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SYSTEM OF BODIES COMBATING ORGANIZED CRIME OF UKRAINE: PROBLEMS AND POSSIBLE SOLUTIONS

The article presents the results of the analysis of the state of Ukrainian legislation in the field of combating organized crime, through the prism of fulfilling Ukraine's obligations under the United Nations Convention against Transnational Organized Crime, as well as implementation of decisions of the National Security and Defense Council of Ukraine "On the National Security Strategy of Ukraine" dated September 14, 2020 and "On the State Security Strategy and Strategy for Combating Organized Crime" dated December 30, 2023.

It is stated that special services of some foreign states continue intelligence and subversive activities against Ukraine, try to feed separatist sentiments, use organized criminal groups and corrupt officials to strengthen influence. Attention to the need to ensure state security by intensifying the fight against terrorism and organized crime, counteracting the destruction of the state apparatus and local governance due to the spread of systemic corruption in state bodies is emphasized.

According to the results of the study, it is stated that in Ukraine there is no systematic approach to the fight against organized crime (inadequate level of interaction between law enforcement agencies in the relevant field, outdated and unbalanced regulatory framework for combating organized crime, imperfection of the procedure for monitoring the criminogenic situation, lack of a consolidated objective methodology for assessing threats of organized crime, use of obsolete forms and methods of struggle), which leads to aggravation of problems related to organized crime and low level of effectiveness of the fight against it. There is need to consider the issue of establishment of special bodies combatting organized crime and to divide the fight against organized crime into strategic and tactical levels. It is proposed to entrust the fight against organized crime at the strategic level to the state body of special purpose with law enforcement functions.

Key words: *organized crime, criminal liability, fight against organized crime, criminal organization, organized criminal group, criminal community, operational and search activity, terrorist organization, terrorist community, terrorist organized group, terrorist activity.*



Шамара О. В., Комашко В. В. Система органів боротьби з організованою злочинністю України – проблеми та шляхи їх вирішення

У статті представлено результати аналізу стану законодавства України у сфері боротьби з організованою злочинністю, через призму виконання зобов'язань України, за результатами ратифікації Конвенції Організації Об'єднаних Націй проти транснаціональної організованої злочинності, а також на підставі виконання рішень Ради національної безпеки і оборони України схвалено проекти від 14 вересня 2020 року Стратегії національної безпеки України та від 30 грудня 2021 року Стратегію забезпечення державної безпеки та Стратегії боротьби з організованою злочинністю.

Констатовано, що спеціальні служби окремих іноземних держав продовжують розвідувально-підривно діяльність проти України, намагаються підживлювати сепаратистські настрої, використовувати організовані злочинні угруповання і корумпованих посадових осіб для зміцнення інфраструктури впливу. Актуалізовано увагу щодо необхідності забезпечення державної безпеки шляхом інтенсифікація боротьби з тероризмом та організованою злочинністю, протидія руйнуванню державного апарату та місцевого самоврядування у зв'язку з поширенням системної корупції в державних органах.

За результатами проведеного дослідження констатовано, що в Україні відсутній системний підхід до ведення боротьби з організованою злочинністю (неналежний рівень взаємодії правоохоронних органів у відповідній сфері, застаріле та розбалансоване нормативно-правове забезпечення з питань боротьби з організованою злочинністю, недосконалість процедури моніторингу криміногенної ситуації, відсутність консолідованої об'єктивної методології оцінки загроз організованої злочинності, використання застарілих форм і методів боротьби), що призводить до загострення проблем, пов'язаних з організованою злочинністю, та низького рівня ефективності боротьби з нею, що зумовлює необхідність розгляду питання створення спеціальних органів для боротьби з організованою злочинністю. Вказано на необхідність поділення боротьби з організованою злочинністю на стратегічний та тактичний рівень. Запропоновано боротьбу з організованою злочинністю на стратегічному рівні покласти на державний орган спеціального призначення з правоохоронними функціями.

