

CURRENT ISSUES OF ECONOMIC CRIME PREVENTION IN THE CONTEXT OF MARTIAL LAW IN UKRAINE

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Abstract. The research is devoted to the study of topical issues of economic crime prevention under martial law in Ukraine. The paper presents a systematic analysis of the state of research on topical issues of economic crime prevention and its methodological tools. The insufficient level of research into the problems of economic crime prevention and the validity of preventive measures has an extremely negative impact on society, especially in the difficult times of martial law in Ukraine. The urgency of the problem is also growing due to the long-overdue need to improve the legal acts regulating the prevention of economic crime. An analysis of the functioning of state bodies in recent years has shown that the defined national security and defence strategy does not fully ensure the compliance of Ukraine's security sector in a scientifically sound and practical sense. A study of the state and trends of economic crime has shown a sharp increase in the number of this type of criminal offence, especially fraud, under martial law. It is also established that a significant part of economic crime in Ukraine is latent crime, the main reasons for which are the reluctance of the victims (mostly due to circumstances beyond their control), and in most cases the inability to report the offence committed against them, mainly in the temporarily occupied territories of Ukraine.

Keywords: economic crime, martial law, crime prevention, fraud, economic crimes.

JEL Classification: K20, K22

1. Introduction

The study of economic crime prevention is an extremely relevant scientific and practical issue and an insufficiently developed one.

Offences committed in the economic sphere, primarily fraud, present a significant public risk, particularly in the context of martial law in Ukraine. They not only jeopardise the economic security of the state but also encroach upon the constitutional rights of citizens, including private property rights and the right to housing. Furthermore, they contribute to an increase in the level of corruption among public officials, discredit public authorities and local governments, law enforcement agencies, the judiciary, and so forth.

Losses from economic crime, including property fraud, are also hampering the development of residential and commercial construction in the country.

According to the statistics of the Unified Report on Criminal Offences of the General Prosecutor's

Office, the number of crimes against property shows a stable downward trend in terms of detection of crimes and prosecution of perpetrators. Given that the figures below are very relative, as property fraud has a high degree of latency and most cases go undetected, it is clear how much bigger the problem is.

In 2020, 1,312 economic offences in real estate and construction were registered, of which 143 persons were served with notices of suspicion and only 68 criminal proceedings were referred to court in accordance with Article 283(2) and (3) of the Criminal Procedure Code of Ukraine. In 2021, 1,356 offences in the field of real estate and construction were registered, of which 122 people were served with notices of suspicion and 81 criminal proceedings were referred to court in accordance with Article 283(2) and (3) of the Criminal Procedure Code of Ukraine. In 2022, 798 economic offences in the field of real estate and construction were registered, of which 118 people were notified of

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suspicion and only 68 criminal proceedings were referred to court in accordance with Article 283 (2) and (3) of the Criminal Procedure Code of Ukraine (Shkuta, 2022).

These criminological prerequisites indicate that there is a lack of scientific research on real estate fraud and point to the timeliness of its comprehensive criminal law assessment.

2. Literature Review

The theoretical basis for the study of topical issues of preventing economic crime in wartime is provided by the scientific works of domestic and foreign scholars.

The works of foreign authors are undoubtedly of great value in the study of the subject. Professor S. Albrecht, for example, is a researcher of fraud as a phenomenon, author of numerous scientific works, consultant to many companies, and former president of the Association of Fraud Investigators. In 1995, S. Albrecht co-authored with J. Wentz and T. Williams the book "Fraud: Bringing Light to the Dark Side of Business" (Shkuta, 2022). They proposed a system of confirmation of authority to prevent fraud when working with electronic systematised databases. They pointed out that control procedures based on a system of proof of authority have many variants.

Among domestic researchers working in this field, the scientific work of O. Lysoded, who has carried out a number of in-depth criminological studies on fraud, is worthy of note.

In connection with the legal regulation of the financing of real estate construction in Ukraine, O. V. Sudarenko in her scientific work proposed an original concept of defining the concept of state loans for housing construction as a method of allocating funds.

The results of the study by N. V. Pavlova are of great practical importance, as they support the opinion that for the forensic characterisation of fraud in the alienation of private housing, not only the subject of criminal interference, but also the object is an indispensable structural element.

Among others, the work of S. V. Golovkin is worth mentioning, as he comprehensively studied the forensic characteristics of fraud in relation to a person's property and its use at the initial stage of investigation, and came to important conclusions regarding the classification of the object of fraud.

