



## KAPITEL 9 / CHAPTER 9<sup>9</sup>

### SOME ASPECTS OF PREVENTION OF CRIMES UNDER MARTIAL STATE

DOI: 10.30890/2709-2313.2023-18-04-030

#### **Introductions.**

Despite martial law, Ukraine has not abandoned its plans to integrate into the European Community. The current realities indicate that corruption infects and affects every area of Ukrainian public concern. This situation directly threatens not only the stability, but the very existence of democratic institutions, hampers the successful development of the country, hinders reforming the economy and, unfortunately, discredits the public authorities. Despite government efforts to the contrary, notwithstanding the existence of well-developed anti-corruption legislation and newly created anti-corruption state agencies, the number of corrupt acts and abuses does not decrease. The most dangerous corruption forms and manifestations exhibit elements of criminally punishable acts and within a legal framework are defined as criminal, or termed corruption-related crimes.

These latter are listed in the present Ukrainian Penal Code yet obviously, the list of corruption-related acts and abuses is not comprehensive. As a rule, such criminal activities are committed not by separate, independent offenders, but by large-scale, ramified networks based on well-established links of corruption and using well-developed illicit techniques. These networks become entrenched in the economy and financial system, thus influencing public policies as a whole.

Apart from the offences listed in the Ukrainian Penal Code, these networks commit a number of other crimes. Characteristically, corruption offences tend to remain latent, for their perpetrators are steadily becoming more “professional” while the legislation remains imperfect. Moreover, individuals in possession of substantial amounts of money establish close contacts with senior government officials. Given the above-mentioned factors, some of these crimes may be included under economic offences, under offences against property, against official duties or public authorizations, against local government agencies, against citizens’ associations, against justice, etc. Despite martial law, prevention of corruption-related offences is a priority, an essential condition for the establishment of a state based on the rule of law and, evidently, a major concern for this country. The findings of the study indicate that corruption offences prevention should be carried out at three levels, viz. general, special and individual. Furthermore, at the general level, anti-corruption activities are

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to be performed by the competent state bodies, institutions and public organizations, at the special level they fall within the competence of law enforcement agencies, while at the individual level they constitute a joint responsibility of the special anti-corruption bodies and law enforcement agencies. The study establishes that at the special and individual levels the prevention of the corruption-related offences involves a number of preventive activities performed by special bodies or agencies in the framework of their respective competences. Forensic prevention of corruption offences is hereby treated as a particular type of crime prevention effected at two levels, special and individual.

**Purpose and objectives of the research.** In wartime, the problem of crime prevention is of particular importance. Although the below-listed experts have made a significant contribution to crime prevention-related research problem remains relevant. The problems related to forensic *prophylaxis* of illegal acts were the objects of thought and study for Yu. M. Antonian, B. N. Golovkin, V. V. Golina, A. N. Djuja, A. P. Zakaliuk, A. Ye. Zhalinsky, V. K. Zvirbul, S. M. Inshakov, Ya. Yu. Kondratiev and other scholars. Criminal investigators O. A. Boridko, A. F. Volobuiev, V. A. Zhuravel, V. P. Kolmakova, V. Ye. Kornoukhova, G. A. Matusovsky, V. M. Shevchuk, A.V. Shemiakin and others were engaged in the same studies. However, since the criminal elements also “hone their skills”, spawning new methods and mechanisms intended to commit and cover up corruption crimes, legislative changes in the general domestic legal framework and an individual reform of anti-corruption legislation would elevate the problems of preventing corruption-related offences to a qualitatively new level. Therefore, the issue requires further research.

The purpose of this article is the concretization and gradation of the prevention of certain types of crimes, including corruption offenses for the effective solution of existing tasks facing the state. To achieve this purpose, the study gradually solves individual objectives related to the justification of the urgent need to update the activities of law enforcement agencies and society as a whole in the fight against certain types of crimes. The task is complicated by the fact that, on the one hand, Ukraine is in a state of war and all the forces and resources of the state are directed to victory. On the other hand, the wartime environment can contribute to an increase in the level of crime in the state as a whole and corruption offenses among dishonest officials. In order to increase the effectiveness of the fight against the challenges that our state faces today in this area, this study solves the issue related to the classification of crime prevention of a particular type into several working levels. After that, on the basis of the analysis, a specific formulation and semantic content of each of the presented levels are given. From the author's point of view, the solution of the objectives set in the study will lead



to the achievement of the set purpose, which can help to increase the effectiveness of the fight against certain types of crimes by law enforcement agencies. This contributes not only to a decrease in the level of crime in the state, but also to an increase in the level of legal awareness and social responsibility in society as a whole.