Ключові слова: організована злочинність, кримінальна відповідальність, боротьба з організованою злочинністю, злочинна організація, організована злочинна група, злочинна спільнота, терористична організація, терористична спільнота, терористична організована група, терористична діяльність.

Statement of the problem. Today in Ukraine there are no bodies that, in accordance with the Law of Ukraine "On the Organizational and Legal Basis for the Fight against Organized Crime", are authorized to combat organized crime. Even though the said Law provides for the creation by the Verkhovna Rada of Ukraine, if necessary, on a permanent or temporary basis of special bodies for combating organized crime. The State Bureau of Investigation, not being a state body specially created to combat organized crime and not being a state body involved in the fight against organized crime (Article 5 of the Law Of Ukraine "On the organizational and legal basis for combating organized crime") [1], today is entitled exclusively to *implement information and analytical measures to establish the systematic causes and conditions of manifestations of organized crime and other types of crime, the counteraction to which is within its competence (Article 6 of the Law of Ukraine "On the State Bureau of Investigation")* [2].

The situation regarding the powers of the State Bureau of Investigations on interaction between the prosecutor's office, the National Police, the Security Service of Ukraine in combating organized crime (Article 16 of the Law of Ukraine "On the Organizational and Legal Basis for the



Fight against Organized Crime") has not been determined, since the State Bureau of Investigation has not been identified as the subject of interaction on these issues.

Amendments to the Law of Ukraine "On the Organizational and Legal Basis for the Fight against Organized Crime" will promote, in particular: normalization of existing legislative gaps and will lead to solving of the majority of problems defined in paragraphs 4.1-4.2 and 4.4 of the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defense Sector of Ukraine for 2023-2027 (*Decree of the President of Ukraine No. 273/2023 of 11.05.2023*) [3], in particular: *improving the internal structure and functions of law enforcement agencies and the prosecutor's office, ensuring their rational construction and ability to effectively perform their functions by optimizing resources in accordance with the powers determined by law; strengthening the coordination role of the Prosecutor General's Office, introducing a legal mechanism for concurring and/or approving by the Prosecutor General of interdepartmental acts of law enforcement agencies on pre-trial investigation and operational and search activities* (standards, methodological recommendations); **clear division of powers, functions and areas of responsibility between law enforcement agencies, creation of an effective system of their interaction**. The provisions of Articles 258- 258-4 and Article 258-6 of the Criminal Code of Ukraine do not contain such a qualifying feature as the commission of a crime *by an organized group or criminal organization*, except for part 3 of Article 258-5 of the Criminal Code (Financing of terrorism) [4]. Committing a terroristic act; involvement in the commission of a terrorist act; public calls to commit a terrorist act; facilitating the commission of a terrorist act; terrorist training and crossing the state border of Ukraine for terrorist purposes under the current legislation of Ukraine cannot be qualified as the commission of such a criminal offense *by an organized group, criminal organization, and criminal community*. Such a criminal offense as the creation *of a terrorist group or terrorist organization, management such a group or organization or participation in it, as well as organizational or other assistance to the creation or functioning of a terrorist group or terrorist organization* (Article 258-3 of the Criminal Code of Ukraine) does not provide for a qualifying feature as "committed *by an organized group, criminal organization and criminal community*", and the meaning of such concepts as: "**terrorist group**" and "**terrorist organization**" is not determined by the Criminal Code of Ukraine. Since the unlawfulness of the act, as well as its punishability and other criminal consequences are determined only by the Criminal Code of Ukraine (part 3 of Article 3 of the Criminal Code of Ukraine), such state of legal regulation of the fight against organized crime and terrorism, especially in the context of open aggression of the Russian Federation, is extremely vulnerable and complicates the enforcement of the analyzed provisions of the legislation by law enforcement and judicial bodies. It significantly narrows the possibilities of qualification of criminal acts of the aggressor and organizations related to it.

