lotteries) and covering information on the awareness of law enforcement agencies about the facts and risks of using gambling for criminal activities and on the readiness to respond to any facts of illegal activities using gambling;

– constant cooperation with authorised state bodies – the Commission for Regulation of Gambling and Lotteries (in terms of compliance by the organisers with licensing legislation and the procedure for organising and conducting gambling), the Ministry of Finance of Ukraine (in terms of compliance by the organisers with legislation on preventing the legitimisation of proceeds from crime), the state tax service of Ukraine (in terms of the exchange of tax information). For example, the Commission for Regulation of Gambling and Lotteries and the Financial Investigations Service signed a memorandum of cooperation and information exchange on February 23, 2022. According to the memorandum, the Ukrainian Commission for Regulation of Gambling and Lotteries and Financial Investigations Service will coordinate efforts in activities aimed at preventing, detecting, suppressing, and investigating offences related to the illegal organisation and conduct of gambling and lotteries in Ukraine, in particular, creating conditions for shadowing the sphere. Within the framework of the Memorandum, the agencies agreed on the exchange of statistical, reference materials, methodological recommendations, consultations, and joint activities [22].

– media reports on the successful results of intelligence-gathering activities, elimination of criminal schemes, and exposure of criminal organisations that help legalise funds obtained by criminal means using gambling;

– implementation of continuous criminal analysis of crimes related to gambling, for the implementation of measures to prevent such crimes in the future by means of general and individual prevention.

Operational individual prevention provides for operational work to prevent the commission of a crime by a specific person (at the stage of occurrence of intent to commit a crime, preparation or attempt to commit it), that is, to prevent the transition of a person from the process of forming intent to commit a certain crime to the implementation of criminal intent (performing preparatory actions for its commission, attempt or commission of a crime) and always has its own object of influence.

Such operational individual prevention can be carried out both in relation to employees of the gambling organiser, and in relation to other persons who are not employees of the organiser, but have acquaintances and influence on persons who work in a gambling establishment and can “help” to realise criminal intent, and in relation to persons who wish to realise criminal intent using gambling.

Information about persons who wish to commit a crime using gambling can be obtained from persons who heard the conversation or were participants in a conversation with a person during which a person announced their intentions to use gambling to legalise corruption proceeds, criminal proceeds, deception

of a gambling establishment, etc. Perhaps in such a conversation, the person asked the interlocutor to assist in the search for persons who could become accomplices in such a crime or help in concealing it.

Crime detection is the activity of searching for and recording information about: preparation for a crime; attempted crime; committing a completed crime [18, p. 48]. Most gambling-related crimes are preceded by predicate crimes, which result in income that needs to be legalised. Thus, funds received as a result of the sale of weapons, drugs, smuggling, etc., are further legalised through playing in a casino, a person allegedly makes a bet and wins a large amount of funds, then receives a certificate of winnings from a gambling establishment and can then transfer such funds to a bank account or use them as legal funds.

In official crimes, there is a similar mechanism for legalising corrupt income: a person accumulates a certain amount of illegal income received as an illegal benefit, then plays in a casino and receives a certificate of winnings. After that, a person submits a declaration of changes in the property status, where they indicate income in the form of gambling winnings. For example, during the period of the ban on gambling, such a scheme was actively used in state lotteries, an example was mentioned when a people's deputy of Ukraine declared three lottery winnings for large amounts within a month, another people's deputy declared lottery winnings in the amount of more than one million UAH [23, p. 400].

A common way to conceal illegal enrichment can also simultaneously be to obtain a certificate of winnings from a gambling establishment, conclude imaginary transactions, etc., that is, perform any actions that would allow a person to obtain documents confirming the existence of income sufficient to acquire the received assets [14, p. 306]. Often a person first acquires an asset (real estate) under a preliminary contract of sale, a contract of acquisition of property rights, because in the register of real estate such contracts are not indicated, then provides themselves with certificates of allegedly receiving additional income (certificates of winning in a gambling establishment), can even submit a notice of significant changes in the property status, and after that already enters into a contract of sale of real estate for the real amount of the transaction with the reflection of information in the annual declaration on the expenditure of funds for the purchase of property.