In Greek, method means "path or tracking." The term is considered as a way of cognition that helps to achieve the goal with the help of a certain sequence of actions. When writing any study, methods are applied in a complex way. Classical scientific methods such as induction and deduction, analysis and synthesis, comparison and abstraction are an integral part of the methodology of scientific work. Their direct implementation can be traced in the content of the study. To prevent and control corruption, the society and the State should act in concert along three main directions, aiming the joint efforts at 1) bridling corruption as a social phenomenon, 2) preventing corrupt practices, 3) providing criminal justice response to the already committed corruption-related offences (Shemsakin, 2013).

Preventive measures relating to the specific offences are part and parcel of the social prevention policies and activities carried out by the authorized agencies with a view to reducing overall crime rate (Koriagina, 2016). These policies and activities should be regarded as a single system of actions aimed at combating social pathologies and their principal causes, as well as at eliminating the factors that lie at the root of the criminal conduct (Meditsky, 2008). Crime prevention can be defined as a systematic activity intended to stop the emergence and development of crime-promoting processes in the society, to de-link these processes from identity-building and separate the identity itself from the act of crime committed by an individual.

The notion of crime prevention stands in both general and specific relation to the above-listed notions. We support the view that crime prevention is a range of activities targeting individuals or groups having criminal intent, planning to commit offences, or just admiring criminal lifestyle. The aforementioned activities should shine light on and establish the ugly truth about the criminal behavior, thereby making such persons change their lives and not offend. In addressing criminality, forensic *prophylaxis*, prevention and suppression of crime serve as the principal building blocks (Marienko, 2014).

**Results and discussion.** The effective fight of law enforcement agencies against crime in general and its manifestations such as corruption offenses is one of the main components of the state system. This element has a direct or indirect impact on all spheres of state activity and the life of society without exception. Effective functioning and sustainable development of any state system is possible only under conditions of general stability of the country's politics and economy. This is what our state is striving



for despite all the most difficult challenges associated with martial law after the outbreak of the war in Ukraine. Unfortunately, the war concerns all spheres of the state as a whole and the life of every family and the fate of every individual citizen of Ukraine. The political, financial and economic instability of the state caused by martial law leads to the accumulation of various risks in various areas of the state, public and social life of society. Which can lead to the development of crises of various levels. In this difficult situation, the work of investigators, prosecutors and all law enforcement officers to prevent crime is even more important than in peacetime. After all, right now the consolidation of society is especially important, which is possible only under the condition of conscious and purposeful support of the rule of law.

The integrative framework of anti-crime activities comprises various measures implemented at three different levels, viz. society-wide, special (expert criminology) and individual. At the society-wide level, crime prevention must be effected by the State, local authorities and administrations, as well as by various civil society organizations, that have no direct responsibilities related to the fight against crime. Forensic *prophylaxis* includes, among other aspects, development and implementation of various social and economic projects and programs, that indirectly contribute to the application of special measures involving expert criminological interference.

It should be remembered that each offense of the category under consideration causes, among other things, material damage. The type of damage and its amount, expressed in property (cash) equivalent, is the subject of a civil claim. In addition, proving the type and amount of harm caused in criminal proceedings is, first of all, of criminal law significance. The amount of damage is the objective side of the committed criminal offense, determines the degree of its public danger, and often the criminal law qualification (Videnko, 2014).

At the special level, crime prevention is effected by the government agencies whose professional duty is the protection of citizens' rights and crime-fighting. In the process, these specialist actors produce a significant impact on criminogenic factors, identify the causes and circumstances conducive to acts of crime and take measures to address them.

At the individual level, crime prevention is effected as a result of ad hoc activities that target individuals or groups having criminal intent and help eliminate the causes and conditions that result in the preparation of and attempts to commit offences (Golina, 2014).

The society-wide patterns of crime prevention should be regarded as a complex of long-term economic, social, cultural and educational measures and actions intended to assist on the one hand social improvement and development, and elimination of the



causes and conditions conducive to negative social phenomena in general and to criminal offences in particular on the other (Golina, 1998).

