



## RESEARCH ARTICLE

## Institutional Challenges in Combating Transnational Organized Crime in Ukraine and the Ways to Solve Them in the Context of Armed Conflict

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**ABSTRACT**

At the current stage of state formation in Ukraine, crime poses a significant threat to the national security, especially in the conditions of the armed conflict currently taking place on the territory of our country. In this regard, there is a constant need for an active fight with this phenomenon and improving the system of prevention of new criminal offenses, timely detection and elimination of their causes and conditions. The article describes the fight against transnational organized crime as an active struggle between society and crime in order to ensure the rule of law and the interests, values, and rules of behavior protected by it, the defense of people from illegal encroachments, compensation for damage, and the restoration of the violated rights. The author's definition of the fight against transnational organized crime is provided. It is determined that the institutional support for combating it includes the following three-level system of entities: macro-strategic; strategic; operative.

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**INTRODUCTION**

At the current stage of state formation in Ukraine, crime poses a significant threat to the national security. In this regard, there is a constant need for an active struggle and improvement of the system of crime prevention, timely detection and elimination of their causes and conditions. In this context, addressing the problems of fighting crime by security sector institutions is quite relevant. One of such problems, characterized by a complex nature and conditioned by the need to find the most optimal ways to overcome criminogenic determinants, is the criminological activity of law enforcement agencies, related to the fulfilment of the requirements of the law to identify and eliminate the causes

and conditions contributing to the commission of criminal illegal acts by transnational organized groups.

Modern international relations are characterized, among other things, by such factors, which so far have either not been taken into account or have not been global. Transnational crime is, in fact, one of those crimes, which is increasingly global political and economic weight in the «third world» countries and in the system of international relations in general. Nowadays, the representatives of the criminal world of Ukraine and transnational organized crime groups use various opportunities to conspire their illegal activities (Doroshenko, 2003).

Currently, there is a significant capital flow in connection with the expansion of international ties, the creation of various state borderless entities (for example, the EU), as well as the formation of global information and financial networks. Such trends led to the intensification of organized criminal associations within a single country, which in their activities went beyond national borders, formed a shadow system of international relations in the form of criminal alliances. Thus, transnational organized crime groups are interested in maintaining a stable system of international relations, which allows creating and maintaining criminal channels with various criminal structures around the world (drugs, weapons, radioactive substances, etc.).

One of the features of transnational crime is that it violates of the national borders of the States. Thus, transnational crime challenges State sovereignty and economic development of the country, peace and security in international relations. Although transnational crime does not pose a threat to the country's military power, it challenges the prerogatives that are inherent attributes of statehood.

## **MATERIALS AND METHODS**

In today's context, the traditional challenge of organized crime in the context of globalization is taking to a new level, which is revealed in the study of its transnational nature. Transnational aspects of crime have not attracted enough attention for a long time. Active research on the transnationalization of organized crime begins in the mid-1980s; although scientists have paid increasing attention to these processes, they have considered them, first of all, in the context of the general professionalization of crime. At that time, the newest direction was the work by Fooner (1973) on the role and capabilities of Interpol in combating transnational criminals.

In the 90s, the progress in information and communication technologies, liberal conditions of economic globalization, the spread of the practice of dual citizenship and great tolerance for ethnic and religious pluralism within national borders, along with many other factors, have prompted specialists to study transnationalization and transnational crimes in more detail.

At that time, relevant criminological research was significantly intensified in Western science. It is necessary to mention the monographs by Alexander and Caiden "The Politics and Economics of Organized Crime" (1985) and Professor E. Viano "Global Organized Crime and International Security" (1999), as well as the work by M. Berdal, M. Serrano "Translational organized crime and international security. Business as usual?" (2002), which reflect the multiplicity of approaches to the phenomenon of globalization and its criminogenic influence.

The works of American experts on transnational crime by Lupsha (1991), Nye (1987), Williams and Savona (1996) are also of great importance. In them, among other advantages, one should note the use of a systematic approach in in the study of this phenomenon by the authors, as well as the analysis of transnational crime in the dynamics of development, not only in the context of the present but also of those conditions, that may be formed under the influence of various factors in the future.

