

ECONOMIC CRIME UNDER MARTIAL LAW IN UKRAINE

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Abstract. The ongoing instability of Ukraine within the global political and economic arenas has resulted in an escalation of criminal activity within the nation. The *aim of this research* is to study economic crime under martial law in Ukraine and to develop effective ways of preventing it. The paper presents a systematic analysis of the state of research on economic crime under martial law in Ukraine, topical issues of economic crime prevention and its methodological tools. The dearth of research into the challenges of preventing economic crime under martial law in Ukraine, coupled with the absence of efficacious measures to address these issues, underscores the imperative for a comprehensive enhancement of the legislative framework for preventing economic crime. Consequently, the prevailing national security and defence strategy falls short in ensuring the alignment of the Ukrainian security sector with the scientific and practical imperatives. A substantial proportion of economic crime under martial law in Ukraine is latent crime, primarily attributable to two factors. Firstly, the victim's reluctance to report crimes is predominantly influenced by circumstances that are beyond their control. Secondly, and more commonly, victims are unable to report crimes committed against them, predominantly in the temporarily occupied territories of Ukraine. The *study* of the state and trends of economic crime demonstrated a marked increase in the number of economic crimes, particularly fraud, during periods of martial law.

Keywords: economic crime, martial law in Ukraine, crime under martial law, crime prevention, fraud.

JEL Classification: K10, K20

1. Introduction

The study of economic crime prevention is a scientific and practical issue of considerable relevance, which has not been sufficiently developed.

The issue of economic crime under martial law in Ukraine is a matter of grave concern, as it poses a significant threat to public safety.

Economic criminal offences encroach not only on economic security and law and order in the state, but also on the constitutional rights of citizens, contribute to the increase in the level of corruption of state bodies and officials, discredit state and local authorities, law enforcement agencies, the judiciary, etc. not only in the eyes of society, but also in the eyes of the European community.

It is important to acknowledge the detrimental impact of economic crime on the development of the nation as a whole.

For example, according to official state statistics, in particular the Unified Report on Criminal Offences of the Prosecutor General's Office, the number of offences against property shows a stable tendency to decrease in the detection of this type of crime and the prosecution of the perpetrators.

For instance, in 2022, 798 economic offences were documented, of which 118 individuals were notified of suspicion. However, only 68 criminal proceedings were referred to court in accordance with paragraphs 2 and 3 of Article 283 of the Ukrainian Criminal Procedure Code (Shkuta, 2022).

In 2021, 1,356 offences were registered in the sphere of real estate and construction, of which 122 persons were notified of suspicion and 81 criminal cases were referred to court in accordance with paragraphs 2, 3 of Article 283 of the Criminal Procedure Code of Ukraine.

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In 2020, 1312 economic offences were registered, of which 143 individuals were notified of suspicion. However, only 68 criminal proceedings were sent to court in accordance with paragraphs 2 and 3 of Article 283 of the Criminal Procedure Code of Ukraine. This data indicates a lack of scientific research on economic crime under martial law in Ukraine and underscores the necessity for a comprehensive legal assessment.

The comparatively languid pace of crime reduction in the economic sphere, in comparison to the pre-war period in Ukraine, is attributable to the substantial emigration of Ukrainian citizens to other countries.

2. Literature Review

The theoretical underpinnings of the study of contemporary issues in the prevention of economic crime in the context of wartime in Ukraine are derived from the scientific contributions of both domestic and foreign scholars.

The works of foreign authors are of indisputable research value in the study of the subject of this scientific research.

Among the domestic scholars working in this area, it is worth noting the scientific works of: N.A. Dmytrenko, O.V. Lysoded, L.I. Radchenko, O.V. Sudarenko, O.O. Shkuta, etc.

It is noteworthy that O.V. Lysoded has carried out a number of thorough criminological studies of fraud.

The study of current issues of prevention of economic crimes under martial law in Ukraine has attracted the attention of not only theoreticians, but also 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.

In connection with the subject of scientific research, in connection with economic crime, the works of O.V. Sudarenko, who in her scientific works proposed an original concept of combating economic crimes, are worthy of attention.

It is evident that S.V. Holovkin's theoretical achievements are of particular scientific significance. Indeed, he undertook a comprehensive study of the forensic characteristics of fraud in relation to a person's property and its use at the initial stage of investigation. This study led to the formulation of significant conclusions regarding the classification of the subject matter of fraud.

The results of the study by N.V. Pavlova are of great practical importance, as she substantiated the opinion that for the forensic characterization of fraud related

to the alienation of private housing, not only the subject of criminal offense, but also the object is an indispensable structural element.

It is imperative to direct particular attention to the scientific contributions of N.A. Dmytrenko and O.O. Shkuta within the ambit of investigating economic crime within the Armed Forces of Ukraine.