In addition, the gambling business can be used to pay wages to citizens, since when paying winnings in gambling, the tax will be less than when paying wages, since the employer additionally pays 22% of the single social contribution, and also deducts 18% of personal income tax and 1.5% of the military fee from the employee's salary [24]. When paying out winnings,

the gambling organiser, as a tax agent, only deducts 18% of personal income tax and 1.5% of the military fee. In addition, the draft law No. 2713-D [16] is awaiting consideration in the Parliament today, which are proposed to exempt from taxation income in the form of winnings in the amount of up to UAH 65,000. After the adoption of such a law, it is expected that the risks of paying “wages” without taxes as gambling winnings will become more frequent. In this case, it will be more profitable for employers to use the online casino, adding funds to the player’s online wallet and then “withdraw” funds from it as winnings.

Detection of such crimes is quite difficult due to the high latency of both predicate crimes and actually those related to gambling due to the secrecy of their commission, involvement of organised criminal groups in the crime and preliminary collusion with representatives of the gambling organiser, who provide such “services” on a permanent basis and only through verified persons. Therefore, the organisation of work of operational units to detect such crimes requires special attention.

According to M.A. Pogoretskyi [25, p. 360], detection of a crime by units authorised to carry out the intelligence-gathering activities, is a complex process that consists in searching for factual data indicating the signs of a crime, their operational-search documentation (recording) to obtain the materials of the intelligence-gathering activities, research these materials, establish in them sufficient data indicating the signs of a crime (their criminal and criminal-legal assessment) and make a decision to initiate criminal proceedings or refuse to initiate it. Considering the norms of the current Code of Criminal Procedure of Ukraine, if the results of the implementation of intelligence-gathering activities reveal signs of a crime, the head of the operational unit immediately sends the collected materials, which record the facts of illegal activities, to the relevant divisions of the pre-trial investigation bodies or prosecutor to make a decision on entering information in the Unified Register of Pre-trial Investigation and the beginning of a pre-trial investigation according to Article 214 of the CPC of Ukraine, and the reason for starting criminal proceedings will be the independent identification from the materials provided to the investigator or prosecutor of circumstances that may indicate the commission of a criminal offence [26, p. 220].

Conducting intelligence-gathering activities to identify and suppress predicate crimes – arms trafficking, drugs, smuggling, committing corruption crimes (obtaining illegal benefits, illegal enrichment, abuse of influence), during which operational units can reveal the facts of concealing such crimes using gambling. Such activities are tasked with identifying individuals and facts of operational interest that have not

previously come to the attention of operational units. Intelligence-gathering is an organisational and tactical form of intelligence-gathering activities, the essence of which is to identify persons and facts of operational interest to the internal affairs bodies [27, p. 191]. With an intelligence-gathering, the process of identifying criminal activity actually begins.

Confidential cooperation on the legitimisation of proceeds from crime (from the sale of weapons, drugs, smuggling) using gambling in Ukraine is usually carried out at the international level. In this case, crimes related to gambling are usually detected during the investigation of the facts of the main criminal activity. In this case, international cooperation may provide for the exchange between states of information that is necessary for conducting secret investigations, conducting joint operations by law enforcement agencies of two or more countries to secretly control the commission of crimes related to illegal crossing of state borders and illegal movement through them of objects and substances prohibited for free circulation; conducting a secret investigation (intelligence-gathering activities) by law enforcement agencies of one state at the request of law enforcement agencies of another and others [28, p. 18].

In the process of prompt search, documents can be drawn up that confirm the implementation of specific activities with a reflection of their effectiveness. An operational employee can provide: a report outlining the results of oral interviews conducted by them, a certificate of studying the documents of an organisation or enterprise for a certain period, indicating proposals on the methods and time of subsequent receipt of information from this source by procedural means, and other information and documents [29, p. 155].

An operational survey is effective for obtaining information necessary for the prevention and detection of crimes, and for the operational development of individuals. An operational survey is allowed to be conducted by the Law of Ukraine “On Intelligence-Gathering Activities” [30] of February 18, 1992 No. 2135-XII (Law No. 2135). Such a survey is usually conducted when receiving messages from citizens about facts of operational interest and is conducted by an operational employee openly and with the consent of the person being interviewed and is usually reflected in the person’s own written explanations.