Pshenychnyi (2000), one of the first Ukrainian researchers of transnational organized crime, notes that this phenomenon arose as a result of the development of international economic and social relations, as well as the rapid integration processes taking place in the world as a result of significant democratic transformations in the countries of Eastern Europe and territories of the former Soviet Union, as well as the countries of Africa, Asia and Latin America.

Verbenskyi (2010) considers the development of transnational crime as a process of rational reorganization of criminal enterprises on an international scale similar to the reorganization of legal business operations in a market economy. At the same time, national and international criminal organizations create their structures similar to the structures of large corporations with a division of labor aimed at obtaining maximum profits and ensuring minimum risk. The scientist makes a forecast regarding the further growth of the level of transnational organized crime both in the countries of the world and in Ukraine: transnational criminal groups will benefit from facilitation of border crossing, establishment of free economic zones, weak legal framework to counter international crime, inadequate border, customs and other controls to carry out their criminal activities.

Skulysh (2012) points out that the spread of transnational criminal organizations activities requires a quick response on the part of the world community by adopting relevant legal instruments and strengthening international cooperation, since the reasons and conditions for their dissemination change with the society development. At the current stage, there is a trend towards an increasing number of such organizations, the emergence of new ones and intensification of existing groupings. All researchers confirm the multifaceted nature and complexity of studying transnational organized crime – not only as a legal, but also as a historical, social, philosophical phenomenon. In general, since the independence of Ukraine, a number of works devoted to transnational organized crime or certain aspects of its activity have been published. However, modern transnational organized crime adapts, constantly changes, chooses new spheres of activity and territories of its distribution, which determines the constant relevance of the study of this phenomenon.

Methodology is, first of all, a systematized set of approaches, ways, methods, techniques and procedures used in the process of scientific knowledge and practical activity to achieve a predetermined goal. Such a goal in scientific cognition is to obtain true knowledge or build a scientific theory and its logical justification. Secondly, methodology is a branch of theoretical knowledge, ideas about the essence, forms, laws, order and conditions of application of approaches, ways, methods, techniques and procedures in the process of scientific knowledge and practical activity.

The methods are chosen in accordance with the set goal and objectives of the research. Given the specificity of this work, the following methods of scientific knowledge were applied:

- Systemic and structural method was used for determining the system of actors providing institutional support for the fight against transnational organized crime.
- Historical and legal method was applied for investigating the development of scientific views (both in Ukraine and abroad) on the transnational organized crime.
- Formal and logical was useful in the study of specificity of the current security crisis that it is unfolding under globalization processes, as well in characterizing the fight against crime as a special type of interaction between two opposing sides: law enforcement and crime.
- With the help of content analysis method, the approaches to the criminological policy as a component of State social policy were investigated.
- Dogmatic method enabled to interpret the content of legal instruments governing the issue under consideration (Constitution of Ukraine, Law of Ukraine “On the Legal Regime of Martial Law”, Plan for introducing and ensuring the measures of the legal regime of martial law in Ukraine).

- Criminal and legal and criminological categories such as transnational organized crime, national security, State security, fight against crime, were construed using logical and analytical approaches.
- Legal and modelling method helped to improve the conceptual and categorical research apparatus, in particular, by formulating the concept of the fight against transnational organized crime.
- The method of systemic analysis made it possible to identify the problems of arranging the activities of law enforcement agencies in combating organized crime.
- Summarization method was used for formulating the relevant conclusions logically derived from the study.

## RESULTS AND DISCUSSION

Establishment and implementation of the state national security policy in Ukraine is almost the most important factor in the transforming society effective management. Domestic political practice proves that the technology of implementing doctrines, strategies, concepts and programs of the State policy in the field of national security should objectively integrate all components of the State's political activity and be based on strong theoretical foundations and historical experience (Novytskyi, 2021).

Interesting, in our opinion, is the concept of maintaining a non-coercive stance against crime expressed by Holina (2013), who believes that criminological policy is a component of state social policy, which, on the basis of the Constitution of Ukraine and the knowledge and world experience integrated by criminological science, determines the methodological principles and the ways in which the State and its institutions are guided in the implementation of non-coercive countermeasures against crime. The scholar also considers such policy in the context of the theory of crime prevention, which assumes a single hierarchical system at the criminological levels of prevention. At the same time, she emphasizes the non-repressive nature of these strategies and their purpose, aimed at reduction or limitation of deviant, delictogenic and criminal manifestations of criminal activity or protecting material and spiritual social values from criminal encroachments.