Results of analysis of scientific publications. In the scientific literature there are many works devoted to the study of the problems of combating organized crime, which in one way or another affect the topic of the article under study. These are the works of O. Busol, M. Verbenskyi, O. Golovkin, V. Grokholskyi, A. Doroshenko, O. Dotsenko, V. Kovalchuk, O. Kyrychenko, M. Kornienko, B. Lizogub, T. Melnychuk, S. Miroshnychenko, D. Sanakoiyev, G. Pozhidaiev, O. Shostko and others. However, no scientific work deals with the issues that are considered within the framework of the proposed study.

The article is aimed at defining the range of problem issues in the sphere of combating organized crime and ways to solve them by providing specific proposals on how to regulate at the level of legislative act the issues of interaction between bodies authorized to carry out operational and search activities in performing functions to counteract organized forms of crime, as well as regulating the legal certainty of criminal liability for committing terrorist crimes in the context of organized groups, criminal organizations and criminal communities.

Brief statement. The Preamble of the Constitution of Ukraine states that the Verkhovna Rada of Ukraine on behalf of the Ukrainian people – citizens of Ukraine of all nationalities, expressing the sovereign will of the people, taking care of strengthening civil harmony on the land of Ukraine and confirming the European identity of the Ukrainian people and the irreversibility



of the European and Euro-Atlantic course of Ukraine, adopts this Constitution – the Basic Law of Ukraine. Article 85 of the Basic Law of Ukraine, paragraph five, includes the authority of the Verkhovna Rada of Ukraine to determine the principles of domestic and foreign policy, the implementation of the strategic course of the state towards Ukraine's full membership in the European Union and the North Atlantic Treaty Organization.

In pursuance of its powers, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On National Security of Ukraine", where Article 3 stipulates that one of the fundamental national interests of Ukraine is Ukraine's integration into the European political, economic, security, legal space, membership in the European Union and the North Atlantic Treaty Organization (hereinafter – NATO), development of equal mutually beneficial relations with other states.

The provisions of Article 102 of the Basic Law of Ukraine stipulate that the President of Ukraine is the guarantor of the implementation of the strategic course of the state towards Ukraine's full membership in the European Union and NATO.

The National Security Strategy of Ukraine, enacted by the Decree of the President of Ukraine dated September 14, 2020 No. 392, stipulates that, taking into account the fundamental national interests defined by the Constitution of Ukraine and the Law of Ukraine "On National Security of Ukraine", the priorities of Ukraine's national interests and ensuring national security are European and Euro-Atlantic integration. Among the current and foreseen threats to national security and national interests of Ukraine, taking into account foreign policy and domestic conditions, the Strategy stipulates that special services of foreign states, primarily the Russian Federation, continue intelligence and subversive activities against Ukraine, try to feed separatist sentiments, use criminal organizations and corrupt officials, try to expand their influence. In addition, it is noted that for the systematic protection of Ukraine from threats to national security, the development of the security and defense sector is necessary. To do this, Ukraine must ensure systematic reform of the National Police of Ukraine, strengthen criminal police and pre-trial investigation bodies, in particular in the field of combating organized and transnational crime [5].

In addition, attention should be paid to the State Security Strategy, approved by the Decree of the President of Ukraine dated February 16, 2022 No. 56/2022. The State Security Strategy defines real and potential threats to Ukraine's state security, directions and tasks of state policy in the field of state security, and it serves as the basis for planning and implementing state security policy. In paragraph 5 of the State Security Strategy, the Security Service of Ukraine is a special state body with law enforcement functions, which ensures the state security of Ukraine, which corresponds to Article 1 of the Law of Ukraine "On the Security Service" [6; 7].

The State Security Strategy stipulates in paragraph 10 *that special services of some foreign states continue intelligence and subversive activities against Ukraine, try to feed separatist sentiments, use organized criminal groups* and corrupt officials to strengthen the infrastructure of influence. Also, among the main tasks of the state policy in the field of ensuring state security in paragraph 24 of the Strategy is improvement of counterintelligence support of state sovereignty, constitutional order, territorial integrity, defense, economic, scientific and technical potential, economic security, critical infrastructure objects from the influence of subjects carrying out intelligence and subversive activities, as well as *intensification of the fight against terrorism and organized crime*, counteracting the destruction of the state apparatus and local self-government due to the spread of systemic corruption in state bodies.