Separately, attention should be paid to the intelligence (secret) operational survey, which consists in direct communication of operational units with individuals to obtain information about persons, events, objects, facts of operational interest, but without disclosing their identity and the purpose of the survey. In order to identify possible facts of committing crimes related to gambling, operational units can

conduct a secret survey of employees of gambling organisers. A secret survey is an event conducted by law enforcement officers with the concealment of their personal data and professional affiliation, which also consists in obtaining information necessary for the prevention of crimes, their detection, termination, and investigation, by communicating with the interviewed persons (oral or written; direct or indirect; using technical means of communication or without them) [31, p. 10]. Law No. 2135 [30] separately defines only a survey of persons with their consent, that is, as a public survey. Accordingly, a secret survey is implemented not as a separate intelligence-gathering activities, but as part of the implementation of other intelligence-gathering activities (performing a special task to uncover the criminal activities of an organised group or criminal organisation, during confidential cooperation or during the agent work of full-time and freelance secret employees). The results of a secret survey are reflected in the documents compiled by the operational employee: report, reference, report. An unspoken survey should be consolidated in the current legislation of Ukraine, which would allow controlling such activities and avoiding abuse [31, p. 16].

Obtaining reference and analytical information consists in the open collection of information, including by sending requests to the enterprise and receiving information and documents from them. It is possible to identify the facts of committing crimes using gambling during familiarisation with the financial and economic activities of enterprises of both gambling organisers and other enterprises, institutions, and organisations. The task of such an intelligence-gathering activity is: obtaining data describing the activities of enterprises, institutions, and organisations, regardless of ownership forms; obtaining copies of documents that are important for solving the problems of intelligence-gathering activities; legending the source of information; checking primary operational information; establishing the causes and conditions that contribute to the commission of a crime; establishing persons involved in criminal activity and their connections; establishing possible witnesses to criminal activity; selecting candidates for secret cooperation [32, p. 209]. When studying the documents of gambling organisers, it is necessary to pay attention to whether there is a frequent payment of winnings to certain persons, what is the interval of such payment, who works a shift in a gambling establishment, when a certain person "wins" in gambling and receives winnings. The study of documentation of other enterprises may be related to obtaining information from banking institutions, whether the person provided a certificate of winnings to deposit a certain amount of funds to the account, or whether funds in a certain amount were received to the person's

account from the gambling organiser, from one or more organisers funds were received as winnings in gambling, what is the frequency and amount of winnings. Such information is necessary to verify possible facts of declaring false information (when a person indicated winnings for a certain amount in the declaration) or facts of illegal enrichment.

The facts of committing crimes related to gambling can be revealed during the implementation of a personal intelligence-gathering or operational proceedings in relation to a certain person on the facts of such a person receiving illegal benefits or committing criminal activities in respect of which in the future there is a need to legalise the income obtained by criminal means. Personal search is carried out in relation to a certain person or place and involves the following tasks: identifying a place (gambling establishment) that is of operational interest among the network of institutions; identifying the causes and conditions that contribute to the commission of crimes in a particular gambling establishment; identifying the criminal activity of certain persons and its termination; identifying other persons (accomplices) who intend to commit a crime, plan, prepare for a crime or commit it; secretly obtaining certain data about a person of operational interest. Personal search can include audio or video recording of a person or place of operational interest. Fixing the results of a personal search is carried out by documenting: a report, certificate, or written explanation is drawn up. The response to crimes by operational units involves documenting criminal activities and transferring materials to the appropriate investigative unit for making a decision on the initiation of criminal proceedings.

Materials that contain information about detected criminal offences or events must contain information about: time, place, method, other circumstances of the commission of the crime; information about the person (group of persons) who committed (will commit) the crime (including the composition of the group, the role of each of them, information about the scheme of connections, bringing to criminal or administrative responsibility, etc.); specific criminal and illegal actions in which the specified criminal offence manifests itself (legitimation of proceeds from crime through winnings in a gambling establishment, tax evasion by paying funds as a win in a gambling establishment, legitimation of illegal benefits received as a win in a casino; declaration of false information in the form of information established in the course of conducting intelligence-gathering activities; instruments of crime that can be seized or that can be seized, etc.