A similar, but slightly different, view on this matter is presented by Fris (2016), who notes that the content of criminological (preventive) policy is determined by targeted measures, the purpose of which is to reduce the level of crime by eliminating or mitigating the potential of the crime causes and conditions.

According to Vasylevych (2021), criminal law and criminological policy are quite similar in certain aspects of their activities. At the same time, each of them solves its tasks, which differ in the spheres of social relations. Moreover, in determining priorities for defining the concepts of criminal and felonious, criminal law policy, not criminological policy, is given primacy. According to the criminologist, criminological policy should be considered in a broad sense as a component of the social policy of the State, which lies in the coordinated activity of all branches of government and civil society institutions, aimed at identifying criminogenic factors (determinants) of crime, preventing criminal offenses, forecasting changes in the criminological situation, development of strategic directions for improving provisions of criminal (substantive, procedural and executive) legislation, as well as implementation of organizational and management measures in the system of criminal justice bodies. In a narrow sense it is a system of criminological provisions and recommendations for the formation and implementation of legal, organizational, managerial and practical tools for combating crime (Vasylevych, 2020).

Transnational crime is actively developing under the existence of a monopolar system of international relations, when on the one hand there is a significant imbalance of power between its participants, and on the other – uneven political and socio-economic development of different States, differences in national law enforcement models, etc. Besides, in the context of the regionalization of the system of international security, manifested in the fragmentation of global security structures, as bipolarity atavism, transnational crime threatens the stability and security of individual States and integration entities, since, among other things, it can be a sponsor of transnational terrorism.

Ukraine was not left aside in such world processes, since the armed aggression of the Russian Federation against Ukraine, which began on April 14, 2014, and the full-scale war from February 24, 2022, led not only to the temporary annexation and occupation of certain territories and regions of the country, destruction, significant economic, ecological and human losses, but also considerable complication of the criminogenic situation and, as a result, a rapid increase in the level of certain types of crime. In this regard, on the basis of the proposal of the National Security and Defense Council of Ukraine, in accordance with Clause 20, Part 1, Art. 106 of the Constitution of Ukraine (Law 254k/96-VR, 1996), the Law of Ukraine “On the Legal Regime of Martial Law” (Law 389-VIII, 2015) put into effect the plan for introducing and ensuring the measures of the legal regime of martial law in Ukraine (Decree 2102-IX, 2022).

Transnational organized crime is a tool used by the special services of foreign countries to destabilize the situation in Ukraine and harm national security. There are conditions for the use of organized crime by individual public associations as a means of political struggle and suppression of democracy. Under such conditions, the fight against crime remains one of the strategic priorities for the country; criminogenic realities require an effective response mechanism on the part of the state, in particular, ensuring coordinated, targeted, joint actions on the part of legislative and law enforcement agencies; completion of the security sector and criminal justice reform, bringing national legislation into line with international standards, which takes place during the formation of market relations under the influence of real war and martial law, economic crisis, unprecedented shadowing of the economy, criminalization of social relations, etc. (Dzhuzha, Vasylevych & Tychna, 2023).

We should note that national security plays a key role in the unified security system. This is explained by the fact that personal and collective interests can be guaranteed only within the framework of the State by its political, legal, economic means and institutions of power. At the regional and global levels of interest, only States are the actors of relations at the respective levels, since modern humanity is the States’ community. The ability to ensure the interests at all levels in any sphere of life (political, economic, military, etc.) is determined primarily by the ability and willingness of countries to do so. However, the state is not only abstract to the socio-economic system of society, but also historically specific. In the latter context, it represents a certain socio-political scheme, is the arena and subject matter of internal political struggle of various groups and classes comprising a certain society. Social groups exercising political power protect the security of the State from the encroachments of other groups primarily as a tool of their power. In this case, the State ensures its security based on its own interests. National and state security are related as a whole and a part. They may coincide, but they may differ significantly. At the same time, national security is primary, since the State emerges and functions as a result of society’s interest in it.