Additionally, the Decree of the President of Ukraine dated 11.05.2023 No. 273/2023 approved the "Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defense Sector of Ukraine for 2023-2027" (hereinafter – the Comprehensive Plan).

It is based on a comprehensive analysis of the activities of law enforcement agencies and the prosecutor's office, as well as problematic issues of their functioning, taking into account the conclusions drawn from the study of previous experience and the provisions of other program documents developed to improve the work of the relevant sector. Its purpose is to increase the priority of reforming law enforcement agencies as part of the security and defense sector, ensuring mod-



ernization and harmonization with standards that Ukraine must achieve on its way to membership in the *European Union*. These measures, primarily aimed at changes in the system of law enforcement agencies, are comprehensive and relate to all aspects of their functioning: from *training and selection of highly professional employees for service to ensuring the efficiency of the system in accordance with international standards*.

At the same time, the general goal of reforming law enforcement agencies is to improve, in particular: management structure, **legislative regulation**, taking into account the needs of law enforcement practice. **The main priorities**, among other things, are to increase the efficiency of the performance by law enforcement agencies and the prosecutor's office of the functions assigned to them, to improve interaction with each other and with other actors of the security and defense sector. As stated by the provisions of the Comprehensive Plan, the current situation requires the approval of a comprehensive legal act, which enshrines the concept of reforms in the field of law enforcement and prosecutor's offices, which will solve a number of problematic issues, in particular: excessive duration of pre-trial investigation due to overload and sometimes **inefficiency of pre-trial investigation bodies and prosecutor's offices, unclear delineation of competences and powers of different law enforcement agencies, duplication of their functions, insufficient harmonization of criminal and criminal procedural legislation of Ukraine with the standards of the European Union**.

Article 116 of the Basic Law of Ukraine stipulates that the Cabinet of Ministers of Ukraine ensures the implementation of the strategic course of the state towards Ukraine's full membership in the European Union and the North Atlantic Treaty Organization.

The Cabinet of Ministers of Ukraine by its Order of September 16, 2020 No. 1126-p approved the Strategy for Combating Organized Crime, which, in particular, states that in the context of armed aggression against Ukraine and attempts to create terrorist organizations in the state, organized crime poses a direct threat to national security [8].

The increase in the level of grave and especially grave crimes committed by organized groups and criminal organizations, in particular with the use of firearms, the establishment of corrupt relations between officials of state authorities, local self-government bodies and criminals, the use of non-competitive methods in the financial and economic activities of enterprises negatively affects economic growth and related social development of Ukraine. Particular attention should be paid to the fact that organized crime is an instrument used by 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.

In today's context, the Law of Ukraine "On the Organizational and Legal Basis for the Fight against Organized Crime" is becoming increasingly important in view of the fact that it was developed and adopted on the basis of General Assembly resolution 55/25 of November 15, 2000 and the United Nations Convention against Transnational Organized Crime (hereinafter – the Convention) signed by Ukraine on 15.11.2000, ratified on 04.02.2004. Date of entry into force of the Convention for Ukraine – 21.05.2004) [9]. And it is this international act that contains such conventional principles, in particular as: criminalization of participation in an organized criminal group (Article 5); criminalization of money laundering (Article 6); anti-money laundering measures (Article 7); criminalization of corruption (Article 8); anti-corruption measures (Article 9); confiscation and arrest (Article 12); international cooperation for the purpose of confiscation (Article 13).

This objectively testifies not only the need for sectoral legislative tools in the fight against organized crime, but also to maintain constant dynamics in its development. Otherwise, it is permissible to ignore such negative social manifestations as human trafficking, corruption, money laundering, etc.

