

# THE MECHANISM OF CRIMINOLOGICAL POLICY FORMULATION IN THE FIELD OF COUNTERING TRANSNATIONAL ORGANISED CRIME

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**Abstract.** *The objective* of this article is to elucidate the fundamental components of the mechanism for formulating criminological policy in the context of combating transnational organised crime. In addition, it aims to analyse the subjective composition of the counteraction to such criminal offences and to identify the measures that are necessary to neutralise threats and risks to national security. The article presents a scientific discussion of the mechanism of formation and implementation of criminological policy. It is determined that the nationwide system of combating transnational organised crime can counteract the systemic threats reflected in the Strategy for Combating Organised Crime. This necessitates the establishment of a singular entity: a state body endowed with distinctive status, entrusted with the requisite authority over other entities, including competence related to the budget allocation process and control over its implementation in terms of combating such crime. This entity must possess a sufficient information and analytical component, the result of which should be both the assurance of the agency's ongoing activities and the preparation of strategic programme documents on combating transnational organised crime in general and in its individual areas. These documents must then be approved by the President of Ukraine, who serves as the guarantor of national security. *Results.* The author develops a scientific concept of the criminological policy of combating transnational organised crime based on the system of coordinated measures to ensure criminological security. This concept has been tested by domestic and foreign practice, with the development and implementation of a set of strategic legal, economic and social measures in the activities of entities involved in combating transnational organised crime (decisions, recommendations, and methodologies) at the legislative and governmental levels. These measures are aimed at identifying criminogenic factors and making effective legal and regulatory, organisational and managerial decisions, including departmental (and interdepartmental) decisions, by authorised entities on this basis.

**Keywords:** transnational crime, organised crime, crime control, war, martial law, criminological policy.

**JEL Classification:** H56, N40, K14

## 1. Introduction

Today Ukraine is passing through a special period in its history: fundamentally new horizons for its development are opening up and favourable conditions are being created for systemic reforms aimed at deepening democracy and integrating Ukraine into the European Union. At the same time, despite the positive results achieved so far in their implementation, it should be noted that Ukraine is still unable to solve the strategic task of creating an effective mechanism for combating crime. The criminological policy of the Ukrainian state is currently aimed at the democratic development of society, which could not but affect the strategy of combating transnational organised crime. This is done through the functioning of the

relevant state mechanisms, because Ukrainian realities have shown that transnational organised crime is a factor of global danger, in which the problems of military expansion, corruption, the political system of the state, as well as economic prospects for the development of the world economy are intertwined. If a few years ago the world community was aware of this danger at a theoretical level, today it has become a reality of international politics and economics, where international relations are largely dependent on the actions of organisers of global transnational crime (Zharovska, 2014). At the beginning of 2014, domestic transnational crime took on global proportions, becoming a factor in the daily life of every citizen of the country and convincingly proving that it can, at its

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own discretion, govern the state, determine the fate of citizens and turn entire regions into enclaves where laws do not apply. Law enforcement officials are in fact contributing to the militarisation of transnational criminal organisations by providing them with weapons, equipment, buildings and premises belonging both to them and to state authorities. In particular, the state Financial Monitoring Service of Ukraine focuses on investigating the laundering of funds derived from corruption, embezzlement and misappropriation of public funds and property by criminal organisations and business structures with transnational links. In particular, the focus is on the billions of dollars received from illegal transactions related to almost all forms of transnational criminal activity and transferred abroad (The State Financial Monitoring Service of Ukraine).

The issue of combating transnational organised crime has been the subject of considerable research by scholars such as A. N. Babenko, O. N. Dzhuzha, P. S. Yeprintsev, E. S. Nazymko and others. However, there are certain aspects of the topic that have not been fully addressed, which makes the subject of this article a relevant one.

The **objective of this article** is to elucidate the fundamental components of the mechanism for formulating a criminological policy in the context of combating transnational organised crime. In addition, it aims to examine the subjective composition of the counteraction to such criminal offences and to identify the measures that are necessary to neutralise the threats and risks to national security.

## 2. Doctrinal and Normative Approaches to Determining the Mechanism of Criminal Justice Policy Formation

In the field of legal scholarship, the term "mechanism" is understood to refer to an institution that encompasses the entirety of the practical implementation of individual tasks, the utilisation of human and citizen rights, and which imbues this process with a systemic and dynamic quality (Onishchenko, 2010). This mechanism may be conceived as a "mechanism of the state". In other words, it is a system of state bodies and institutions through which state power is exercised and the public administration of society is ensured (Democratic principles of state administration and administrative law, 2010).

