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Legal regulation of combating organised crime in Ukraine: Current state and areas of improvement

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■ **Abstract.** The relevance of this study is conditioned by the need to develop concrete proposals for improving the legislation in the field of combating organised crime at the present stage. The purpose of this study was to identify, based on the identified gaps in the legal regulation of combating organised crime, the ways of its improvement with due regard to current socio-political realities and international practices. The study addressed these issues using a system of general scientific and special methods of scientific cognition: analysis, synthesis, analogy, comparison, generalisation, content analysis, as well as formal legal, comparative legal, and systemic methods. The results of the analysis of the legal regulation of combating organised crime in Ukraine show that there are substantial gaps in the national legislation, which creates preconditions for further criminalisation of the key areas of the state's functioning, especially in the context of the ongoing military operations in the country. The study focused on several draft laws, the provisions of which are aimed at strengthening the capacity of actors to combat organised crime and will have a positive impact on eliminating the causes and conditions of its existence. It is proved that modernisation of criminal, criminal procedural, anti-corruption, law enforcement intelligence, and counter-intelligence legislation, as well as improvement of legal acts in the areas of counterterrorism and sanctions policy are of great importance. The study argued that it is necessary to accelerate the implementation of the Europol methodology for assessing the threats of serious and organised crime in Ukraine to provide a strategic vision of the socio-political spheres vulnerable to criminal influence. It was proved that an important prerequisite for effective counteraction to crime is the implementation of the provisions of the Strategy for Combating Organised Crime concerning the creation of stable and systematic legislation for the introduction of new methods and mechanisms of counteraction. The practical significance of this study is that the findings of the study may serve as a basis for improving the legal regulation of combating organised crime in Ukraine as a threat to its national security, primarily during the martial law regime

■ **Keywords:** national security; law enforcement; countering crime; organised criminal group; terrorism; sanctions

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■ Introduction

In the context of a full-scale war in Ukraine, organised crime is a threat to national security. Organised crime is used by foreign intelligence services and is one of the most powerful tools for destabilising the situation in the country. For the law enforcement agencies to build an effective system of combating organised crime and eliminate the causes and conditions of its existence, it is important to have proper legal regulation of this area, including stable and systematic legislation that should be consistent with the socio-political and socio-economic conditions of today, as well as international practices in this area.

The quality of legal regulation of combating organised crime is of immense importance, as law is the main regulator of social relations in all spheres of life (Bilozorov *et al.*, 2017). Therefore, the study of the current state of legal regulation of the sphere of combating organised crime in Ukraine is always relevant in terms of timely identification of legal gaps in legislative and sub-legislative acts and development of ways to improve them, considering the practices of developed foreign countries.

The conceptual foundations and legal regulation of combating organised crime have been sufficiently covered in Ukrainian and foreign legal science. Among the most recent published studies, attention should be paid to the fundamental studies by H.P. Zharovska (2019) and V.S. Burkal (2021) on the theory and practice of combating transnational organised crime in Ukraine, which outline the problems of legal support for this process. Specifically, the authors provide a substantive critical analysis of the provisions of criminal legislation of Ukraine regarding criminal offences which are considered to be manifestations of transnational organised crime. The authors emphasise several gaps in the current Criminal Code of Ukraine (CCU) that need to be addressed. T. Obokata (2019) covered some aspects of the fight against transnational organised crime through international human rights law. The researcher concludes that international human rights law, apart from simple criminal justice measures, encourages states to adopt a holistic approach capable of addressing the complex and multifaceted nature of transnational organised crime.

A. Kupatadze (2019) studied the development of organised crime in post-Soviet Eurasia, how geography, natural resources, types of political leadership and the involvement of international actors give rise to various forms of collusion. He argued that even if the authorities' capacity to counter organised crime through legal means is strengthened, the link between political and criminal structures stays strong. O. Horbachov *et al.* (2020) investigated the specific features of combating ethnic crime in Ukraine, including the structure of modern and outdated organised criminal groups. L.P.G. da Costa (2018) revealed that

organised crime is part of a geopolitical and asymmetric warfare strategy. Using specific examples, he demonstrated how developed countries in various historical periods have used criminal and terrorist organisations in covert intelligence operations and proxy wars as a tool to strengthen their geopolitical influence. He presented common views on combating organised crime, including through legal means.

Despite a considerable number of scientific studies on the problems of combating organised crime, the current state of its legal regulation shows that several issues are still unresolved. These include the delineation of the functions of state bodies involved in combating its manifestations, the procedure for their interaction and coordination, determination of the status of the entity responsible for organisational support of the implementation of the state strategy for combating organised crime, monitoring and reporting in the relevant area through the introduction of a strategic communications mechanism, etc. This necessitates further scientific research in this area, namely, identifying ways to improve the current legislation and the mechanism of its practical implementation to increase the efficiency of the subjects of the fight against organised crime.

The purpose of this study was to analyse the regulations governing the fight against organised crime and to provide proposals for modernising national legislation to strengthen the capacity of Ukrainian state bodies involved in combating organised crime.