The preamble of the Law of Ukraine "On the Organizational and Legal Basis for the Fight against Organized Crime" stipulates that this Law defines the **main directions of national policy and the organizational and legal basis for** combating organized crime.



Article 5 of this Law defines a system of bodies that counteract organized crime, which includes specially created for combating organized crime state bodies and state bodies involved in the fight against organized crime within the framework of performing other basic functions assigned to them.

State bodies specially created to combat organized crime do *not include any state body*. However, the Law of Ukraine "On the Organizational and Legal Basis for the Fight against Organized Crime" stipulates that, if necessary, the Verkhovna Rada of Ukraine may establish other special bodies on a permanent or temporary basis to combat organized crime.

The state bodies involved in the fight against organized crime include: bodies of the National Police and the Security Service of Ukraine; bodies of the Prosecutor's Office of Ukraine; bodies of incomes and fees, bodies of the State Border Guard Service of Ukraine and bodies of state financial control; penitentiary bodies and detention centers; intelligence agency of the Ministry of Defense of Ukraine; Foreign Intelligence Service of Ukraine; National Anti-Corruption Bureau of Ukraine; Bureau of Economic Security of Ukraine. Despite the fact that the State Bureau of Investigation has been functioning in Ukraine for almost five years, the powers of this body to participate in the fight against organized crime are not properly regulated at the legislative level. The powers of this body, defined by paragraph 2 of part one of Article 6 of the Law of Ukraine "On the State Bureau of Investigation", are limited exclusively to the implementation of information and analytical measures to establish systemic causes and conditions for manifestations of organized crime and other types of crime, the counteraction to which is within the competence of the State Bureau of Investigation, and taking measures to eliminate them.

That is, the State Bureau of Investigation, not being a state body specially created to combat organized crime and not being a state body involved in the fight against organized crime (Article 5 of the Law of Ukraine "On the organizational and legal basis for combating organized crime"), today is entitled exclusively *on the implementation of information and analytical measures to establish systemic causes and conditions of manifestations of organized crime and other types of crime, the counteraction to which is within its competence*.

The situation regarding the powers of the State Bureau of Investigations on interaction between the prosecutor's office, the National Police, the Security Service of Ukraine in combating organized crime (Article 16 of the Law of Ukraine "On the Organizational and Legal Basis for Combating Organized Crime") is still uncertain, since the State Bureau of Investigation has not been identified as the subject of interaction on these issues.

After all, exclusively the provisions of parts 4-6 of Article 16 of the said Law define that the conditions and procedure for exchanging information between units of the Security Service of Ukraine and units of the National Police are regulated by joint regulations of the Ministry of Internal Affairs of Ukraine and the Security Service of Ukraine (part 4); the transfer of operational information by special units for combating organized crime to the territorial bodies of the National Police and the Security Service of Ukraine is allowed only with the consent and written order of the head of the relevant special unit (part 5); territorial bodies of the National Police and the Security Service of Ukraine (within departments) *are obliged to transfer operational information, documents and other materials related to organized crime, as well as criminal proceedings to the relevant special units through the appropriate prosecutor at the written request of special units for combating organized crime*. Heads of territorial bodies of the National Police and the Security Service of Ukraine ensure interaction with special units for combating organized crime and facilitate the fulfillment of tasks assigned to special units (Part 6).

In view of the above, performing by units of the State Bureau of Investigation (*operational units, operational-technical units, units on internal control, units on ensuring personal safety*) of operational-search activities and exchange of information, materials on organized crime should be standardized taking into account the provisions of the Law of Ukraine "On the organizational and legal basis for combating organized crime".

Taking into account the number of bodies involved in the fight against organized crime, there must certainly be coordination of this process.