*The mechanism of combating crime is a way of ensuring the safety of a person, society and the state from criminal offences, which is determined by the nature, capabilities and focus of actions of the subjects of formation and implementation of the country's criminological policy.* The fundamental principle underlying the mechanism of combating transnational organised crime is the collective undertaking of agreed-upon actions,

designed to attain the desired level of security for the individual, society, and the state. The foundation of such a mechanism is the fulfilment of the requisite conditions for the security of individuals, society and the state, commensurate with the level of societal development attained through the agreed activities of security actors (Nikitin, 2009).

The formation and implementation of criminological policy is underpinned by a number of key mechanisms, including: a) the system of state bodies, state institutions and enterprises, local self-government bodies, officials and officials, and associations of citizens; b) guarantees for the protection of fundamental rights and freedoms; c) legal and organisational components of the mechanism of implementation; d) the process of practical implementation of the possibility and necessity in reality; e) conditions and factors of the human rights process (Vasylevych, 2020).

The mechanism should be considered in two directions: firstly, in terms of its internal function, which is to ensure the life of a person and society within the state; and secondly, in terms of its external function, which is to minimise the negative impact of challenges related to globalisation and transnational criminal groups on the internal security of Ukrainian society. The operational form of the mechanism in the system of ensuring national security of society is presented in the following scheme: the security needs of objects, the objective conditions for ensuring the security of a person and society (the structural and functional interaction of security subjects), the means and ways of achieving the goal (i.e., decision-making and implementation), the effectiveness of joint activities (i.e., stabilisation of the criminological situation), and the correction of future anti-crime measures. The criminological mechanism is characterised by a complex hierarchical structure and an array of intrinsic means and methods of function. In other words, for such a mechanism to be effective, it is necessary that the entire spectrum of the subject-object mechanism, including state bodies, public associations and citizens, as well as the spheres of influence such as the military, economy, politics, law and information, are interconnected and act in unison. This is provided that the necessary resources to achieve the goal are available.

In this context, it is correctly stated that the legal response to criminal offences represents a specific form of counteraction to criminal offences. This is implemented by directing criminal law measures provided for by the Criminal Code of Ukraine at the relevant subjects (Problems of combating crime, 2010).

It can thus be stated that the functions of the rule of law in formulating and ensuring the implementation of criminological policy are primarily aimed at the prevention of criminal offences.

In light of this paradigm, the principal functions of the mechanism for combating transnational organised crime can be defined as follows: a) ontological, in that it identifies the criminogenic determinants of impact (internal and external) on national security; b) heuristic, in that it researches criminogenic determinants, forecasts further threats and plans preventive measures of impact; c) epistemological, in that it facilitates interaction between security sector institutions and the public in the detection, suppression and investigation of criminal offences committed by transnational organised crime.

In such circumstances, the implementation of criminological policy to combat transnational organised criminal associations can be effective if the determinants of crime are identified, the mechanism of individual criminal behaviour is established and measures are taken that can eliminate further illegal actions and detect them at the stage of preparation or attempt (Korniakova, 2011).

In view of the above, it can be stated that the mechanism of *formation and implementation of criminological policy is a regulatory, legal, socially conditioned and mutually coordinated activity of the authorised bodies of the state for determination of strategic directions of the fight against crime, development of a set of legal, economic, social measures (i.e., decisions, recommendations, methods) at the legislative and governmental levels aimed at identification of criminogenic factors, as well as their praxeological implementation for prevention of certain types of crime.*

### **3. Current Status and Trends in the Development of Criminological Policy in the Field of Combating Organised Crime**

In 2000, the Law of Ukraine "On State Forecasting and Development of Programmes for Economic and Social Development of Ukraine" was adopted (The Law of Ukraine "On State Forecasting and Development of Programmes for Economic and Social Development of Ukraine", 2012), which established the general procedure for the development, approval and implementation of forecasting and programme documents for economic and social development, as well as the rights and responsibilities of participants in state forecasting. This law, though, did not directly regulate the development, approval and implementation of state programmes to combat crime. Therefore, the third programme, entitled "Comprehensive Crime Prevention Programme for 2001-2005" (2000), was approved by presidential decree. However, in 2004, the Law of Ukraine "On State Targeted Programmes" (The Law of Ukraine "On State Targeted Programmes", 2014) was adopted, which defines the basic principles of development, approval and implementation of state target programmes. Pursuant to the provisions

of this Law, the fourth in the series, but structurally and substantively different from the previous ones, the Comprehensive Programme for the Prevention of Offences for 2007-2009 (2006) was developed and approved, which provided for unclear "cascading" control over the implementation of this programme. Later, the Concept of the State Targeted Programme for the Prevention of Offences for the period up to 2015 was approved (2011). Comparison of the concepts of previous Comprehensive Programmes for the Prevention of Offences (for example, for 2007-2009 and 2011-2015) shows that their programme prescriptions are very similar and sometimes repeat each other. This is no accident, as the problems remain unresolved.