■ Materials and Methods

To fulfil the purpose of this study, the most suitable methodology was used, which ensured its comprehensiveness and completeness. The study is based on the analysis and synthesis of the provisions of laws and regulations of Ukraine and NATO member states in the field of combating organised crime. When studying the legal provisions of national and foreign legislation and identifying the links between them based on their similarities, the study employed the methods of theoretical and legal research: analogy and comparison. The use of analogy is a way to eliminate legal uncertainty in identifying gaps in national legislation, including through the implementation of European and international acts, to increase the effectiveness of combating organised crime by law enforcement agencies of Ukraine. Using the method of content analysis, the study investigated invariant sources of information which substantiate the functional model of organised crime to identify legal conflicts in the regulations on combating organised crime and develop a single abstract model of the text of the law.

The study used the formal legal method to investigate the internal content of legal provisions governing the activities of Ukrainian state authorities aimed

at detecting and preventing organised crime with their further classification, systematisation, and generalisation. The systemic method of legal regulation of combating organised crime in Ukraine was used to consider the legal regulation of combating organised crime in Ukraine as an integral system of interrelated elements. The comparative legal method was used to compare the norms, institutions, and categories used in the legal systems of the partner countries and to identify their common and distinctive features.

The study was based on the materials of regulations (laws, strategies, concepts), according to which the fight against organised crime, the fight against terrorism, national security, state security, cybersecurity, sanctions policy, as well as draft laws of Ukraine, the provisions of which are aimed at improving criminal, criminal procedural, anti-corruption, law enforcement intelligence, and counter-intelligence legislation. Specifically, the following documents were analysed in the study: Constitution of Ukraine¹, Criminal Code of Ukraine², Law of Ukraine “On Legal Framework for Combating Organised Crime”³, Law of Ukraine “On Fundamental Principles of Ensuring Cybersecurity of Ukraine”⁴, Decree of the President of Ukraine “On the Decision of the National Security and Defence Council of Ukraine “On the National Security Strategy of Ukraine”⁵, Order of the Cabinet of Ministers of Ukraine “On Approval of the Strategy for Combating Organised Crime”⁶, etc.

To bring national legislation in the field of combating organised crime in line with European law, Europol’s materials on the harmonisation and implementation of the IOCTA methodology (Europol, 2018), as well as data from analytical reports on the assessment of organised cybercrime threats, were used.

■ Results and Discussion

A key element of society’s effective fight against organised crime is the proper level of its legal regulation (Vodko & Podobnyi, 2021). It defines the types and signs of criminal offences committed by organised criminal groups; responsibility for such illegal activities; particular powers of law enforcement agencies

to prevent this criminal phenomenon, eliminate the causes and conditions of its existence; means that can be used for this purpose, etc. (Kupka *et al.*, 2021). Therewith, national legislation must be necessarily harmonised with international norms and standards, as dictated by the international and European community (Dotsenko, 2019).

Repeatedly amended and supplemented since 1993. The Law of Ukraine “On Legal Framework for Combating Organised Crime”⁷, does not meet the current political, economic, and law enforcement needs in this area. As O. Bakhurynska (2020) notes, the content of the law does not contain the fundamental principles on which the law enforcement, preventive and punitive activities of counteraction actors should be based. T.M. Mishchenko (2018) addresses the absence of a reference in the law to the fact that legislation on combating organised crime is based, among other things, on the norms of anti-corruption legislation. Agreeing with the position of the majority of experts, it can be assumed that the provisions of the law are outdated and do not keep pace with the dynamics of reforming the system of judicial, law enforcement, and human rights bodies of Ukraine, which leads to a violation of the harmonisation and unification of legislation in the field of combating organised crime.

The consolidation of new basic criminal law institutions on organised crime in the Criminal Code of Ukraine⁸ (CCU) in 2001 was a major achievement of the Ukrainian legislator, which generally ensured the possibility of criminal law combating organised forms of crime in the context of Ukraine’s attempts to enter the European legal field. Nevertheless, the legislative description of the criminal law provisions on organised crime cannot be considered complete, and the responsibility of the legislator includes their further improvement. In this context, one of the steps towards strengthening the fight against organised illegal activities of criminal communities in Ukraine was the introduction of amendments to the Criminal Code of Ukraine to expand the corpus delicti of Article 255 and criminalise the status of a “code-bound criminal” and the concepts of “criminal influence”

¹ The Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

² The Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

³ Law of Ukraine No. 3341-XII “On Legal Framework for Combating Organised Crime”. (1993, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/3341-12#Text>.

⁴ Law of Ukraine No. 2163-VIII “On the Fundamental Principles of Ensuring Cybersecurity of Ukraine”. (2017, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2163-19#Text>.

⁵ Order of the President of Ukraine No. 392/2020 “On the Decision of the National Security and Defence Council of Ukraine of September 14, 2020 “On the National Security Strategy of Ukraine”. (2020, September). Retrieved from <https://www.president.gov.ua/documents/3922020-35037>.