Such coordination can be carried out by the prosecutor's office, through the prism of enforcement of Article 25 of the Law of Ukraine "On the Prosecutor's Office" [10], which stipulates that the Prosecutor General, heads of relevant prosecutor's offices, their first deputies and deputies, in accordance with the division of responsibilities, coordinate the activities of law enforcement agencies of the appropriate level in the field of combating crime. The main form of coordination is to hold coordination meetings with heads of law enforcement agencies, at which information on their activities in the field of combating crime is heard. The decision of the coordination meeting is binding for all law enforcement agencies specified in it. The procedure and other forms of coordination are approved by order of the Prosecutor General.

However, the prosecutor's office is somewhat limited in the implementation of the coordination function in the field of combating organized crime in relation to intelligence agencies and it is not fully known how such coordination with respect to the counterintelligence body will be implemented, since the final agreed status of the Security Service of Ukraine does not exist and the relevant Law has not been adopted by the Verkhovna Rada of Ukraine as part of the reform of the Security Service of Ukraine.

The above-mentioned aspects and stated in the Strategy for Combating Organized Crime lack of a systematic approach to the fight against organized crime (*inadequate level of interaction between law enforcement agencies in the relevant field, outdated and unbalanced regulation for combating organized crime, imperfection of the procedure for monitoring the criminogenic situation, lack of a consolidated objective methodology for assessing threats of organized crime, the use of outdated forms and methods of fight*) lead to an aggravation of problems associated with organized crime and a low level of effectiveness in combating it, which necessitates consideration of the creation of *special bodies to combat organized crime*.

First of all, such bodies should be defined as law enforcement agencies that have pre-trial investigation bodies in their structure in accordance with Article 216 of the Criminal Procedural Code of Ukraine (investigators of the National Police, security agencies (Security Service of Ukraine), the State Bureau of Investigations, detectives of the Bureau of Economic Security of Ukraine and the National Anti-Corruption Bureau of Ukraine). A separate institution in the fight against organized crime should also be the prosecutor's office, which is responsible for *supervision* of adherence to the law by the bodies conducting operational and search activities, pre-trial investigation, and *procedural guidance* in criminal proceedings, as well as for *coordination* of the activities of law enforcement agencies of the appropriate level in the field of combating crime (Article 36 of the Criminal Procedural Code of Ukraine [11] and Article 25 of the Law of Ukraine "On Prosecutor's Office").

The cornerstone is the issue of regulating at the level of the Law the interaction of state bodies *involved* in the fight against organized crime, defined by the Law of Ukraine "On the organizational and legal basis for combating organized crime". Article 16 of the Law defines the interaction in this matter exclusively between the prosecutor's office, the National Police, and the Security Service of Ukraine. Interaction of bodies on incomes and fees, bodies of the State Border Guard Service of Ukraine and state bodies of financial control; penitentiary bodies and detention centers; intelligence agency of the Ministry of Defense of Ukraine; Foreign Intelligence Service of Ukraine; National Anti-Corruption Bureau of Ukraine; Bureau of Economic Security of Ukraine; The State Bureau of Investigation on the issues regarding combating organized crime is not regulated by the Law.

It should also be noted that the objective of the Convention is to promote cooperation to ensure effective prevention and control of transnational organized crime.

In this connection, it is necessary to mention draft Law of Ukraine on Amendments to the Law of Ukraine "On the Security Service of Ukraine" (registration No. 3196-d) [12] on improving the organizational and legal principles of the Security Service of Ukraine". The final and transitional provisions provide for amendments to the Law of Ukraine "On the Organizational and Legal Basis for the Fight against Organized Crime" and propose to set out Article 5 as follows:



Article 5. The system of state bodies in the field of combating organized crime

1. The system of state bodies in the sphere of combating organized crime consists of:

(a) State bodies fighting organized crime;

b) State bodies involved in the fight against organized crime.

2. State bodies fighting organized crime within the limits of their tasks and functions shall include: a) bodies of the Prosecutor's Office of Ukraine; b) the National Police of Ukraine; c) the Bureau of Economic Security of Ukraine; d) the State Bureau of Investigation; e) National Anti-Corruption Bureau of Ukraine".