The specificity of the current security crisis lies largely in the fact that it is unfolding under globalization processes, that is, radically increasing the degree of mutual dependence of international policy actors. This requires greater responsibility on the part of international actors. Instead, the neglect of international obligations, especially on the part of influential States and their associations, leads to dangerous consequences at the regional and global levels, undermining the possibilities of

sustainable economic and social development in the world. Russian aggression has highlighted the ineffectiveness and fragility inherent in the European Neighborhood Policy, which has proven unable to prevent and mitigate risks to Europe in both the Mediterranean and Eastern European directions. The events in Ukraine confirmed that instead of establishing a “circle of friends” around the EU, envisaged by the Neighborhood Policy, rather a “circle of fire” of armed conflicts appeared on the borders of the Commonwealth (Horbulina et al., 2015; Yeprintsev, 2023).

Therefore, it is not for nothing that in modern conditions we should talk about the fight against crime, since it is a special type of interaction between two opposing sides: law enforcement and crime. The word “fight” is interpreted as an active clash of opposing interests, groups, opinions, etc., which aim to acquire the dominance of one over the other. This is always an activity that pursues a certain goal. The fight against crime is its prevention with the use of coercive and non-coercive means (Holina, 2011).

Moreover, under the armed conflict of the Russian Federation against Ukraine, manifestations of separatism, attempts to create terrorist organizations, a significant increase in illegal arms circulation, the number of serious crimes committed by organized criminal groups, in particular with the use of firearms, raiding and other non-competitive methods of financial and economic activity, combined with corruption, is on the rise, which in general negatively affects the economic growth and related social development.

Thus, in our opinion, the fight against transnational organized crime is an active collision of society and crime with the aim of ensuring the rule of law and the interests, values, rules of behavior, protecting people from illegal encroachments, compensation for damage, restoration of violated rights, which involves the use of all legally available means, measures, methods, and in the conditions of martial law – the application of repressive and armed, targeted attacks by the authorities of the law enforcement sector and the society to prevent, identify, cease the creation and activity of organized criminal groups of a transnational nature, eliminate the causes and conditions of their functioning; identification and detention of their members, prosecution of the latter.

Considering the problems of organizing the activities of law enforcement agencies, let us emphasize that each State has its own national characteristics in this area. At the same time, law enforcement agencies of any country perform the task of countering threats to human rights and freedoms, property, law and order. The system of international relations is extremely vulnerable to the activities of transnational crime. Significant differences in national and regional law enforcement systems, different political priorities of fighting organized crime in the countries of the world, uneven development of the latter, the growth of financial and informational factors in the current political and economic relations objectively reduce the possibilities of effective fight against transnational crime. The issues of such struggle become one of the arguments in the case of unification of existing legislation, strengthening of the role of international specialized organizations in the system of modern international relations (Lyzohub, 2004).

Unfortunately, the domestic law enforcement system did not cope with these tasks, and at the beginning of 2014, the State effectively exposed itself to the encroachment of a transnational criminal element on the national security; transnational organized crime groups were almost transparently operating outside the territory of Ukraine and now they actively influence the social and political situation in the state even outside the country. Nowadays, Ukraine practically does not respond to the challenge of the activities of transnational organized criminal organizations; in fact, the measures to reform the law enforcement system with the aim of increasing its effectiveness based on the optimization of the structure, increasing the level of coordination of the activities of law enforcement

agencies, and improving their financial, material and technical, organizational, legal and personnel support have not been effective enough.

These circumstances oblige us to look at the organizational principles from a new perspective, according to which the system of combating crime in our country should be established based on the experience of developed European countries. In our opinion, it is time for the transition of law enforcement agencies to a qualitatively new level of planning and management, in particular, implementation of strategic management elements into the law enforcement system activity (Zharovska, 2018). Therefore, application of the problems of overcoming the activities of transnational organized criminal organizations in the security struggle on the part of Ukraine is extremely insufficient.