⁶ Resolution of the Cabinet of Ministers of Ukraine No. 1126-p “On Approval of the Strategy for Combating Organized Crime” (2020, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/1126-2020-%D1%80#Text>.

⁷ Law of Ukraine No. 3341-XII “On Legal Framework for Combating Organised Crime”. (1993, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/3341-12#Text>.

⁸ The Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

and “criminal assembly”¹. For instance, Law of Ukraine No. 671-IX of 04.06.2020 supplemented the Criminal Code of Ukraine with new articles, namely, 255-1, 255-2, 255-3, and Article 255 was supplemented by Part 4 on liability for “creating a criminal community, i.e., the union of two or more criminal organisations, and the management of such a community”². The same law defines the terms “criminal influence” and “a person in the status of a subject of increased criminal influence, including the status of a “code-bound criminal”. However, according to court practice, even before the criminalisation of the above actions in national legislation, information received by domestic law enforcement agencies from foreign colleagues was factually treated as a criminal offence. K. Yakovenko (2020) provides specific examples of such court decisions.

With the entry into force of the above-mentioned Law No. 671-IX³, liability for participation in a criminal organisation has increased, as its provisions establish liability without any qualifying features, including organisation of criminal groups, participation in grave or particularly grave crimes, and prescribe confiscation of property. This opinion is shared by judges of appellate courts when reviewing the decisions of investigating judges to impose a preventive measure in the form of detention (Yakovenko, 2020). Thus, today's realities show that Ukraine, along with other states, is trying to introduce new methods and mechanisms for combating organised crime, for which purpose it is gradually updating its legislative framework, as well as introducing new state bodies, types, and methods of information exchange, specifically within the framework of international cooperation.

The next reaction of the state to the need to improve the legal regulation of law enforcement agencies' activities in combating organised crime was the adoption of a governmental act – the Strategy for Combating Organised Crime, approved by the Order of the Cabinet of Ministers of Ukraine No. 1126-p dated 16.09.2020.⁴ As a strategic planning document, the Strategy outlines the stages, principles, ways, and areas of its implementation. One of such areas is the improvement of the regulatory framework for combating organised crime, which is the basis for prompt detection and prevention of this socially dangerous phenomenon.

The analysis of the political and economic situation in Ukraine suggests that the implementation of the national policy in the field of combating organised crime at the present stage will require fundamental changes in the institutional and legal measures to ensure this fight. The current system of law enforcement agencies of Ukraine and the existing regulatory framework for their activities in combating organised crime do not allow for offensive steps to effectively combat this anti-social phenomenon and the key threat to national security.

V.I. Lytvynenko (2020), having investigated the problems of implementing the Strategy for Combating Organised Crime at the present stage, notes that the document needs substantial revision, as it is more reminiscent of the relevant Concept, i.e., defines a system of views on the fight against organised crime, rather than ways to implement national policy in this area. The problems of implementing the Strategy arise not because of its content, but because of the systemic crisis in the legislative, executive, and judicial branches of government, the incompetence of their representatives, who at many key stages slow down the processes related to the development and adoption of legislative acts and constantly lobby for the adoption of acts whose provisions do not comply with the Constitution of Ukraine. One example is the development of a draft law amending the Law of Ukraine “On Legal Framework for Combating Organised Crime”, which, according to the Action Plan for the Implementation of the Strategy for Combating Organised Crime, was to be submitted to the Cabinet of Ministers of Ukraine in March 2023, but for subjective reasons, work on this project is still ongoing⁵.

The danger of organised crime is also highlighted in the National Security Strategy of Ukraine⁶. According to paragraph 19 of the Strategy⁷, the special services of foreign countries are conducting intelligence and subversive activities against Ukraine. They try to support separatist sentiments, use and support organised crime groups and corrupt officials, and make efforts to strengthen their infrastructure of influence. The above strongly suggests that effective counteraction to organised crime cannot be ensured without counter-intelligence activities in this area, which use special methods, forces, and means of collecting

¹ The Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

² Law of Ukraine No. 671-IX “On Amendments to Certain Legislative Acts of Ukraine on Liability for Crimes Committed by a Criminal Community”. (2020, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/671-20#Text/>

³ Ibidem, 2020.

⁴ Resolution of the Cabinet of Ministers of Ukraine No. 1126-p “On Approval of the Strategy for Combating Organized Crime”. (2020, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/1126-2020-%D1%80#Text>.

⁵ Order of the Cabinet of Ministers of Ukraine No. 850-p “On Approval of the Action Plan for the Implementation of the Strategy for Combating Organised Crime”. (2022, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/850-2022-%D1%80#Text>.

⁶ Order of the President of Ukraine No. 392/2020 “On the Decision of the National Security and Defence Council of Ukraine of September 14, 2020 “On the National Security Strategy of Ukraine”. (2020, September). Retrieved from <https://www.president.gov.ua/documents/3922020-35037>.