Materials of the intelligence-gathering activities can be operational – service documents that are drawn up by authorised persons and other operational

and search units (operational documentation, operational-technical units, ensuring the safety of participants in criminal proceedings, etc.), documents that are obtained both publicly and secretly by the operational and search unit in the manner provided for by law from individuals and legal entities, documents and items discovered by the operational and search unit during the intelligence-gathering activities. The content of the materials of the intelligence-gathering activities is operational and search information – any information (factual data) included in the subject of research in the operational-search case, which is obtained in accordance with the purpose and objectives of the intelligence-gathering activities in a manner determined by law from any sources not prohibited by law by authorised subjects, which can be the justification of relevant decisions in certain areas of activity [25, p. 227].

These materials after the imposition of the resolution of the head of the investigative department are subject to mandatory registration by the relevant division of the pre-trial investigation body or prosecutor's office, in order to avoid possible information leakage (duty station, database "Unified accounting", (URPI) without decoding the data about the person who commits a crime, since Part 8 of the regulation on the URPI, the procedure for its formation and maintenance, approved by the order of the Office of the Prosecutor General of 06/30/2020 No.298 provides that access to the information entered in the Register regarding criminal offences related to the acceptance of an offer, promise or receipt of illegal use of gambling business opens from the moment of declaring suspicion to a person or making a decision to close the proceedings without declaring suspicion to a person [33].

After checking the received materials of the intelligence-gathering activities, the investigator or prosecutor registers it in the unified state register of legal entities and criminal proceedings begin. Making such a decision is preceded by a legal assessment of the materials received by the investigator. The materials of the intelligence-gathering activities are sent to the investigative unit with a cover letter, filed and numbered, with a description and analytical certificate, which must necessarily reflect the identified signs of the crime for which it is proposed to start criminal proceedings, with reference to the materials available in the case that confirm them.

The scientific originality of the study lies in the fact that the authors were the first to comprehensively investigate the issues of intelligence-gathering prevention of crimes related to gambling, after the legalisation of gambling in Ukraine in 2020. The study clearly identified and described all the elements of

the system of countering these crimes: crime prevention, crime detection, and response to crimes.

■ Conclusions

The activities of operational units are extremely important for prompt response to any manifestations of crime and minimising the crime rate in general.

The authors of this study propose to divide the crimes defined above into the following groups:

- legitimisation of corrupt income using gambling;
- legitimisation of income obtained by criminal means (arms and drug trafficking, smuggling, human trafficking) using gambling;
- other crimes related to the organisation and conduct of gambling (fraud, computer crimes).

The system of intelligence-gathering counteraction to crimes related to gambling includes the following elements: crime prevention, crime detection, and response to crimes. Each of these elements provides for the performance by operational units of certain actions, intelligence-gathering measures aimed at fulfilling the tasks set.

In the system of countering crimes related to gambling, special importance is attached to the prevention of crimes, which is implemented through general and individual prevention measures. General prevention includes actions to identify the causes and conditions that contribute to the commission of a certain type of crime, that is, it significantly complicates the commission of such crimes in the future. Individual prevention measures are aimed at the work of operational units with a specific person and preventing the development of intent to commit a crime into criminal intent, preventing the commission of a crime by a certain person.

Detection of crimes related to gambling is carried out by operational units during the intelligence-gathering activities to detect and suppress predicate crimes – arms trafficking, drugs, smuggling, committing corruption crimes (obtaining illegal benefits, illegal enrichment, abuse of influence), in the process of which operational units can reveal the facts of concealing such crimes using gambling. It is possible to identify such crimes during confidential cooperation, including international cooperation, conducting an operational survey, obtaining reference and analytical information, studying documents, intelligence-gathering or operational proceedings in relation to an individual, etc. Confidential operational work of full-time and freelance secret employees is important for detecting crimes related to gambling. Response to identified crimes includes documenting criminal activities by operational units and transferring materials to the appropriate investigative unit for making a decision on the initiation of criminal proceedings.