Aside from the question of political will that is essential to establish a reliable system intended to counteract and prevent corruption, Ukraine needs to provide an adequate legislative support for this system, create an effective system of governance, shape an efficient and well-coordinated anti-corruption regulatory framework (Revak, 2011). The principal anti-corruption measures permitting to implement and monitor anti-corruption strategies would be: 1) monitoring of the conduct and professional contacts of state officials or public servants; 2) periodic monitoring of their activities; 3) identification of the officials and citizens with whom a public servant has random or systematic contacts for the wrong reasons or financial gain; 4) conducting interviews with such public servants; also with their superiors or colleagues, to discuss a broadly or tightly defined sets of issues; 5) performing planned audits or evaluations of the public servant's performance, of its legality and validity; 6) analyze available operational data, statistics, etc.; 7) perform assessments and monitoring of management procedures; also of decision-making processes that most commonly turn into elementary driving forces behind corruption offences. The everyday behavior of decision makers should not be left unattended either (Revak, 2011).

In the conditions of military and political confrontation between Ukraine, which is supported by the democratic states of the world and Russia, the issues discussed in the article become even more acute. This is explained by the fact that taking into account the mechanism of committing such types of criminal offenses as military and corruption crimes with the aim of ensuring compensation for the damage caused in the future, there is a need for international cooperation with foreign law enforcement agencies and international law enforcement organizations. After all, international business entities, criminal proceeds, etc. may be involved in the commission of the specified type of criminal offenses. From the point of view of prevention of committing the above-mentioned category of criminal offenses, it is impossible to ignore the procedural activity of the investigator, the prosecutor, which is aimed at ensuring compensation for the damage caused by the crime. This goal is most effectively implemented by conducting tactical operations aimed at solving the specified task. Such activity includes a significant number of overt and covert investigative (research) actions and operative-research measures, which are implemented by conducting tactical operations.

A key element of the development strategy is the security vector that provides, among other issues, for an anti-corruption reform primarily aimed at reducing the corruption level in Ukraine and the national budget and business losses resulting



therefrom or entailed thereby. This would improve Ukraine's position in the international anti-corruption ranking. To achieve these objectives, the new anti-corruption strategy must be adequately implemented and modern anti-corruption mechanisms put into proper action. It means, inter alia, that the public servants will have to declare their financial standing and property status, that conflicts of interest will be prevented and resolved. Honesty, integrity and lifestyle of the public servants have to be duly monitored. Prevention of political corruption requires fundamental reforms of funding systems for political parties, along with the use of state-of-the-art technologies для обеспечения государством to enhance public access to information in the so-called «open data» of the government format.

Listed among measures and mechanisms for prevention and suppression of corruption-related offences are the following restrictions and prohibitions: a) public servants shall not use their official authority for the improper advancement of their personal or financial interest; b) the receipt of gifts or benefits by public servants by virtue of their function shall be restricted; c) obtaining unlawful benefits or gifts shall be precluded; d) merging of several functions shall be limited; e) after separation from performance of public or local administrative functions, certain restrictions and constraints shall be imposed on former public servants; f) the right of close relatives to work together shall be limited; g) any conflicts of interest shall be prevented and resolved; h) the public servants will have to declare their financial standing and property status; i) government and local authorities shall not be eligible for obtaining benefits, services and assets; j) legal and regulatory acts shall be subject to anti-corruption reviews and assessments; k) thorough screening of public officials aspiring for sensitive positions, jobs with elevated risks of corrupt practices, etc. shall be performed.

These measures are not directly targeting crime, yet they produce a significant impact on criminality.

There are suggests that the notion of crime prevention be approached and considered in broad and narrow senses. Thus, in a broad sense, crime prevention implies a historical pattern of systematic measures aimed at addressing the objective and subjective causes of crime by all civil society institutions' activities targeted at eliminating, reducing or neutralizing the factors that generate criminality and lead to criminal acts. In a narrower applied sense, crime prevention is an activity directed at identification and elimination of the causes and conditions conducive to criminality and criminal acts, as well as at influencing the individuals inclined to commit offences (Koriagina, 2016).