In addition, the Presidential Decree of October 21, 2011, approved the Concept of State Policy in the Field of Combating Organised Crime, which envisaged a number of measures for 2011-2017 aimed at reducing the manifestations of organised crime, strengthening social and political stability in the country, increasing the trust of civil society institutions in the state authorities, and improving the level of protection of citizens from criminal attacks.

In accordance with this decree, the Cabinet of Ministers of Ukraine approved an Action Plan for the Implementation of the Concept of State Policy in the Field of Combating Organised Crime. An analysis of the Concept and the Action Plan shows that they are somewhat autonomous. More specifically, the Action Plan consists mainly of measures that are or should be the subject of daily activities of certain actors in the fight against organised crime (improving the mechanism for monitoring the crime situation in the country as a whole and in its regions by introducing an annual systematic analysis of the causes and conditions affecting it; ensuring a systematic analysis of the state of pre-trial investigations in criminal cases of crimes committed by organised groups or criminal organisations; developing and implementing criteria for evaluating the effectiveness of the work of special units, etc.). However, there was virtually no mechanism for implementing the Concept (The Security Service of Ukraine as part of the system of combating organised crime and corruption, 2021).

The approved Strategy for Combating Organised Crime (2020) is much more optimistic. In particular, its provisions, which were not included in previous policy documents, are noteworthy:

1. The assessment of the threats of serious and organised crime will lead to analytical conclusions that will form political priorities, which in turn will be transformed into strategic goals. Approved strategic goals are the basis for the development of comprehensive action plans.
2. Establishment of an interagency commission – a coordinating body (National Coordinator) that will

approve priorities for combating organised crime, as well as monitor and evaluate the implementation of this Strategy (The Order of the Cabinet of Ministers of Ukraine "Strategy for Combating Organised Crime" of September 16, 2020, No. 1126-p).

#### **4. Subjects of Formation of Criminological Policy in the Field of Combating Transnational Organised Crime and Directions for its Improvement**

In light of the current challenges and threats facing society, it is of the utmost importance to reinforce measures to transnationalise crime, coordinate and systematise anti-corruption activities across all sectors, and ensure the consistent implementation of the principle of integrity for employees at all levels of the organisational structure. O. Shostko (2014) concluded that the implementation of prevention measures should be prioritised. However, in light of the novel challenges associated with establishing evidence of multi-billion dollar embezzlement of the state budget, it is imperative to prioritise the implementation of the principle of inevitability of punishment for all individuals guilty of corruption-related offences and the return of their illegally obtained income to the Ukrainian state. In this context, it is worth focusing on the adoption of the Law of Ukraine "On Regulation of Lobbying Activities" as part of the de-oligarchisation action plan, which should meet European standards and be the result of an open and inclusive discussion with a wide range of stakeholders (including civil society organisations).

In accordance with the Constitution of Ukraine and the Law on National Security of Ukraine, the President of Ukraine is the head of state, acting on its behalf. The President of Ukraine is the guarantor of state sovereignty, territorial integrity, the observance of the Constitution of Ukraine, and human and civil rights and freedoms (The Constitution of Ukraine of 28 June 1996, No. 254k/96-VR). In the field of combating transnational organised crime, the President of Ukraine exercises his powers, ensures national security and defence of the country, in particular: guarantees state independence and national security; chairs the National Security and Defence Council of Ukraine, enacts its decisions in accordance with the established procedure; issues decrees and orders on national security and defence issues that are binding on the territory of Ukraine, in particular, the Presidential Decrees approve the National Security Strategy of Ukraine (The Law of Ukraine "On National Security of Ukraine" of 21.06.2018 No. 2469-VIII). As head of state, he represents Ukraine in international relations.