■ References

- [1] Law of Ukraine No. 768-IX “On State Regulation of Activities Related to the Organization and Conduct of Gambling”. (2020, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/768-20#Text>.
- [2] Information on the entity’s right to conduct gambling activities and activities. (2022). Retrieved from <https://gc.gov.ua/ua/Litsenziini-reiestry.html>.
- [3] Banks, J., & Waugh, D. (2019). A taxonomy of gambling-related crime. *International Gambling Studies*, 19(2), 339-357. doi: 10.1080/14459795.2018.1554084.
- [4] Adolphe, A., Khatib, L., Golde, C.V., Gainsbury, S.M., & Blaszczyński, A. (2019). Crime and gambling disorders. *Systematic Review Journal of Gambling Studies*, 35, 395-414. doi: 10.1007/s10899-018-9794-7.
- [5] Arthur, J.N., Williams, R.J., & Belanger, Y.D. (2014). The relationship between legal gambling and crime in Alberta. *Canadian Journal of Criminology and Criminal Justice*, 56(1), 49-84. doi: 10.3138/cjccj.2012.E51.
- [6] Cherniavskiy, S., Dzhuzha, O., Babanina, V., & Harust, Yu. (2021). System of ensuring the economic security of the state: World experience and ways of its reform in Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 157-168. doi: 10.37635/jnalsu.28(4).2021.157-168.
- [7] Lefterov, L.V. (2019). General social measures which prevent frauds committed by using of electronic communications. *Lex Portus*, 1, 89-101. doi: 10.26886/2524-101X.1.2019.6.
- [8] Dopilko, V.O., & Yavdoshchuk, R.V. (2019). Legal measures to counteract smuggling and violations of customs rules on transport: The modern state. *Lex Portus*, 4, 90-104. doi: 10.26886/2524-101X.4.2019.6.
- [9] Shcherbakovskiy, M., Stepaniuk, R., Kikinchuk, V., Oderiy, O., & Svyrydova, L. (2020). Evidentiary problems in the investigation of corruption crimes in Ukraine. *Amazonia Investiga*, 9(32), 117-124. doi: 10.34069/AI/2020.32.08.12.
- [10] Pohoretskyi, M., Serhieieva, D., & Toporetska, Z. (2019). The proof of the event of a financial resources fraud in the banking sector: Problematic issues. *Financial and Credit Activity: Problems of Theory and Practice*, 1(28), 36-45. doi: 10.18371/fcaptp.v1i28.163692.
- [11] Tarasenko, O., Shevchishen, A., Yermakov, Y., Mirkovets, D., & Diakin, Y. (2021). Use of intelligence tools of operational and search activities in pre-trial investigation. *Amazonia Investiga*, 10(45), 105-112. doi: 10.34069/AI/2021.45.09.11.
- [12] Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.
- [13] Pomazanov, A., & Chornousko, M. (2020). Some issues of institutional and legislative support to prevent corruption in the context of current challenges. *Scientific Bulletin of the National Academy of Internal Affairs*, 4(117), 32-38. doi: 10.33270/01201174.32.
- [14] Toporetska, Z.M. (2019). Forensic characteristics of illicit enrichment. *Forensics and Forensic Science*, 64, 305-319. doi: 10.33994/kndise.2019.64.27.
- [15] Cherniak, A.M., & Prozorov, A.Yu. (2019). Aspects of crime prevention in the field of use of bank payment cards during contactless and Internet payments and their qualification. *Scientific Bulletin of the National Academy of Internal Affairs*, 4(113), 8-18. doi: 10.33270/01201152.8.
- [16] Draft Law of Ukraine No. 2713-d “On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine on Taxation of Income from the Organization and Conduct of Gambling and Lotteries”. (2020, June). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69206.
- [17] Criminal Procedure Code of Ukraine No. 4651-VI. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.
- [18] Hribov, M.L., & Cherniak, A.M. (2018). Counteraction to crime by operational units of law enforcement agencies: Concept and content. *Scientific Bulletin of the National Academy of Internal Affairs*, 4(109), 37-51.
- [19] Shevchenko, O.A. (2012). Crime prevention as one of the priority areas for combating crime. *Law and Society*, 3, 194-197.
- [20] Constitution of Ukraine No. 254к/96-BP. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.
- [21] Pcholkin, V.D. (2010). The concept and role of operational and preventive prevention in crime prevention. In *Prevention of crimes by subjects of operative-search activity: Proceedings of the scientific and practical conference* (pp. 15-17). Kharkiv: Yaroslav Mudryi National Law University.
- [22] KRAIL and the Bureau of Economic Security of Ukraine signed a Memorandum of Cooperation and Information Exchange. (2022). Retrieved from <https://gc.gov.ua/ua/Informatsiini-povidomlennia/33171.html>.
- [23] Toporetska, Z.M. (2019). Winning the lottery as a way to legalize corrupt income. In *New challenges of legal science in Ukraine and EU countries: Proceedings of the scientific and practical conference* (pp. 399-402). Miskolc: University of Miskolc.