⁷ Ibidem, 2020.

information. Timely detection of manifestations of organised criminal activity from the perspective of foreign intelligence services and their neutralisation can prevent the destruction of public administration and local self-government mechanisms in Ukraine. Furthermore, Item 24 of the Strategy¹ states that “inconsistent and incomplete reforms and corruption make it impossible for the Ukrainian economy to grow steadily and dynamically, increase vulnerability to threats, and foster the criminal environment”, while Item 63 of the Strategy² states that to protect Ukraine from all threats to national security, the state should focus on systemic reform of law enforcement agencies, specifically in the fight against organised and transnational crime. This confirms the urgent need to improve the system of actors in the fight against organised crime, as well as the need to introduce modern forms and methods of countering this illegal activity.

The State Security Strategy, approved by the National Security and Defence Council of Ukraine on 30 December 2021 and enacted by the Decree of the President of Ukraine No. 56/2022 dated 16 February 2022, also became an important basis for the development of a system of statutory regulation of law enforcement agencies' activities to combat organised criminal groups³. The document states that apart from legality, transparency, the rule of law, accountability, and democratic public control over the functioning of the security and defence sector, and respect for human and civil rights and freedoms, the Strategy is based on the principles of countering terrorism and transnational organised crime. The regulation declared organised criminal activity as a threat to state security, as the intelligence services of some foreign countries continue to conduct intelligence, subversive, and other illegal activities against Ukraine, including through organised criminal groups, and attempt to influence corrupt officials to make management decisions in their favour.

The issue of combating organised crime is also reflected in the Strategy for the Development of the Justice System and Constitutional Justice for 2021-2023, proclaimed by the Decree of the President of Ukraine

No. 231/2021 dated 11.06.2021⁴. Specifically, the areas of development of the justice system include increasing the effectiveness of law enforcement agencies' cooperation in combating crime and ensuring the proper performance of functions and powers of the prosecutor's office in the criminal justice system.

The issue of depriving the Security Service of Ukraine (SSU) of its powers in this area is problematic for organising the fight against organised crime. The amendments to the Law of Ukraine “On Legal Framework for Combating Organised Crime”⁵ proposed by the Draft Law of Ukraine reg. No. 3196-d “On Amendments to the Law of Ukraine “On the Security Service of Ukraine” Concerning the Improvement of the Legal Framework of the Security Service of Ukraine”, dated 26.10.2020⁶ as amended for the second reading may lead to the destruction of an effective mechanism for combating organised crime. In the future, the SSU is to be entrusted with counter-intelligence support for the system of fighting organised crime.

The EU and NATO require that the SSU be stripped of functions that are not typical for the intelligence service during reform. At the same time, law enforcement officials agree that the spread of organised crime, including transnational crime, is still one of the most dangerous threats to the national security of each country (Buciuas, 2019). PACE Recommendations No. 1402 (1999) and No. 1713 (2005) state that in cases of direct threat of organised crime to the democratic regime of a country, the special services should take part in measures to counter this socially dangerous phenomenon⁷. With the outbreak of the armed conflict in Donbas in 2014, part of eastern Ukraine came under the control of quasi-governmental structures, where organised criminal groups benefited financially from the chaos, lawlessness, and impunity of their illegal activities (Zabyelina & Markovska, 2019). The Russian special services actively used these circumstances to fuel separatism and further destabilise the political situation in the region, which led to a full-scale military invasion of Ukraine in February 2022. In the context of the ongoing military operations in Ukraine, including those involving

¹ Order of the President of Ukraine No. 392/2020 “On the Decision of the National Security and Defence Council of Ukraine of September 14, 2020 “On the National Security Strategy of Ukraine”. (2020, September). Retrieved from <https://www.president.gov.ua/documents/3922020-35037>.

² Ibidem, 2020.

³ Order of the President of Ukraine No. 56/2022 “On Decisions of the National Security and Defence Council of Ukraine”. (2021, December). Retrieved from <https://www.president.gov.ua/documents/562022-41377>.

⁴ Order of the President of Ukraine No. 231/2021 “On the Strategy for the Development of the Justice System and Constitutional Justice for 2021-2023”. (2021, June). Retrieved from <https://www.president.gov.ua/documents/2312021-39137>.

⁵ Law of Ukraine No. 3341-XII “On Legal Framework for Combating Organised Crime”. (1993, June). Retrieved from: <https://zakon.rada.gov.ua/laws/show/3341-12#Text>.

⁶ Draft Law of Ukraine No. 3196-d “On Amendments to the Law of Ukraine “On the Security Service of Ukraine” Concerning the Improvement of the Legal Framework of the Security Service of Ukraine”. (2020, October). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70243.

⁷ Opinion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine No. 3080 “On the Draft Law of Ukraine “On the Security Service of Ukraine”. (2020, February). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/pubFile/65869>.

private military companies financed by criminal organisations, countering organised criminal activity as a threat to state security should still be a priority for the national intelligence service.