Thus, the draft law proposes to exclude the Security Service of Ukraine from the number of state bodies *fighting* organized crime. This approach contradicts the State Security Strategy approved by the Decree of the President of Ukraine, approved by the decision of the National Security and Defense Council of Ukraine. At the same time, the legislator leaves unchanged paragraph three of Article 5 of the Law of Ukraine "On the Organizational and Legal Basis for the Fight against Organized Crime", which states that state bodies involved in the fight against organized crime include: a) bodies of the National Police and the Security Service of Ukraine; b) bodies of the Prosecutor's Office of Ukraine; c) bodies of incomes and fees, bodies of the State Border Guard Service of Ukraine and bodies of state financial control; e) penitentiary bodies and detention centers; f) intelligence agency of the Ministry of Defense of Ukraine; g) the Foreign Intelligence Service of Ukraine; g) the National Anti-Corruption Bureau of Ukraine; h) the Bureau of Economic Security of Ukraine.

The experience of some NATO and EU member states shows that today, for example, the priorities of the US Federal Bureau of Investigation are: protecting the United States from terrorist acts; U.S. protection from foreign intelligence, espionage, and cyber operations; combating significant cybercrime; fight against state corruption at all levels; protection of civil rights; *fight against transnational criminal organizations*; fight against serious crimes; combating violent crime.

The main areas of work of the Internal Security Agency of Poland (*Agencja Bezpieczeństwa Wewnętrznego*) are: counterintelligence, fight against terrorism, counteraction to the proliferation of weapons of mass destruction, fight against economic crimes, *fight against organized crime*, fight against corruption, protection of classified information, analytics.

SRI is Romania's main intelligence service, specializing in the collection, evaluation and management of intelligence information. Among the main tasks of the SRI are to prevent and *counteract* espionage, terrorism and *cross-border organized criminal activity*, which by its nature and scale affects national security; protection of Romanian democratic values, ensuring the security of citizens, as well as the security of economic and secret information.

Therefore, only regulation of the outlined existing legislative gaps will lead to the solution of most problems defined in paragraphs 4.1.–4.2. and 4.4. of a Comprehensive plan, such as: *improving the internal structure and functions of law enforcement agencies* and the prosecutor's office, *ensuring their rational construction and ability to effectively perform their functions by optimizing resources* in accordance with powers defined by the law; *strengthening the coordination role of the Prosecutor General's Office*, *introducing a legal mechanism for concurring and/or approving by the Prosecutor General interdepartmental acts of law enforcement agencies on pre-trial investigation and operational and search activities* (standards, methodological recommendations); ***clear delineation of powers, functions and areas of responsibility between law enforcement agencies, creation of an effective system of their interaction.***

In view of the above, it should be noted that there is a need to divide the fight against organized crime in Ukraine *into tactical and strategic levels*.

According to Article 1 of the Law of Ukraine "On National Security of Ukraine", state security is defined as protection of state sovereignty, territorial integrity and democratic constitutional order and other vital national interests from real and potential threats of a non-military nature [13].

The National Security Strategy of Ukraine, enacted by the Decree of the President of Ukraine dated September 14, 2020 No. 392, stipulates that, taking into account the fundamental national interests defined by the Constitution of Ukraine and the Law of Ukraine "On National Security of



Ukraine", special services of foreign states are identified among the current and foreseen threats to national security and national interests of Ukraine. First of all, it is Russian Federation, which continues intelligence and subversive activities against Ukraine, is trying to fuel separatist sentiments, uses organized and criminal groups and corrupt officials, and seeks to strengthen the influence.

The Strategy for Combating Organized Crime, approved by Order No. 1126-p of September 16, 2020, stipulates that in the context of armed aggression against Ukraine and attempts to create terrorist organizations in the state, organized crime poses a direct threat to national security. The Strategy states that organized crime is an instrument used by special services of foreign states to destabilize the situation in Ukraine and harming national security.