- [24] Deductions from wages in 2022 by examples. (2022). Retrieved from <https://www.budgetnyk.com.ua/article/242-vdrahuvannya-z-zarobtno-plati-2022-roku-na-prikladah>.
- [25] Pogoretskyi, M.A. (2007). *Functional purpose of operational and investigative activities in criminal proceedings*. Kharkiv: Arsis.
- [26] Pogoretskyi, M.A., & Toporetska, Z.M. (2013). The use of materials of operational and investigative activities at the initial stage of the pre-trial investigation of gambling. *Fight Against Organized Crime and Corruption (Theory and Practice)*, 3, 215-225.
- [27] Podobnyi, O.O. (2021). *Operational and investigative activities in the detection and investigation of crimes: Theory, history and modern practice*. Odesa: Helvetica.
- [28] Kniaziev, S.M., Cherniavskiy, S.S., & Hribov, M.L. (2020). International cooperation in the field of covert investigations. *Scientific Bulletin of the National Academy of Internal Affairs*, 4(117), 7-19.
- [29] Shapovalov, O.O. (2017). The concept and essence of operational search. *Scientific Bulletin of the National Academy of Internal Affairs*, 2(103), 149-159.
- [30] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2135-12#Text>.
- [31] Hribov, M., Venediktov, A., & Venediktov, Yu. (2020). Secret interrogation as one of the tools of pre-trial investigation of crimes. *Scientific Bulletin of the National Academy of Internal Affairs*, 1(114), 8-18.
- [32] Kapustnyk, V., & Stashchak, M. (2020). Tasks of operational units of the national police during operational and investigative measures of departmental authorization. *Entrepreneurship, Economy and Law*, 9, 209-213. doi: 10.32849/2663-5313/2020.9.36.
- [33] Order of the Office of the Prosecutor General No. 298 "On Approval of the Regulations on the Unified Register of Pre-trial Investigations, the Procedure for its Formation and Maintenance". (2020, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0298905-20#n875>.