This understanding of crime prevention concept seems quite reasonable, for



indeed, primary prevention activities should be conducted at the state level. First and foremost, they should cover efficient and effective legislative regulation with respect to all areas and spheres of social life; this should not only entail legally binding rights and obligations of citizens, but set out adequate mechanisms to that end and also guarantee their implementation. At this elevated, state level efforts should therefore be undertaken precisely to prevent crime.

Special (or special criminological) crime prevention is a set of various crime-addressing measures taken by government authorities, social organizations, social groups and individual citizens to eliminate the reasons and conditions promoting the commission of illegal activities, as well as to keep crimes from actually happening (Danshin, Golina, Valuiska *et al.*, 2009).

Another aspect of the crime prevention activities relates to the activity of law enforcement bodies that has a preventive effect and aims at: detection and prevention of intended offences; stopping the attempted crimes; identification of conditions or causes that contribute to the commission of criminal acts; implementation of measures directed at the elimination of the aforementioned causes and conditions; prevention of similar criminal acts in the future; identification of individuals who risk committing offences (problem young people and minors, ex-convicts, etc.); taking appropriate preventive measures against the officials or employees known to be inclined to commit corruption offences.

Such activities are often termed «forensic *prophylaxis*». Forensic *prophylaxis* is defined as a) activities carried out by legitimately authorized entities, b) research work based on general crime-related guidelines helping identify the causes and conditions conducive to committing offences, c) special criminological techniques intended to prevention and suppress offences (Matusovsky, 2003). In some consolidated study, this point of view is supported. In conclusion the forensic *prophylaxis* of criminal acts should be seen in two different but complementary perspectives (Shevchuk, 2002), (Meditsky, 2008).

Firstly, it should be regarded as a specific activity carried out by legitimately authorized entities using investigative methods, techniques and tactics intended to deal with certain offences and identify the conditions or causes conducive to committing criminal acts, as well as using special forensic techniques in order to prevent intended criminal activities or suppress those already conducted by particular individuals.

Secondly, forensic *prophylaxis* of crime can be treated as a branch of criminology

It is possible to say that as regards forensic prevention of corruption offences, the purpose of the law enforcement agencies should be primarily to identify the potentially dangerous categories of officials or employees, presumably prone to corruption



offences, and carry out preventive work (discussions, official warnings, reprimands) with these groups of persons. It would also be necessary to identify the causes and conditions conducive to committing corruption offences and thereupon implement activities focused on the elimination of these causes and conditions (by proposing to fill legislative gaps, through the identification of negative aspects in the structure and activities of the state bodies, institutions and organizations. Potentially dangerous activities that could be used in corruption schemes (as well as potentially vulnerable economic spheres, etc.) should also be duly identified.

Prevention of corruption offences at the special level by the law enforcement agencies is tightly linked to the third, individual level of prevention. At the individual level, it means preventing an offence or offences that could be committed by a given person. In other words, crime prevention at the individual level constitutes a segment of the activity under consideration and is effected at the stage preceding the emergence of criminal intent. Removing the danger of the potential offence is the principal purpose of crime prevention at the individual level (Danshin, Golina, Valuiska *et al.*, 2009).

Individual crime prevention measures include a) eliminating the adverse influence on a person's mentality that can turn the person into a social drop-out prone to deviant behavior that poses a threat to the public; b) correction of his or her anti-social behavior and, if necessary, of negative personality traits; c) taking urgent action to prevent offences about to be committed by the afore-said person (Khomenko, 2016).

## **Conclusions**

In wartime, the priorities of the state and society change. War-related issues come to the fore. And even in such incredibly difficult conditions, issues related to crime prevention do not lose their relevance.

Prevention of corruption-related offences means systematic measures adopted and put in place by the State agencies having general or special decisive authority on matters concerning the prevention and suppression of corruption and corruption-related offences. Measures of corruption offences prevention should be carried out at three levels, viz. general, special and individual. At the general level, anti-corruption activities are to be performed by the competent state bodies, institutions and public organizations, at the special level they fall within the competence of law enforcement agencies, while at the individual level they constitute a joint responsibility of the special anti-corruption bodies and law enforcement agencies. At both special and individual levels, effective prevention of corruption-related crimes calls for a number of preventive





activities carried out by specialized agencies within their areas of competence. Individual prevention of corruption-related offences aims at working with those persons who have already committed such offences and with those who by reason of their official positions or capacities are likely or could be inclined to committing similar breaches of the law.