Institutional support for the fight against transnational organized crime includes the following actors' system:

1. Macro-strategic – subjects of formation of general State policy to combat transnational organized crime (the Verkhovna Rada of Ukraine; the President of Ukraine; the Cabinet of Ministers of Ukraine; the National Security and Defense Council of Ukraine).
2. Strategic – entities involved in the development of the criminological policy to combat transnational organized crime, which determine the directions, measures, means, methods; they also elaborate and implement the organizational and legal mechanisms and procedures necessary for practical implementation, monitor their performance, take measures to remove determinants, and eliminate international dangers, threats and their consequences (Ministry of Internal Affairs of Ukraine, National Police of Ukraine, Security Service of Ukraine (SBU), National Anti-Corruption Bureau of Ukraine, Prosecutor's Office, State Bureau of Investigation, Economic Security Bureau of Ukraine, etc.).
3. Operational – subjects of criminological policy implementation at the regional (territorial) (operational and investigative units; counter-intelligence agencies, special units to fight corruption and organized crime, etc.) and international level (Foreign Intelligence Service of Ukraine, National Security Service of Interpol in Ukraine, Asset Recovery and Management Agency, etc.).

There is duplication and lack of coordination in the work of actors involved in the fight against transnational organized crime due to the absence of clear criteria for the distribution of competences between them. Adoption of contradictory and hastily drafted laws, in particular through amendments to the Criminal Procedure Code of Ukraine, has led to the fact that today there is not only a lack of unity and cooperation between law enforcement agencies, but on the contrary – there is unhealthy competition, but not for clarifying who is better at protecting the rights of citizens, revealing high-profile crimes or demonstrating more effective work in fighting crime and corruption, but for determining who has more procedural rights and powers, who is stronger and more influential, which causes open clashes between them with the involvement of the security forces and the use of special means (Bahaneț, 2019).

Nowadays, the question of taking criminological measures to influence crime in the country have become very urgent. However, what kind of joint coordinated and effective work can we talk about, if none of the heads of law enforcement agencies bears direct responsibility for the deterioration of the criminogenic situation in the country, and the Ministry of Internal Affairs, the National Police, and the Prosecutor's Office are not obliged to report on the state of crime and counter it, and even more so – on the observance of constitutional rights and freedoms of citizens. There are no joint

coordination meetings on urgent issues of combating crime in the State; no one is responsible for low rates of crime detection – these issues are not analyzed, and therefore have no weight and serious importance among the «problems» of law enforcement (Servatko, 2002).

In our opinion, one of the most successful steps towards overcoming this shortcoming is the creation of coordination of actors' action teams with regard to monitoring the fight against transnational organized crime. The creation of such teams is expedient precisely under martial law, since there is a negative tendency of duplicating the actions of employees of different services in the fight against this dangerous type of crime. A personalized approach should be the priority area of activity of such groups; and special attention should be paid to operational control over the leaders (organizers) of criminal groups, because of all the members of the transnational criminal community, they are the most dangerous to society. The fight must be carried out against a systemic social and legal phenomenon, and today it is mainly a reaction to the results of its manifestation.

Moreover, Section II of the Law of Ukraine “On the Organizational and Legal Basis of Combating Organized Crime” (Special Units for Combating Organized Crime, Their Competence) (Law 3341-XII, 1993) should determine the legal status and general authority of such units, the rights of their employees, requirements regarding the level of training and continuous improvement of qualifications, exchange of positive work experience, to establish the order of creation and liquidation of regional structural units of special units for the fight against organized crime and the procedure for the appointment of senior members of these special units.

Leaving the name of the special units “to combat organized crime” in the Law aims to preserve their current name to avoid the expenditure of budget funds associated with their possible renaming. Among other measures of institutional support, a government body and research institution that will be responsible for the development and implementation of the latest means and methods of combating transnational organized crime, taking into account modern threats, real war, and the conditions of a state of war or emergency, to be identified (this proposal was supported by 59 % of surveyed respondents); to conduct constant monitoring of criminal and judicial practice in criminal proceedings regarding the activities of organized groups and criminal organizations (43%); to develop criteria for risk-oriented approaches in the activities of security sector institutions, introduce a system for evaluating the effectiveness of their activities in combating such crime (25%); to organize professional staff selection, recruitment and training of employees of special and operational units (19%) (Lyzohub 2004).

Nowadays, our country has become the object of interest of transnational criminal groups (in particular, in the areas of money laundering, illegal migration, trafficking in people, weapons, dangerous materials, narcotic substances, etc.), and therefore – participation in international cooperation in the fight against crime, in the activities of international law enforcement organizations. In view of this, the involvement of Ukraine in international cooperation in the field of combating crime, based on the rules and principles of international law, is quite important. It is quite clear that Ukraine's collaboration with the countries of the world and international organizations is an important condition for the successful solution of many problems related to foreign policy and economic, but also of internal nature (Voitsihovsky, 2010).