■ Список використаних джерел

- [1] Про державне регулювання діяльності щодо організації та проведення азартних ігор : Закон України від 14 лип. 2020 р. № 768-IX. URL: <https://zakon.rada.gov.ua/laws/show/768-20#Text>.
- [2] Інформація щодо наявності у суб'єкта господарювання права на провадження діяльності з організації та проведення азартних ігор. URL: <https://gc.gov.ua/ua/Litsenziini-reiestry.html>.
- [3] Banks J., Waugh D. A taxonomy of gambling-related crime. *International gambling studies*. 2019. Vol. 19. No. 2. P. 339–357. doi: 10.1080/14459795.2018.1554084.
- [4] Adolphe A., Khatib L., Golde C. V., Gainsbury S. M., Blaszczyński A. Crime and gambling disorders. *Systematic Review Journal of Gambling Studies*. 2019. Vol. 35. P. 395–414. doi: 10.1007/s10899-018-9794-7.
- [5] Arthur J. N., Williams R. J., Belanger Y. D. The relationship between legal gambling and crime in Alberta. *Canadian Journal of Criminology and Criminal Justice*. 2014. Vol. 56. No. 1. P. 49–84. doi: 10.3138/cjccj.2012.E51.
- [6] Cherniavskiy S., Dzhuzha O., Babanina, V., Harust, Yu. System of ensuring the economic security of the state: World experience and ways of its reform in Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*. 2021. Vol. 28. No. 4. P. 157–168. doi: 10.37635/jnalsu.28(4).2021.157-168.
- [7] Лефтеров Л. В. Загальносоціальні заходи запобігання шахрайству, що вчиняється шляхом використання засобів електронних комунікацій. *Lex Portus*. 2019. № 1. С. 89–101. doi: 10.26886/2524-101X.1.2019.6.
- [8] Допілко В. О., Явдошук Р. В. Правові засоби протидії контрабанді та порушенням митних правил на транспорті: сучасний стан. *Lex Portus*. 2019. № 4. С. 90–104. doi: 10.26886/2524-101X.4.2019.6.
- [9] Shcherbakovskiy M., Stepaniuk R., Kikinchuk V., Oderiy O., Svyrydova L. Evidentiary problems in the investigation of corruption crimes in Ukraine. *Amazonia Investiga*. 2020. Vol. 9 (32). P. 117–124. doi: 10.34069/AI/2020.32.08.12.
- [10] Pohoretskyi M., Serhieieva D., Toporetska Z. The proof of the event of a financial resources fraud in the banking sector: problematic issues. *Financial and Credit Activity: Problems of Theory and Practice*. 2019. Vol. 1 (28). P. 36–45. doi: 10.18371/fcaptp.v1i28.163692.
- [11] Tarasenko O., Shevchishen A., Yermakov Y., Mirkovets D., Diakin Y. Use of intelligence tools of operational and search activities in pre-trial investigation. *Amazonia Investiga*. 2021. Vol. 10 (45). P. 105–112. doi: 10.34069/AI/2021.45.09.11.
- [12] Кримінальний кодекс України : Закон України від 5 квіт. 2001 р. № 2341-III. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.
- [13] Pomazanov A., Chornousko M. Some issues of institutional and legislative support to prevent corruption in the context of current challenges. *Scientific Bulletin of the National Academy of Internal Affairs*. 2020. Vol. 4 (117). P. 32–38. doi: 10.33270/01201174.32.

- [14] Топорецька З. М. Криміналістична характеристика незаконного збагачення. *Криміналістика і судова експертиза*. 2019. № 64. С. 305–319. doi: 10.33994/kndise.2019.64.27.
- [15] Черняк А. М., Прозоров А. Ю. Аспекти запобігання правопорушенням у сфері використання банківських платіжних карток під час проведення безконтактних й інтернет-платежів та їх кваліфікація. *Науковий вісник Національної академії внутрішніх справ*. 2019. № 4 (113). С. 8–18. doi: 10.33270/01201152.8.
- [16] Про внесення змін до Податкового кодексу України та інших законів України щодо оподаткування доходів від діяльності з організації та проведення азартних ігор та лотерей : проект Закону України від 19 черв. 2020 р. № 2713-д. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69206.
- [17] Кримінальний процесуальний кодекс України : Закон України від 13 квіт. 2012 р. № 4651-VI. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.
- [18] Грібов М. Л., Черняк А. М. Протидія злочинності оперативними підрозділами правоохоронних органів: поняття та зміст. *Науковий вісник Національної академії внутрішніх справ*. 2018. № 4 (109). С. 37–51.
- [19] Шевченко О. А. Запобігання злочинам як один із пріоритетних напрямів протидії злочинності. *Право і суспільство*. 2012. № 3. С. 194–197.
- [20] Конституція України : Закон України від 28 черв. 1996 р. № 254к/96-ВР. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.
- [21] Пчолкін В. Д. Поняття та роль оперативно-розшукової профілактики у запобіганні злочинам. *Попередження злочинів суб'єктами оперативно-розшукової діяльності* : матеріали наук.-практ. конф. (Харків, 17 груд. 2010 р.). Харків, 2010. С. 15–17.
- [22] КРАПІ і Бюро економічної безпеки України підписали Меморандум про взаємодію та інформаційний обмін. URL: <https://gc.gov.ua/ua/Informatsiini-povidomlennia/33171.html>.
- [23] Топорецька З. М. Виграш у лотерею як спосіб легалізації корупційних доходів. *Нові виклики юридичної науки в Україні та країнах ЄС* : матеріали наук.-практ. конф. з міжнар. участю (Мішкольц, 19–20 квіт. 2019 р.). Мішкольц, 2019. С. 399–402.
- [24] Відрахування із заробітної плати 2022 року на прикладах. URL: <https://www.budgetnyk.com.ua/article/242-vdrakhuvannya-z-zarobtno-plati-2022-roku-na-prikladah>.
- [25] Погорецький М. А. Функціональне призначення оперативно-розшукової діяльності у кримінальному процесі : монографія. Харків : Арсис, 2007. 576 с.
- [26] Погорецький М. А., Топорецька З. М. Використання матеріалів оперативно-розшукової діяльності на початковому етапі досудового розслідування зайняття гральним бізнесом. *Боротьба з організованою злочинністю і корупцією (теорія і практика)*. 2013. № 3. С. 215–225.
- [27] Подобний О. О. Оперативно-розшукова діяльність у виявленні та розслідуванні злочинів: теорія, історія і сучасна практика : навч.-метод. посіб. Одеса : Гельветика, 2021. 258 с.
- [28] Князєв С. М., Чернявський С. С., Грібов М. Л. Міжнародне співробітництво у сфері негласних розслідувань. *Науковий вісник Національної академії внутрішніх справ*. 2020. № 4 (117). С. 7–19.
- [29] Шаповалов О. О. Поняття та сутність оперативного пошуку. *Науковий вісник Національної академії внутрішніх справ*. 2017. № 2 (103). С. 149–159.
- [30] Про оперативно-розшукову діяльність : Закон України від 18 лют. 1992 р. № 2135-XII. URL: <https://zakon.rada.gov.ua/laws/show/2135-12#Text>.
- [31] Грібов М., Венедіктов А. Венедіктова Ю. Негласне опитування як один з інструментів досудового розслідування злочинів. *Науковий вісник Національної академії внутрішніх справ*. 2020. № 1 (114). С. 8–18. doi: 10.33270/01201141.8.
- [32] Капустник В., Стацак М. Завдання оперативних підрозділів національної поліції під час проведення оперативно-розшукових заходів відомчого санкціонування. *Підприємництво, господарство і право*. 2020. № 9. С. 209–213. doi: 10.32849/2663-5313/2020.9.36.
- [33] Про затвердження Положення про Єдиний реєстр досудових розслідувань, порядок його формування та ведення : наказ Офісу Генерального прокурора від 30 черв. 2020 р. № 298. URL: <https://zakon.rada.gov.ua/laws/show/v0298905-20#n875>.