As the head of the system of ensuring both national and internal security of the state, the President

forms the National Security and Defence Council of Ukraine (NSDC). In accordance with its designated responsibilities, this body strives to ascertain the strategic national interests of Ukraine, to identify both potential and actual threats to national security in general and internal security in particular, and to develop security plans in various spheres of life. These plans are then submitted to the President of Ukraine for further implementation, with the aim of promptly identifying, preventing, or neutralising real and potential threats. The NSDC considers and develops concepts, state targeted programmes, international treaties on national security, and coordinates the activities of state bodies in implementing the state policy on the protection of state secrets. The NSDC monitors the implementation of its decisions and collects, analyses, processes and evaluates data on the activities of executive authorities in the field of state secret protection (The Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine 'On Urgent Measures to Protect Ukraine and Strengthen its Defence Capability'" of August 28, 2014, No. 744/2014). It is beyond doubt that the NSDC plays a pivotal role in ensuring national security and defence, as well as the protection of state secrets. This is evidenced by the classification of a number of its decisions, for example, some provisions of the NSDC decisions are classified as "secret" (Pozhydaiev, 2009). A further significant function of the NSDC is the coordination and supervision of the activities of executive bodies in the field of national security.

With regard to the work of the NSDC in the field of crime control, temporary inter-agency commissions, working and advisory bodies may be established to study and comprehensively address criminological problems of a cross-sectoral nature and to provide scientific and analytical support. The materials developed are submitted to the NSDC for consideration and thorough discussion, after which appropriate decisions are taken. They come into force if they are adopted by at least two-thirds of the votes of all members of the Council. The decisions are put into effect by a decree of the President of Ukraine. Their implementation is obligatory for all executive bodies and structures. The members of the NSDC coordinate and control the implementation of these decisions within the limits of their competences.

The Verkhovna Rada of Ukraine plays a special role in the mechanism of counteraction and formation of criminological policy. This body develops and adopts laws in the area of combating crime and ensuring internal security of society (Nikitin, 2009). On the basis of these laws, it has great powers in the process of developing and implementing measures that contribute to the fight against crime and ensuring

security. The laws adopted by the Verkhovna Rada of Ukraine have laid the foundation for the fight against transnational organised crime. For the first time in the history of Ukraine, laws were adopted that directly regulate the activities of state bodies in the fight against corruption: the Law of Ukraine "On Organisational and Legal Framework for Combating Organised Crime", the Law of Ukraine "On Prevention of Corruption", the Law of Ukraine "On Operational and Investigative Activities" and a number of others. With the adoption of the Law of Ukraine "On Organisational and Legal Framework for Combating Organised Crime", the legislator for the first time defined the state bodies responsible for combating organised crime and united them into state bodies specially created to combat organised crime and state bodies that also participate in the fight against organised crime. However, the issues of governance of these units have not yet been sufficiently studied. It is also problematic to identify a coordinating body that could effectively coordinate their activities that have a common goal, such as the fight against organised transnational crime, as the current coordinating body, the Prosecutor's Office of Ukraine, does not fully exercise its powers in this area (Pozhydaiev, 2009).

One of the most important regulatory manifestations of the Verkhovna Rada of Ukraine in ensuring the fight against transnational organised crime is the financing of various crime prevention programmes from the state budget. Financing and logistical support of the fight against transnational organised crime is a priority and is provided from the state budget. The amount of funds required for this purpose, including in foreign currency, is set annually by the Verkhovna Rada of Ukraine when approving the budget in accordance with state targeted programmes to combat crime. The structure, staffing and payroll of specialised units of the MIA and SSU are approved by their heads within the limits of the allocations determined by the Committee.

In order to carry out these functions, the Verkhovna Rada of Ukraine has established committees, most of which deal with issues directly related to the fight against crime and ensuring the internal security of society (in particular, the committees on anti-corruption policy, foreign policy and interparliamentary cooperation, Ukraine's integration into the European Union, national security, defence and intelligence, organisation of state power, local self-government, regional development and urban planning, and legal and regulatory affairs).

According to the Constitution of Ukraine, the Cabinet of Ministers of Ukraine is the supreme executive body that ensures the adoption of state decisions in the internal security system (Article 6, Article 113(1), Article 116, Article 117) (The Constitution of Ukraine of June 28, 1996. № 254k/96-VR).

The analysis of the extant legislation has enabled the functions of such a body in the field of combating transnational organised crime to be distinguished, in particular: ensuring state sovereignty and economic independence of Ukraine; implementing the state's domestic and foreign policy; implementing a unified financial, pricing, investment and tax policy; ensuring the national programme of economic, scientific, technical, social and cultural development; managing state property; implementing measures to ensure defence.