It is also worth mentioning the scientific work of L. I. Radchenko, who proposed the introduction of alternative forms of investment in housing construction by uniting investors who wish to acquire ownership of residential premises in the form of a legal entity, etc.

Based on the analysis of scientific works by scholars, the authors argue that today in Ukraine there is no

comprehensive study of the problems of preventing economic crime under martial law. In this regard, it is emphasised that the issues of the status, structure, dynamics, latency of economic crimes, criminological characteristics of victims, the identity of the perpetrator, as well as the causes and conditions of these socially dangerous acts remain relevant. The article also notes the uncertainty of the criminal law assessment of unlawful encroachment on property and property rights.

The study of current issues related to the prevention of economic crime under martial law in Ukraine has attracted the attention of both theoreticians and practitioners. In the light of modern scientific developments aimed at ensuring the effective protection and functioning of the state system for the prevention of economic crime, both the current basic legal norms of the national legislation of Ukraine and the valuable work of domestic scientists who have worked on this issue in recent years should be taken into account.

At the same time, studying the state of development of any topic allows to:

- 1) Avoid duplication in relevant research areas;
- 2) verify previously obtained results and critically or positively evaluate them in terms of confirmation or refutation in practice
- 3) formulate the most effective system and methodology of scientific research;
- 4) identify the most significant and time-tested achievements of predecessors in the field of research, etc.

The study of the current state of scientific works on certain issues of economic crime confirms the thesis that the areas of this study are and will be relevant in the future. Due to the constant change and improvement of the forms and methods of criminal activity of offenders, it is necessary to work continuously to prevent and suppress criminal acts in relation to the subject of this study. Therefore, various aspects of preventing economic crime are the subject of special attention and research by specialists in the field of criminal law, criminology, and criminal executive law, both domestic and foreign.

It is important to highlight that, despite the pressing nature of the issue, there is currently a dearth of comprehensive criminological research examining the prevention of economic crime under martial law in Ukraine, where these offences are often disguised as civil legal relations. Furthermore, it is essential to establish a scientific foundation for the resolution of legal disputes, inconsistencies and contradictions within the legal framework. This will ensure that the legal framework aligns with internationally accepted standards for the regulation of legal entities, and that their rights and obligations are clearly defined, thereby reducing the potential for the commission of such offences.

3. Materials and Methods

The study employed a range of methods, including general scientific and specialised techniques, to investigate the prevention of economic crime under martial law in Ukraine. These methods enabled the examination of the following issues: the dialectical method of scientific cognition was employed to examine criminal liability in the context of economic crime. Structural analysis facilitated the discernment of the content of objective and subjective indications of economic crime. The logical and dogmatic method assisted in the analysis of criminal law provisions that establish liability for economic crimes. The statistical method contributed to the investigation of statistical data on the prevalence of economic crime. The comparative method enabled the identification of the distinctive features of foreign experiences in the domain of economic crime.

4. Results and Discussion

In the context of martial law in Ukraine, the primary factors contributing to the prevalence of economic crime include a profound socio-economic and financial crisis within the state, an imbalance in the social function of the state, the artificial inhibition of the legislative process with regard to regulatory and legal support for the social protection of citizens, a decline in moral standards within Ukrainian society, the phenomenon of anomie and lawlessness, miscalculations and inconsistency in the reforms introduced, and other factors.

Preventing economic crime under martial law in Ukraine is one of the most pressing issues of the present day, which, in the process of changing the military and political situation in the country, requires an appropriate and fundamental rethinking.

It is widely acknowledged that economic crime represents the most significant and destabilising factor affecting not only the national economy but also the national security of the state. The higher the level of economic crime, the fewer opportunities there are to utilise effective tools for addressing foreign and domestic issues (Shkuta, 2022).

Depending on the identified causes and conditions of economic crime, scholars distinguish two main levels of prevention: general social and special criminological.

In the field of criminological theory, the concept of general social prevention is exemplified by a system of economic, political, ideological, and organisational measures. While these measures are not explicitly designed to combat crime or prevent criminal activities, they nonetheless constitute a crucial aspect of criminological theory, providing the foundation and framework for specialised criminological prevention strategies. These strategies are shaped by a focus on addressing the challenges and issues faced by society.

The state establishes conditions that facilitate a reduction in the prevalence of criminal activities. Consequently, the primary objective of general social prevention with respect to economic crime is to cultivate a conducive external environment for the optimal functioning of the economy, thereby ensuring the satisfaction of the country's population's needs at an appropriate level (Shkuta, 2020).