The authors prove that the main causes of economic crime in the Armed Forces of Ukraine are as follows:

- Imperfection of the legislative framework that would meet the challenges of the 21st century and provide proper legal conditions for the formation of a reliable military and security environment;
- lack of an effective system for solving defence and security problems, including the absence of separate fundamental documents that would take into account current trends and the state of development of the security environment, as well as the need to reform the Military Organisation in accordance with the needs of security and defence in the context of Ukraine's non-aligned policy, and insufficient attention to the problems of military science;
- limited budgetary funding for defence, which in recent years has not exceeded 1% of gross domestic product, making it impossible to properly maintain the defence potential at a level that would guarantee Ukraine's high combat readiness and combat capability of the Armed Forces and other military formations;
- low level of efficiency in the use of resources allocated from the state budget to maintain the combat capability and combat readiness of the Armed Forces of Ukraine and other military formations at the appropriate level;
- untimely or poor-quality performance or failure to comply with the requirements of the current legislation, as well as acts and instructions of the President of Ukraine in the field of national security and defence;
- state programmes for reforming and developing the Armed Forces of Ukraine, other components of the military and security sector of Ukraine, development of armaments and military equipment, their inconsistency due to the lack of systematic and consistent development, inadequate level of fulfilment of tasks set by state programmes, as well as insufficient control over the completeness and timeliness of their implementation;
- absence in the structure of the executive branch of power of an institution vested with proper powers and capable of efficiently, comprehensively and competently coordinating the implementation of the defence and industrial policy, creation of military and technical support, as well as other measures provided for by the Constitution of Ukraine aimed at ensuring the defence capability and national security of Ukraine, public order and the fight against crime;

- the unformed national defence industry;
- regression in the development of most defence design bureaus, enterprises and research institutions aimed at creating and producing modern military equipment and weapons or upgrading existing models;
- delays in getting rid of the Ministry of Defence of Ukraine from performing functions that are not inherent to it;
- imperfection of the system of sale of surplus military property, including the use of defence land and military camps released in connection with the reform of the Armed Forces of Ukraine;
- shortcomings in the personnel policy that lead to an increase in officer turnover, insufficient staffing of primary officer positions and, as a result, a low level of professionalism of military personnel, as well as an imbalance in the ratio between the number of junior and senior officers;
- corruption offences in the Armed Forces of Ukraine, other military formations and law enforcement agencies, especially among senior command and control personnel;
- lack of effective measures aimed at transferring military formations to the contract form of manning, taking into account the necessary financial, economic and social conditions;
- aggravation of social problems among military personnel, as well as officers and rank-and-file personnel and members of their families, including those dismissed from the Armed Forces of Ukraine and other military formations in connection with their reform. This is due to the very low level of financial support, lack of housing and unsatisfactory living conditions for military personnel compared to European countries;
- insufficient effectiveness and limitations of democratic civilian, including parliamentary, control over the activities of the Armed Forces of Ukraine, other components of the Military Organisation and the security sector of Ukraine. Contrary to the practice of European states and world leaders, the control of the Verkhovna Rada of Ukraine does not extend to the implementation of personnel policy in the military sphere (Shkuta, 2024).

Drawing upon an analysis of extant scholarly works, it is argued that there is presently a paucity of comprehensive development of the problems of preventing economic crime under martial law in Ukraine. In this regard, emphasis is placed on the pressing need to address the status, structure, dynamics, latency, and criminological characteristics of victims of economic crime, as well as the identity of the offender and the causes and conditions that give rise to such socially dangerous acts. The author further notes the uncertainty surrounding the criminal law assessment of unlawful encroachments on property and the right to property.

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

- 1) verify the previously obtained results and critically or positively evaluate them in terms of confirmation or refutation in practice;
- 2) avoid duplication in the relevant areas of research;
- 3) formulate the most effective system and methodology of scientific research;
- 4) highlight the most significant and time-tested achievements of predecessors in the field of research, and so forth (Dmytrenko, 2021).

The study of the current state of scientific work on specific problems of economic crime confirms the thesis that the areas of these scientific studies are and will be relevant in the future. Due to the constant changes and improvements in the forms and methods of criminal activity by criminals, there is a need for continuous work on the prevention and suppression of criminal activity related to the subject of the study. Consequently, a range of issues pertaining to the prevention of economic crime are the focus of specialised research conducted by experts in the domains of criminal law, criminology and criminal executive law, both domestically and internationally.

It is important to note that, despite the urgency of the problem, there are currently no comprehensive criminological studies on the prevention of economic crime under martial law in Ukraine. Offenders are able to disguise their actions as civil legal relations. It is also important to have a scientific basis for eliminating legal conflicts, discrepancies and contradictions in legal acts, to bring the legal framework into line with generally accepted international standards in the field of regulatory regulation of the activities of legal entities, and to legislate their rights and obligations in order to reduce the possibility of committing such offences.