Currently, the adoption of the Draft Law reg. No. 3196-d¹ has been postponed, as the reform of the SSU during martial law, as well as the institutional reform of any military formation, which involves a complete review of the agency's staffing, certification of most of its employees and reduction of personnel, is considered to be untimely. The Law of Ukraine "On Amendments to the Criminal and Criminal Procedural Codes of Ukraine in connection with the ratification of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, as well as to certain legislative acts of Ukraine on improving the fight against terrorism" adopted in March 2023 was important for improving the legal framework for combating organised crime². The law was drafted with the involvement of the SSU representatives, considering foreign practices in the field of counterterrorism, to strengthen the capabilities of security agencies and the national system of counter-terrorism in general. This resulted in amendments to the Criminal Code of Ukraine to establish criminal liability for "terrorist training", "crossing the state border of Ukraine for terrorist purposes", as well as financing of these acts, and the Criminal Procedural Code of Ukraine (CPCU) to determine the jurisdiction of the above crimes for the SSU investigators. During martial law, the application of preventive measures to persons suspected or accused of committing crimes is limited to the use of only one measure – detention. It also envisages the introduction of special pre-trial investigation procedures (*in absentia*) and the expansion of the types of sanctions that may be applied in such cases, namely to terrorist organisations and groups, following the Law of Ukraine "On Sanctions". Additionally, the Law of Ukraine "On Combating Terrorism" prescribes the establishment of a legal framework for anti-terrorist training of the population, the establishment of new entities responsible for combating terrorism and, specifically, their

powers, the expansion of the powers of the SSU, as it is the main actor in the fight against terrorism, as well as the formation and updating of the list of terrorist organisations and groups, etc.

In the context of a full-scale armed aggression against Ukraine, prompt detection of terrorist activities is essential for ensuring national security to prevent its negative consequences, eliminate factors that facilitate terrorist acts, as well as to stop, investigate, and solve them. Accordingly, the implementation of the above provisions should lay the groundwork for improving the organisation of law enforcement agencies in Ukraine in the area of countering terrorist activity.

An important regulation that, if adopted, will have a positive impact on eliminating the causes and conditions of organised crime is the Draft Law of Ukraine, reg. No. 7684-d dated 30.11.2022.³ The main reason for drafting this regulation was the urgent need to increase the effectiveness of the counter-intelligence units of the national special service in countering intelligence, subversive, terrorist, and other illegal activities of the special services of the Russian Federation in the context of war, including the use of various forms of organised crime.

Among other innovations, the Draft Law proposes to add to the list of grounds for conducting counter-intelligence activities set out in Article 6 of the Law of Ukraine "On Counter-Intelligence Activities"⁴ such grounds as verification of information on the conduct of intelligence and subversive activities against Ukraine by foreign states and their organisations, special services, including the use of criminal structures, as well as the performance of tasks related to counter-intelligence support for the system of combating organised crime. Furthermore, the draft law sets out a provision on the system of bodies that will combat organised crime.

It should be considered that in the context of armed aggression against Ukraine, attempts by Russia to create terrorist organisations in the country and the active use of organised criminal groups for this purpose, the adoption of the Draft Law No. 7684-d⁵ will be a major step forward for Ukrainian legislation.

¹ Draft Law of Ukraine No. 3196-d "On Amendments to the Law of Ukraine "On the Security Service of Ukraine" Concerning the Improvement of the Legal Framework of the Security Service of Ukraine". (2020, October). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70243.

² Law of Ukraine No. 2997-IX "On Amendments to the Criminal and Criminal Procedural Codes of Ukraine in Connection with the Ratification of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, as Well as to Certain Legislative Acts of Ukraine on Improving the Fight Against Terrorism". (2023, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2997-20#Text>.

³ Draft Law of Ukraine No. 7684-d "On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Capacity of Counterintelligence Agencies to Counteract the Large-Scale Military Aggression of the Russian Federation against Ukraine". (2022, November). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1561605>.

⁴ Law of Ukraine No. 374-IV "On Counter-Intelligence Activities". (2002, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/374-15/ed20021226#Text>.

⁵ Draft Law of Ukraine No. 7684-d "On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Capacity of Counterintelligence Agencies to Counteract the Large-Scale Military Aggression of the Russian Federation against Ukraine". (2022, November). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1561605>.

Strengthening the capabilities of counter-intelligence actors can considerably increase the effectiveness of counter-intelligence measures to counter terrorist and sabotage activities at counterintelligence facilities and help prevent organised criminal activity and combat criminal organisations in areas where there is an elevated risk of criminal acts.

Ukraine's ability to effectively counter threats of any origin and nature, including organised criminal activity, should be facilitated by the state's systemic sanctions policy. According to the provisions of the Law of Ukraine "On Sanctions"¹, the grounds for the application of coercive measures are the actions of a foreign state, foreign legal entity, or individual to the detriment of the national security, sovereignty, and territorial integrity of Ukraine, which lead to violations of human rights and freedoms, the interests of society and the state, occupation of the territory and other adverse consequences.