Особливості оперативно-розшукової протидії злочинам, пов'язаним з гральним бізнесом

Діана Борисівна Сергєєва¹, Зоряна Миколаївна Топорецька²

¹Київський національний університет імені Тараса Шевченка
02000, вул. Володимирська, 60, м. Київ, Україна

²Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна

■ **Анотація.** Актуальність статті полягає в тому, що автори комплексно дослідили питання оперативно-розшукової протидії злочинам, пов'язаним з гральним бізнесом, після легалізації грального бізнесу в Україні 2020 року. Метою дослідження є вивчення особливостей оперативно-розшукової протидії злочинам, пов'язаним з гральним бізнесом, задля підвищення ефективності цієї протидії. Досягненню поставленої мети сприяло використання загальнонаукових і спеціальних юридичних методів: загальний діалектичний метод наукового пізнання явищ та зв'язків між ними; формально-правовий (догматичний або юридико-технічний); системно-структурний; порівняльно-правий; метод узагальнення. Розглянуто такі складові системи оперативно-розшукової протидії злочинам, пов'язаним з гральним бізнесом: запобігання злочинам, виявлення злочинів і реагування на злочин. Запобігання злочинам, пов'язаним з гральним бізнесом, передбачає здійснення дій та реалізацію оперативно-розшукових заходів загальної та індивідуальної профілактики. Виявлення злочинів, пов'язаних з гральним бізнесом, здійснюють оперативні підрозділи під час проведення оперативно-розшукових заходів з виявлення та припинення предикатних злочинів. Реагування на виявлені злочини передбачає документування злочинної діяльності й передачу матеріалів до відповідного слідчого підрозділу для прийняття рішення про початок кримінального провадження. Практична значущість результатів дослідження полягає в тому, що в статті запропоновано конкретні механізми оперативно-розшукової протидії злочинам, пов'язаним з гральним бізнесом

■ **Ключові слова:** оперативно-розшукова діяльність; гральний заклад; азартна гра; корупційні злочини; легалізація доходів, отриманих злочинним шляхом; оперативні підрозділи