3. Materials and Methods

During the course of the study, a variety of both general scientific and special methods were applied, each of which facilitated the analysis of the challenges associated with the prevention of economic crime under martial law in Ukraine. These methods included the dialectical method of scientific cognition, which was employed to examine criminal liability in the realm of economic crime; structural analysis, which enabled reveal the content of objective and subjective features of economic crime; the logical and dogmatic method helped to analyse the criminal law provisions establishing liability for economic crimes; the statistical method contributed to the study of statistical data on the state of economic crime; and the comparative method made it possible to find out the features of foreign experience in the field of economic crime.

4. Results and Discussion

In the context of martial law in Ukraine, the main determinants of economic crime are: a deep socio-economic and financial crisis in the state, imbalance of the social function of the state, artificial inhibition of the legislative process on regulatory and legal support of social protection of citizens, moral decline of Ukrainian society, anomie and lawlessness, miscalculation and inconsistency of reforms, etc.

Crime in the economic sphere is recognised as the most dangerous destabilising factor that has an extremely negative impact not only on the country's economy, but also on the national security of the state – the higher its level, the less opportunities to use an effective tool for solving foreign and domestic problems (Shkuta, 2022).

The prevention of economic crime under martial law in Ukraine is one of the most pressing issues of the present age. In the process of changing the military and political situation in the country, this issue requires an appropriate and fundamental rethinking.

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

In criminological theory, general social prevention is manifested through a system of economic, political, ideological and organisational measures that, although not specifically aimed at combating crime and preventing criminal offences, implement an important criminological aspect, becoming the basis and platform for special criminal prevention, since their focus on solving the problematic tasks facing the state creates preconditions for reducing the level of criminal offences. In this regard, the main objective of the general social prevention of economic crime is to create favourable external conditions for the effective functioning of the economy, aimed at ensuring that the needs of the country's population are met at the appropriate level (Shkuta, 2020).

It is necessary to concur with scholars who emphasise that the nuances of criminal law qualification, the subtleties of the legal characterisation of specific offences, and other issues pertaining to the General and Special Parts of criminal law are largely devoid of practical significance if a fair punishment is not imposed for the offence committed, or if the punishment is either not executed or executed improperly. Such deficiencies undermine adherence to the principles enshrined in Article 5 of the Criminal Executive Code of Ukraine, including legality, justice, humanism, equality of convicts before the law, respect for human rights and freedoms, rational application of coercive measures, and the promotion of law-abiding behaviour (Shkuta, 2020).

General social prevention is defined as the creation and implementation of targeted state programmes and strategies for reforming the national economy. The overarching aim of these programmes and strategies is to effectively address the economic issues 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 is defined as an act that contravenes an individual's will, desires and beliefs, and which is in opposition to the will of the state and the interests of society. Punishment, therefore, can be regarded as a suitable response on the part of the state, a coercive measure aimed at the restoration of social justice, the correction of the perpetrator, and the protection of individuals, legal entities, society and the state from future criminal encroachments. The concepts of criminal offence and punishment are inextricably linked; neither can exist without the other. They are interconnected, forming a dynamic relationship characterised by action and counteraction, risk and its mitigation, and harm (evil) and its eradication (Dmytrenko, 2021).

When imposing punishment, the court must consider the overarching objective of punishment in general, as opposed to merely its individual components (Arifkhodzhaieva, 2022).

As stated in Article 50(2) of the Criminal Code of Ukraine, punishment is intended not only to punish, but also to reform convicts, as well as to prevent the commission of new crimes by both convicts and other persons. In this regard, E.O. Pysmenskyi observes that this approach is indicative of the mixed theory of punishment, which is regarded as a form of compromise between absolute (retribution to the offender for the crime) and relative (achievement of mercenary goals) theories, given that the purpose of punishment comprises four interrelated components:

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

The court is tasked with determining the appropriate sentence, a process that is outlined in Article 62 of the Constitution of Ukraine. This article stipulates that the court must first establish the presence of a criminal offence in the act committed by the individual and recognise their culpability for the crime. 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 results of the case and the punishment imposed by the court form the public opinion about justice (Shkuta, 2020).

Paragraph 1 of the Resolution of the Plenum of the Supreme Court of Ukraine of October 24, 2003 No. 7 "On the Practice of Imposing Criminal Punishment by Courts" emphasises the need to comply with the requirements of Article 65 of the Criminal Code of Ukraine regarding the general principles of sentencing, as the latter implement the principles of legality, fairness, reasonableness and individualisation of punishment. It is noteworthy that the aforementioned explanation is founded upon a balanced position, according to which the principles of imposing punishment and the general principles of imposing punishment are interconnected yet distinct from each other, constituting independent criminal law categories. While the general principles of sentencing have been fairly clearly consolidated legislatively in Article 65 of the Ukrainian Criminal Code, the current Code contains no separate norms dedicated to the principles of sentencing as starting principles that guide the court's activities in choosing a specific punishment. Instead, these principles "permeate" the entire criminal legal institution of sentencing and determine its functioning and development (Dmytrenko, 2021).