As of 2023, the sanctions legislation, which was urgently introduced in 2014 as a response to the aggressive actions of the Russian Federation, is outdated and needs to be amended. Currently, the National Security and Defence Council (NSDC) of Ukraine has prepared a Draft Law reg. No. 5191 "On the Principles of Sanctions Policy of Ukraine" dated 02.03.2021², considering the practice of developing and implementing sanctions policies of international partners (EU countries, the USA, Canada, and other states). One of the key innovations for the fight against organised crime is the addition of national and international sanctions to the lists of sanctions applied in the fight against terrorist financing. At the same time, the draft law is not without substantial drawbacks, such as the lack of provisions on the grounds for imposing sanctions, too long a timeframe for making a decision on their imposition (up to one month), and the lack of a mechanism for mandatory approval of the NSDC's decision to lift and amend international sanctions by a relevant resolution of the Verkhovna Rada of Ukraine. Furthermore, the draft law prescribes criminal and administrative liability for violation of the requirements of this Law. Currently, there is no such responsibility. Therefore, it would be advisable to make provision for appropriate amendments to the CCU and CPCU, as well as to the Code of Ukraine on Administrative Offences.

Along with the Draft Law reg. No. 5191, the Verkhovna Rada of Ukraine registered two more draft laws related to sanctions policy, namely the Draft Law of Ukraine reg. No. 5191-1 "On Restrictive Measures (Sanctions) of the State to Protect the National Interests of Ukraine" dated 16.03.2021³ and the Draft Law of Ukraine reg. No. 5191-2 "On Amendments to the Law of Ukraine "On Sanctions" dated 19.03.2021.⁴ The main ideas of the draft laws are to systematically reform the sanctions policy and create legislative conditions for the implementation of effective sanctions programmes. The imposition of sanctions on the identified Russian assets (of the Central Bank of the Russian Federation, private companies, individuals, etc.) is a prerequisite for further confiscation of these assets to be used as sources of recovery of the Ukrainian economy.

A major step towards improving Ukraine's sanctions policy was the adoption in May 2022 of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving the Effectiveness of Sanctions Related to Individual Assets"⁵, which aims to introduce a procedure for identifying and confiscating assets of those entities that support military aggression against Ukraine in any way. The law establishes new sanctions, such as the seizure of assets of an individual or legal entity in favour of the state. The decision on such a penalty will be made by the High Anti-Corruption Court. However, the institution of asset confiscation is quite new in modern law. The first precedents of confiscation of property of Russian oligarchs in Ukraine by terminating their ownership rights demonstrated the inability of the state to effectively manage confiscated assets (Transparency International Ukraine, 2022).

One of the key features of organised crime in Ukraine is the use of corruption. In the context of widespread corruption, growing influence of organised crime, which is taking place against the backdrop of numerous contradictions in the current legislation and the lack of an effective strategic initiative to counter these phenomena, it is important that the legislator, at the initiative of the President of Ukraine, take measures aimed at reducing the level of corruption in Ukrainian society. For example, the Law of Ukraine "On Prevention of Threats to National Security Related to Excessive Influence of Persons with Significant Economic and Political Weight in

¹ Law of Ukraine No. 1644-VII "On Sanctions". (2014, August). Retrieved from <https://zakon.rada.gov.ua/laws/show/1644-18#Text>.

² Draft Law of Ukraine No. 5191 "On the Principles of Sanctions Policy of Ukraine". (2021, March). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=71291.

³ Draft Law of Ukraine No. 5191-1 "On Restrictive Measures (Sanctions) of the State to Protect the National Interests of Ukraine". (2021, March). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/pubFile/611788>.

⁴ Draft Law of Ukraine No. 5191-2 "On Amendments to the Law of Ukraine "On Sanctions". (2021, March). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/pubFile/623524>.

⁵ Law of Ukraine No. 2257-IX "On Amendments to Certain Legislative Acts of Ukraine on Improving the Effectiveness of Sanctions Related to the Assets of Individuals". (2022, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2257-20#Text>.

Public Life (Oligarchs)”¹ defined the procedure for the NSDC to recognise a person as an oligarch, prescribed restrictions on their rights, and measures to influence oligarchs and their associates. Some opponents of the law questioned its political feasibility, as there is no analogous legislation in the EU.

According to several Ukrainian experts, the legal act has certain shortcomings related to contradictions in legal provisions. For example, the proposed provision of Article 7 of the Law, which bans the financing of political parties, could be interpreted as a restriction on the right of persons recognised as oligarchs to own their property (Sushchenko, 2021). This restriction includes a ban on the transfer of money to political party accounts at their discretion. In practice, this means that the NSDC of Ukraine and the President of Ukraine will be entitled to restrict the disposal of people’s property without their consent, in violation of Article 41(4) of the Constitution of Ukraine² on the inviolability of private property rights. Furthermore, it is believed that the circle of oligarchs could theoretically become extremely wide, and some measures prescribed by the Law could be ineffective in terms of their practical application. At the same time, foreign scholarly sources emphasise that to qualitatively change national legislation and bring it closer to European law, legal measures should be taken to prevent a situation in which organised crime controls part of society and politics (Kupka *et al.*, 2021). Ukraine lacks the institutions necessary to effectively prosecute organised crime and needs to work on strengthening its legal system and introduce best practices and countermeasures (Williams & Picarelli 2017). Therefore, despite all the possible shortcomings of the wording of this law and the lack of tools to achieve the goals declared in it, its adoption is a major step by the state to counteract the systemic signs of the oligarchy’s criminal influence on the functioning of the national economy, which is the most complex part of organised crime.