The international level is regulated by the Instruction On the Procedure for the Use of the International Criminal Police Organization – Interpol Information System by law enforcement agencies of Ukraine (Order No. 613/380/93/228/414/510/2801/5, 2020), where the ways of cooperation between law enforcement agencies of Ukraine with the law enforcement departments of foreign countries within the Interpol to improve the quality of the fight against criminality in, are



determined. The Instruction was developed in accordance with the legal framework of Ukraine, which makes it possible for the National Security Service of Interpol of Ukraine to cooperate with the General Secretariat of Interpol of foreign countries in the fight against transnational organized crime in the following areas: identification of wanted persons for the purpose of detention, arrest, restriction of freedom of movement and further extradition; locating persons or objects of interest to law enforcement agencies of Ukraine or other Interpol member states; provision or receipt of information concerning the investigation of crimes, criminal records or criminal activities of persons (coordinated activities (operations) to disrupt criminal channels; transmission of intelligence information concerning persons involved in inter-State; conducting, upon request, investigative measures and procedural actions in criminal proceedings regarding transnational organized groups and criminal organizations); providing or receiving information for the purpose of warning about persons, events, objects, methods of committing crimes that pose a real threat to national security and can cause significant damage to property or citizens; identification of persons or unidentified bodies and conducting forensic research (using technical means to detect and cease criminal activity); determining security threats, establishing the trends in the development of transnational organized crime, information and analytical support (using the method of criminological intelligence, which includes collection, acquisition, processing, analysis and use of information and search data (OSINT, One Login, IBM i2, Python, etc.), analytical systems (Big Data, FACE Recognition, Internet of Things Technologies, VideoAnalytics, etc.), using specialized software (PALANTIN, goAML, goPRS, goCASE, goTRACE); completion of national databases); exchange of experience in the fight against crime and law enforcement activities.

## CONCLUSIONS

The modern world is characterized by the trends of globalization and integration of not only positive processes and phenomena, but also negative ones; transnational organized crime is especially dangerous among the latter. Its rate of increase is much higher than that of other crimes. Currently, international criminal organizations are effectively using the international political situation, as well as war and martial law conditions in Ukraine, which facilitates joint criminal actions in many business areas and poses a threat to national security.

Taking into account the latest trends of development, the identification of its new qualities, strengthening the systemic nature of the corruption of the various branches of government agencies and increasing the integration of law enforcement officials into a system of criminal and corrupt ties, politicians, practitioners and specialists of various areas of law enforcement activity and management are aware of the need to find fundamentally new solutions to improve the fight against this global danger (Pozhydayev, 2009).

The criminological policy of combating transnational organized crime should be aimed at formation and establishment of a society climate of virtue, comprehensive fight against these manifestations and their prevention. Implementation of such policy is impossible without the introduction of a wide system of coordinated measures of a regulatory, legal, organizational and informational nature, without the painstaking day-to-day work not only of specialized government bodies, but also educational institutions, public associations, individual citizens, without clear interaction of the center and regions. Criminological activity should be aimed at ensuring criminological security, including through establishing and staffing of special units to combat transnational organized crime with professionals, possessing knowledge of the organized criminal groups' structural features and methods of work. The State should also provide the necessary training and resources for the staff of such units so that they could focus their efforts on the collection and analysis of operational information on transnational organized crime.

It is also worth emphasizing that under war and martial law in Ukraine only one law enforcement agency was purposefully created to fight organized crime – Special units to combat corruption and organized crime of the Security Service of Ukraine. However, it cannot fully ensure the fight against transnational crime in Ukraine considering the fact that other institutions (provided for by Article 5 of the Law of Ukraine “On the Organizational and Legal Basis of Combating Organized Crime” (Law 3341-XII, 1993) and the Strategy for Combating Organized Crime (Order 1126-r, 2020) are defined as those involved in the fight. Consequently, the effectiveness of the system (efficiency, comprehensiveness, completeness) of the actors involved in the fight against transnational organized crime, which should not only participate but also conduct counter-measures, including with international partners, is violated.

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