General social prevention involves the creation and implementation of targeted state programmes and strategies for reforming the national economy aimed at effectively addressing problems in the economic sphere that contribute to the commission of crimes.

One of the main places in the fight against crime is occupied by punishment, a coercive measure applied on behalf of the state by court order to a person found guilty of a criminal offence, which consists in the restriction of the rights and freedoms of the convicted person as provided for by law (Article 50(1) of the Criminal Code of Ukraine). A criminal offence can be defined as an act committed by an individual who is in opposition to their own will, desires and beliefs, in comparison to the will of the state and the interests of society. The state's response to such actions is punishment, which can be understood as a coercive measure aimed at restoring social justice, correcting the perpetrator, protecting individuals and legal entities, society and the state from criminal encroachments in the future. Criminal offences and punishment are interrelated and inextricably linked. They are akin to action and counteraction, danger and the elimination of this danger, and harm (evil) and the fight against it (Dmytrenko, 2021).

It is evident that scholars concur with the view that the intricacies of criminal law qualification, the complexities of criminal law characterisation of specific offences, and other issues pertaining to the General and Special Parts of criminal law lose their significance when a fair punishment is not imposed for the offence committed or when the imposed punishment is not executed or is executed improperly. This is particularly so when the provisions of Article 5 of the Criminal Executive Code of Ukraine and the principles of legality are not taken into account. These include the principles of justice, humanism, equality before the law for convicts, respect for human rights and freedoms, the rational use of coercive measures and the encouragement of law-abiding behaviour.

Article 50(2) of the Criminal Code of Ukraine states that punishment is aimed not only at punishment, but also at the correction of convicts, as well as at preventing the commission of new crimes by both convicts and other persons. In this regard, E. O. Pysmenskyi notes that this approach is a reflection of the mixed theory of punishment, which is considered a kind of compromise between

the absolute (revenge or retribution to the offender for the crime) and relative (achievement of mercenary goals) theories, since the purpose of punishment has four interrelated components:

- 1) Punishment of the convicted person;
- 2) correction of the offender;
- 3) prevention of committing new crimes (special prevention);
- 4) prevention of committing crimes by other persons (general prevention).

When imposing punishment, the court must proceed from the need to achieve the purpose of punishment as a whole, and not just its individual components (Arifkhodzhaieva, 2022).

The imposition of punishment is one of the main issues to be resolved by the court when passing a sentence, which, in accordance with Article 62 of the Constitution of Ukraine, must be preceded by the establishment of the presence of a criminal offence in the person's action and the recognition of his/her guilt in committing a criminal offence. The imposition of illegal and unfair punishments not only complicates or makes it impossible to achieve the purposes of punishment specified in Article 50(2) of the Criminal Code of Ukraine, but also undermines the authority of justice, leads to the cancellation or modification of sentences, and violates human rights and freedoms. It is not without reason that the implementation of the sentencing provisions is recognised as the quintessence of the trial and sentencing, the culmination of criminal proceedings in court, one of the most difficult and responsible tasks of law enforcement, and the most crucial stage in the fight against crime. The outcome of the case and the punishment imposed by the court shape public opinion about justice (Shkuta, 2020).

Paragraph 1 of the Resolution of the Plenum of the Supreme Court of Ukraine No. 7 'On the Practice of Imposing Criminal Punishment by Courts' of October 24, 2003 emphasises the need to comply with the requirements of Article 65 of the Criminal Code of Ukraine regarding the general principles of sentencing, as they implement the principles of legality, fairness, reasonableness and individualisation of punishment. The experts note that the above explanation is based on the balanced position that the principles of sentencing and the general principles of sentencing are interrelated and at the same time separate, independent criminal law categories. While the general principles of sentencing have found a fairly clear legislative consolidation in the form of Article 65 of the CC of Ukraine, there are no separate provisions devoted to the principles of sentencing as the initial provisions that guide the court's activity in imposing a specific sentence, "permeate" the entire criminal law institution of sentencing and determine its

functioning and development in the current CC of Ukraine (Dmytrenko, 2021).