It is important to adapt national legislation on combating organised crime to the norms of European law and UN requirements. Implementation of the provisions of EU regulations is Ukraine’s obligation on its path to European integration (Leun, 2021). One of the examples of Ukraine’s compliance with international legal norms is the introduction of the Europol Serious and Organised Crime Threat Assessment (SOCTA) methodology into law enforcement

activities, which is highly effective in EU countries and is constantly reviewed and supplemented by the Europol Advisory Group. The SOCTA report provides a detailed analysis and assessment of the socio-political areas of EU Member States vulnerable to criminal influence and targeted by criminal groups, as well as an analysis of organised criminal groups, including the forms, methods, and means of their activities (Europol, 2021). According to O.Y. Korystin & N.P. Sviridyuk (2022), the modern paradigm and world practice of combating organised crime is to focus on identifying the sources of its existence and ways to influence it. Therefore, the possibility of a strategic vision of the threats and risks to national security posed by criminal activity, as well as the conditions of existence of criminal groups and the mechanisms they choose to commit criminal offences, makes the SOCTA methodology unique (Sanakoiev *et al.*, 2022). It is believed that the use of this methodology will allow law enforcement agencies of Ukraine to conduct a thorough analysis of the current state of organised crime, based on which they will formulate strategic and operational goals, as well as appropriate tactics to counter this socially dangerous phenomenon.

At the same time, gaps in Ukrainian legislation, the lack of specialised software and the lack of competent IT analysts and specialists in this area considerably slow down the implementation of the SOCTA methodology. These problems can be solved through professional training of actors in the fight against organised crime in the specifics of criminal analysis at the strategic level, the purchase of licensed software, the introduction of best European practices and the implementation of a set of legislative measures. A study of foreign practices in the offensive strategy of fighting organised crime (Pereyhina & Dmytryshak, 2019) shows that European countries try to update their legislation every year to strengthen the capacity and efficiency of law enforcement agencies. The SOCTA methodology is being implemented in Ukraine with the support of the EU Advisory Mission. The initial stage of such implementation is the approval of Resolution of the Cabinet of Ministers of Ukraine No. 59 dated 26 January 2022³. This resolution approved the composition of the Interagency Working Group to coordinate the implementation of the assessment system in the activities of executive authorities. However, the tasks of this working group do not contain provisions that

¹ Law of Ukraine No. 1780-IX “On Prevention of Threats to National Security Associated with the Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)”. (2021, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/1780-20#Text>.

² The Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80#Text>.

³ Resolution of the Cabinet of Ministers of Ukraine No. 59 “On Some Issues of Implementation of the SOCTA Ukraine Assessment System in the Activities of Central Executive Authorities”. (2022, January). Retrieved from <https://www.kmu.gov.ua/npas/deyaki-pitannya-zaprovadzhennya-v-diyalnist-centralnih-organiv-vikonavchoyi-vladi-sistemi-ocinki-socta-ukrayina-59-260122>.

would prescribe the development of a state policy on combating organised crime based on the implementation of the SOCTA methodology (setting strategic goals, developing comprehensive action plans), which, according to the authors of the present paper, considerably slows down its implementation.

The rapid development of digital technologies is driving the improvement of forms and methods of digital crime. Organised cybercrime is associated not only with cybersecurity issues, but also with threats to national security, namely critical infrastructure, the military-industrial complex, etc. M.V. Hutsaluk (2019) notes that it is impossible to carry out a complete criminological analysis that would fully cover all aspects of global cybercrime, including its organised forms. This phenomenon is substantially different from conventional types of crime and cannot be adequately assessed by the usual criminological approach. Currently, the legal framework for protecting the interests of the state, society, and individuals in cyberspace is defined by the Law of Ukraine “On the Fundamental Principles of Ensuring Cybersecurity of Ukraine”¹, which is also not without its drawbacks. As digital transformation is one of the priorities of modern development, Ukraine is taking effective steps towards the global digital environment. Thus, on 17 January 2018, the Government approved the Concept for the Development of the Digital Economy and Society of Ukraine for 2018–2020, and on 03 March 2021 – the Concept for the Development of Digital Competencies. At the same time, the rapid development of digital technologies encourages the improvement of forms and methods of “digital crime”².