The Supreme Court of Ukraine has also clearly defined that judicial discretion in sentencing applies to: criminal law, relatively certain (setting the limits of punishment) and alternative (providing for several types of punishment) sanctions; principles of law; authorising norms that use the wording "may", "has the right" in relation to the powers of the court; legal terms and concepts that are ambiguous or have no regulatory basis, such as "person of guilt", "sincere remorse", and so forth; evaluative concepts, the content of which is determined not by the law or regulatory act, 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 on; individualisation of punishment – determination of the type and amount of state coercion imposed by the court on a person who has committed

a criminal offence, depending on the specifics of the criminal offence and its subject (Dmytrenko, 2021).

Therefore, it should be emphasised that these provisions must be taken into account when considering the type and amount of punishment for an offence provided for in Article 190 of the Criminal Code of Ukraine committed in the sphere of real estate. The person who has committed the offence must be sentenced to a punishment which is necessary and sufficient for his correction and prevention of the commission of new offences, as provided for by the legislation in force. An analysis of this provision reveals that ensuring compliance with all legal requirements when imposing a punishment ensures that its type and amount are necessary and sufficient to achieve the purpose of the punishment. The concept of necessity and sufficiency in punishment is defined by the severity of the criminal offence committed, the individual's background and characteristics, and the mitigating or aggravating circumstances that may influence the sentence (Arkusha, 2019).

The special criminological prevention of economic crime in Ukraine is closely interconnected with general social prevention.

However, in contrast to general social prevention, it possesses a distinct objective and is directed towards the identification and elimination (blocking, neutralising) of the determinants of crime, which is both its distinguishing characteristic and its primary function. In addition, special criminological prevention encompasses the prevention of both planned and prepared criminal offences, as well as the cessation of initiated criminal activities (Arifkhodzhaieva, 2022).

The main difference between special criminological preventive measures and general social measures is that their action has a tactical, not a strategic direction, in connection with which special criminological prevention of criminal offences should be understood as a social process, the basis of which is the use of special methods and techniques, knowledge and skills of regulating social relations exclusively for the purpose of eliminating those negative aspects of them that can cause the commission of criminal offences, i.e., to ensure the requirements of criminal law (Dmytrenko, 2020).

Within the parameters of this study, special criminological prevention is defined as a multifaceted array of political, socio-economic, legal, organisational, and other measures designed to prevent economic crime in Ukraine. The cornerstone of this prevention strategy is criminological prevention, which, as articulated by V.V. Golina, is a form of early prevention. Its primary objective is the elimination of negative phenomena and processes that are directly associated with the commission of criminal offences (Arkusha, 2019).

The subsequent component of criminological prevention of economic crime under martial law in Ukraine is organisational and managerial measures, which include the enhancement of the work of law enforcement agencies and the combatting of deviant behaviour.

A pivotal aspect of the process of ensuring organisational and managerial prevention of economic crime under martial law in Ukraine, particularly under such circumstances, is the fight against antisocial behaviour, alcoholism and drug addiction. This should be implemented through preventive and hygienic measures aimed at the physical, mental, spiritual and social components of the population's health. Concurrently, the inadequate effectiveness of the measures implemented by law enforcement agencies in combating economic crimes, the absence of effective methodologies for their detection and investigation, particularly scientifically substantiated and empirically validated approaches for averting this category of socially hazardous acts, has resulted in a substantial exacerbation of the criminogenic environment in this domain. This underscores the necessity for additional targeted research to be conducted, with the objective of developing and implementing a system of measures to prevent criminal offences in the economic sphere within the practical activities of law enforcement agencies (Shkuta, 2022).

5. Conclusions

Based on the analysis of scientific works of domestic and foreign scientists, it can be stated that the problems of prevention of economic crimes under martial law in Ukraine have not been studied so far. In connection with this, today there is a lack of comprehensive development of the problems of criminological characteristics of these criminal offences and their prevention. Scientific developments in this field are characterised by a substantial corpus of literature, which reveals only a limited number of aspects of preventing criminal offences against property in various branches of economic activity. The majority of works are confined to the development of measures to prevent individual crimes against property, and many are based on the provisions of outdated domestic or foreign legislation. It has been proven that in democratic societies with a perfect legal system and mechanisms of liability for criminal offences in the economic sphere, the legislator takes a responsible approach to the protection of property rights. It is this approach that allows for the maximum protection of the right to private, municipal and state ownership of real estate against unlawful encroachments, as well as the prevention of unlawful actions by officials of state authorities, and it is this path that the Ukrainian legislator should follow.

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