The Supreme Court of Ukraine has also clearly defined that the grounds for judicial discretion in sentencing are: criminal law, relatively certain (setting the limits of punishment) and alternative (providing for several types of punishment) sanctions; principles of law; and authorising provisions that use the words "may" and "has the right" in relation to the powers of the court; legal terms and concepts that are ambiguous or unregulated, for example, "guilty party", "sincere remorse", and so forth; evaluative concepts, the content of which is determined not by law or regulation, but by the legal consciousness of the law enforcement agency, for example, in the case of taking into account mitigating and aggravating circumstances (Articles 66, 67 of the CCU), determining "other circumstances of the case", the possibility of reforming a convicted person without serving a sentence, which is important for the application of Article 75 of the CCU, and so forth; individualisation of punishment – specification of the type and amount of state coercion applied by the court to a person who has committed a criminal offence, depending on the specifics of the criminal offence and its subject (Dmytrenko, 2021).

It is therefore imperative to consider these provisions when determining the appropriate penalties for an offence under Article 190 of the Criminal Code of Ukraine committed in the field of real estate. The individual who has perpetrated the criminal act must be subjected to a penalty that is both necessary and sufficient to effect a correction of their behaviour and to deter them from committing further criminal acts, in accordance with the provisions of the current legislation. In examining this stipulation, it is important to highlight that adherence to all mandatory criteria when meting out punishment ensures that the chosen form and degree of punishment will be both necessary and sufficient to achieve the desired objective of punishment. A punishment is considered "necessary and sufficient" when it aligns with the gravity of the criminal offence, the individual's culpability, and the circumstances that may either mitigate or aggravate the sentence (Arkusha, 2019).

Specialised criminological prevention of economic crime in Ukraine is closely linked to general social prevention.

However, in contrast to general social prevention, it has a specific objective and is designed to identify and eliminate (block, neutralise) the factors that contribute to crime, which is its defining characteristic. Concurrently, special criminological prevention encompasses the deterrence of planned and prepared criminal acts, as well as the disruption of those that have already been initiated (Arifkhodzhaieva, 2022).

The primary distinction between special criminological prevention measures and general social ones is that their impact is tactical rather than strategic. Consequently, special criminological prevention of criminal offences should be conceptualised as a social process based on the utilisation of specialised methods and techniques, along with the knowledge and skills required to regulate social relations with the sole objective of eliminating their negative aspects that may potentially lead to the commission of criminal offences. In other words, the aim is to ensure compliance with the requirements set out in criminal law (Dmytrenko, 2020).

In the context of this study, special criminological prevention is defined as a set of political, socio-economic, legal, organisational and other measures aimed at preventing economic crime in Ukraine. The main element of this is criminological prevention, which, according to V. V. Holina, is an early prevention strategy that aims to eliminate negative phenomena and processes directly related to the commission of criminal offences (Arkusha, 2019).

The next component of the criminological prevention of economic crime in Ukraine is organisational and managerial measures, which include improving the work of law enforcement agencies and counteracting deviant behaviour.

The fight against anti-social behaviour, alcoholism and drug addiction is a key part of the organisational and managerial prevention of economic crime in Ukraine, especially in the context of martial law, which should be carried out through preventive and hygienic measures aimed at the physical, mental, spiritual and social components of public health.

Concurrently, the inefficacy of the measures taken by law enforcement agencies to combat criminal offences in the economic sphere, the absence of efficacious

methods for their detection and investigation, in particular, a scientifically sound and practically tested methodology for preventing this category of socially dangerous acts, has resulted in a notable exacerbation of the crime situation in this area. This in turn requires further targeted research to develop and implement a system of measures to prevent criminal violations in the economic sphere in the practical activities of law enforcement agencies (Shkuta, 2022).

5. Conclusions

The analysis of scientific works by domestic and foreign scholars indicates that the issue of preventing economic crime under martial law has not been previously studied in Ukraine. In this regard, there is currently a paucity of comprehensive analysis of the criminological characterisation of these criminal offences and their prevention. The scientific literature on this topic is characterised by a significant body of material which reveals only certain aspects of the prevention of criminal offences against property in various sectors of economic activity. The majority of works are limited to the development of measures to prevent certain crimes against property, and many are based on the provisions of outdated domestic or foreign legislation.

The authors argue that in democratic societies with a perfect system of legislation and mechanisms of liability for criminal offences in the economic sphere, the legislator takes a responsible approach to the protection of property rights. This approach allows to protect the right of private, municipal and state ownership of real estate from unlawful encroachments, as well as to prevent unlawful actions of officials, and this is the path that the Ukrainian legislator should follow.

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Received on: 18th of June, 2024

Accepted on: 18th of August, 2024

Published on: 20th of September, 2024