Europol’s analytical report “Internet Organised Crime Threat Assessment (IOCTA), 2018” (Europol, 2018) states that an effective tool for prompt detection and further localisation of criminal groups’ activities in cyberspace is the creation of databases on cybercrime and its criminological state. Other important components of successful counteraction to organised cybercrime should be technical support of authorised entities, including constant updating of licensed software to detect malware and new business models of cybercrime, involvement of IT specialists in counteraction measures, international digital integration, regulation of interagency information exchange, and application of best practices in countering crime in foreign countries with developed digital economies.

■ Conclusions

The legal regulation of this activity, primarily national legislation that is in line with current socio-political

realities and international practices, has an important impact on the organisation of countering organised crime. Ukraine, along with other countries, is trying to introduce new ways and mechanisms to combat organised crime and is gradually updating its national legislation. The results of the analysis of certain regulations in terms of their potential impact on the organisation of countering organised crime show both positive developments in this area and indicate legal gaps that need to be addressed. The new laws create legal grounds for law enforcement agencies and special purpose state bodies to use the latest forms, methods, and means of countering intelligence and subversive, terrorist, sabotage, and other illegal activities of organised criminal groups, primarily in the context of full-scale armed aggression against Ukraine. Gaps in anti-crime legislation slow down democratic processes and create preconditions for further criminalisation of the key areas of state functioning. The most substantial gaps include incomplete and sometimes absent legal provisions that should regulate the implementation of effective anti-corruption programmes, criminal, and administrative liability for violation of the sanctions policy, and criminalisation of intelligence and subversive activities carried out through organised criminal groups.

As of 2023, the regulations governing the law enforcement intelligence, counterintelligence, anti-terrorism, anti-corruption, and criminal procedural activities of law enforcement agencies need to be improved. It is also urgent to accelerate the implementation of the Europol Serious and Organised Crime Threat Assessment (SOCTA) methodology in Ukraine, the full implementation of the Convention on Cybercrime and the implementation of the provisions of the National Strategy for Combating Organised Crime, which emphasises, among other things, the need for a permanent comprehensive analysis of the causes and conditions under which organised criminal groups emerge and develop, and strengthen their activities.

Further research on this topic should be focused on defining the current system of actors involved in countering organised crime, the list of their powers and principles of interaction, the specifics of counteraction measures under martial law, and the organisation of international cooperation with law enforcement agencies of NATO member states.

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None.

■ Conflict of Interest

None.

¹ Law of Ukraine No. 2163-VIII “On the Fundamental Principles of Ensuring Cybersecurity of Ukraine”. (2017, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2163-19#Text>.

² Order of the Cabinet of Ministers of Ukraine No. 167-p “On Approval of the Concept of Digital Competence Development and Approval of the Action Plan for its Implementation”. (2021, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/167-2021-%D1%80#Text>.

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Правове регулювання протидії організованим злочинності в Україні: сучасний стан і напрями вдосконалення

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■ **Анотація.** Актуальність наукового дослідження зумовлена необхідністю розроблення конкретних пропозицій з удосконалення законодавства у сфері протидії організованим злочинності на сучасному етапі. Мета статті – на основі виявлених прогалин у правовому регулюванні протидії організованим злочинності визначити шляхи його вдосконалення з огляду на сучасні соціально-політичні реалії та міжнародні практики. Дослідження вирішує ці питання за допомогою системи загальнонаукових і спеціальних методів наукового пізнання: аналізу, синтезу, аналогії, порівняння, узагальнення, контент-аналізу, а також формально-юридичного, порівняльно-правового та системного методів. Результати аналізу правового регулювання протидії організованим злочинності в Україні засвідчують наявність суттєвих прогалин у національному законодавстві, що створює передумови для подальшої криміналізації найважливіших сфер функціонування держави, передусім в умовах воєнних дій, що тривають на території країни. У статті акцентовано на низці проєктів законів, положення яких спрямовані на посилення спроможностей суб'єктів протидії організованим злочинності та матимуть позитивний вплив на усунення причин й умов її існування. Доведено, що вагоме значення має модернізація кримінального, кримінального процесуального, антикорупційного, оперативно-розшукового та контррозвідувального законодавства, а також удосконалення правових актів у сферах боротьби з тероризмом і санкційної політики. Аргументовано необхідність пришвидшення імплементації в Україні методології Європолу з оцінки загроз тяжких злочинів та організованої злочинності щодо можливості стратегічного бачення вразливих для кримінального впливу суспільно-політичних сфер. Доведено, що важливою передумовою ефективної протидії злочинності є реалізація положень Стратегії боротьби з організованою злочинністю, що стосуються створення стабільного й системного законодавства для впровадження нових методів і механізмів протидії. Практичне значення роботи полягає в тому, що отримані результати дослідження можуть слугувати підґрунтям для вдосконалення правового регулювання протидії організованим злочинності в Україні як загрози її національній безпеці, насамперед під час дії правового режиму воєнного стану

■ **Ключові слова:** національна безпека; правоохоронна діяльність; протидія злочинності; організоване злочинне угруповання; тероризм; санкції