Ministries and other central executive bodies that have military formations and law enforcement agencies under their jurisdiction shall, within their powers, organise and ensure the implementation of laws of Ukraine and other regulatory legal acts on combating crime, create the necessary conditions for other subjects to exercise their powers in the field of combating transnational organised crime, ensure objective and timely information to the Verkhovna Rada of Ukraine, the President of Ukraine, the National Security and Defence Council of Ukraine and the National Assembly of Ukraine.

The reform process that occurred during the period of military aggression had the most deleterious effect on the work of law enforcement agencies. Consequently, the division of power structures in terms of their subordination between the President and the Prime Minister is untenable. Furthermore, the disorganisation of law enforcement agencies can be attributed to the political privatisation of certain power institutions. Furthermore, it is unacceptable for a political force or institution to utilise the security forces as a means of political competition and a system of suppression of political opponents, whether directly or indirectly. It is regrettable that certain actions undertaken by the Ukrainian authorities give rise to the concern that the existing power structures, particularly the special services, may be assuming the role of political police. This is particularly worrying given that these structures lack the capacity to effectively counteract the activities of organised criminal networks that have established close ties with criminal groups in neighbouring countries. These networks are supported by political regimes and special services whose objective is to create a centre of political instability in Ukraine, where transnational criminal activity will be further legalised. Indeed, some law enforcement officers are unable to make appropriate decisions, and there is evidence of betrayal, disarmament, and reluctance to risk their own lives in the protection of citizens (Zharovska, 2014).

## 5. Conclusions

It can thus be concluded from this study that a nationwide system of combating transnational organised crime is the only means of counteracting

the systemic threats reflected in the Strategy for Combating Organised Crime. This necessitates the establishment of a singular entity: a state body with distinctive status, equipped with the requisite authority over other entities, including competence related to the budget process and control over its implementation in terms of combating such crime. Furthermore, it must possess a sufficient information and analytical component, the result of which should be both the assurance of the agency's ongoing activities and the preparation of strategic, programme documents on combating transnational organised crime in general, and in its separate directions. These documents must be approved by the President of Ukraine as a guarantor of its security.

However, today these norms are formed by these actors independently, which leads to the emergence of tactical-level programme and planning documents, the content of which does not go beyond "day-to-day activities". As a result, the norms-principles (currently the National Security Strategy) do not find their further implementation and remain "declarations of intent" not backed by organisational and material resources (in the case of the Security Service of Ukraine as part of the system of fighting organised crime and corruption).

The activities of such a body should be systematic and based on the effective organisation of measures to prevent criminal offences, which depends on the availability of a comprehensive, scientifically based *Concept for Combating Transnational Organised Crime in Ukraine*. Such a concept should be based on an understanding of a multifactorial systemic social phenomenon that should be addressed, on the one hand, within a single system, and on the other hand, at different social, political and governmental levels. This concept can be created and effectively implemented only within the framework of the conceptual foundations of criminological policy, which, taking into account the creation of new law

enforcement institutions and systemic changes in the activities of existing ones, should be aimed at determining the body responsible for targeted crime fighting in the national crime prevention system, taking into account European experience and international practice; continuing the reform of the police and security services, taking into account the conditions of martial law and integration into the European Union; introducing the latest information and analytical technologies for analysing and forecasting crime in the country and in certain regions, as well as certain types of crime; creating criminological intelligence and identifying a body (scientific institution) responsible for developing and implementing the latest methods and ways to counter modern threats; regulating and implementing a mechanism for coordinating the activities of state bodies in this area, as well as ensuring the interaction of law enforcement agencies by identifying the main coordinator in the fight, holding interagency meetings on a regular basis, and creating joint investigative teams to prevent, detect, stop and investigate the activities of organised criminal groups; reforming penitentiary institutions with an increased emphasis on punitive and operational and investigative functions; developing criteria and implementing a system for assessing the effectiveness of law enforcement agencies involved in combating such crime based on a risk-based approach; creating a system for selecting, staffing and training special and other units of authorised bodies to implement criminal policy in the country as a whole and in the regions separately; initiating the introduction of new tools aimed at strengthening the capacities of agencies involved in the fight against transnational crime, supplying modern special equipment, weapons, and so forth; as well as strengthening cooperation and implementing joint prevention teams, conducting operations under agreements with international law enforcement institutions (Interpol, Europol) and foreign partners.

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