The above should be attributed to the strategic level of the fight against organized crime, which should be entrusted to a *state body of a special purpose with law enforcement functions*. As the experience of some foreign countries, such as Spain, shows, key functions in the fight against organized crime are combined in one state authority that combats terrorist activities.

Analysis of the provisions of Article 258 (Terrorist act), Article 258-1 (Involvement in the commission of a terrorist act), Article 258-2 (Public calls to commit a terrorist act); Article 258-3 (Creation of a terrorist group or terrorist organization); Article 258-4 (Facilitating the commission of a terrorist act, passing terrorism training) and Article 258-6 (Crossing the state border of Ukraine for terrorist purposes) of Chapter IX (Criminal offenses against public security), the Criminal Code of Ukraine in its systemic relationship with the provisions of Article 28 of the Criminal Code of Ukraine (Commission of a criminal offense by a group of persons, a group of persons by prior conspiracy, an organized group or a criminal organization), Chapter VI (Complicity in a criminal offence) and Article 255 (Creation, management and participation in a criminal community or criminal organization), Chapter IX gives grounds to indicate the possible existence of a certain legal gap.

Thus, Article 28 of the Criminal Code of Ukraine determines that a criminal offense is recognized as committed by a group of persons if several (two or more) performers participated in it without prior collusion with each other. A criminal offense is recognized as committed: by *prior conspiracy by a group of persons*, if it was jointly committed by several persons (two or more) who in advance, that is, before the start of the criminal offense, agreed on its joint commission; organized group, if several persons (three or more) participated in its preparation or commission, who previously organized themselves into a stable association to commit this and other (other) criminal offenses, united by a single plan with the distribution of functions of group members aimed at achieving this plan, known to all members of the group; *a criminal organization*, if it is committed by a stable hierarchical association of several persons (five or more), whose members or structural parts by prior agreement have organized for joint activities with the aim of directly committing serious or particularly grave crimes by members of this organization, or directing or coordinating criminally illegal activities of other persons, or ensuring the functioning of both the criminal organization itself and other criminal activities of illegal groups (parts 1–4). According to the prescriptions of part four of Article 255 of the Criminal Code of Ukraine, "*creation of a criminal community*" is an *association of two or more criminal organizations*.

Unfortunately, the provisions of Articles 258–258-4 and Article 258-6 of the Criminal Code of Ukraine do not contain such a qualifying feature as the commission of a crime *by an organized group or criminal organization*, with the exception of part 3 of Article 258-5 of the Criminal Code of Ukraine (Financing of terrorism).

Consequently, the commission of a terrorist act; involvement in the commission of a terrorist act; public calls to commit a terrorist act; facilitating the commission of a terrorist act; terrorist training and crossing the state border of Ukraine for terrorist purposes under the current Criminal Code of Ukraine cannot be qualified as the commission of such a criminal offense *by an organized group, criminal organization and criminal community*.

The objective element of such a criminal offense as the creation of a terrorist group or terrorist organization), leadership of such a group or organization or participation in it (*i.e. terrorist*), as well as organizational or other assistance to the creation or activities of a terrorist group or terrorist



organization (Article 258-3 of the Criminal Code of Ukraine) also does not provide for such a qualifying feature as committed by an *organized group*, *criminal organization* and *criminal community*, and the meaning of such concepts as: "*terrorist group*" and "***terrorist organization***" is not defined by the Criminal Code of Ukraine.

Instead, as already noted, the concept of committing a criminal offense *by prior conspiracy by a group of persons*; – *organized group*; – *criminal organization*; – *the criminal community*, and their criminal and legal characteristics are clearly standardized (formulated) by the provisions of Article 28 and part 4 of Article 255 of the Criminal Code of Ukraine.

An attempt made by the legislator to define such concepts as a "*terrorist group*" (*a group of two or more persons who have united to commit terrorist acts*) and "***terrorist organization***" (*a stable association of three or more persons, which was created for the purpose of carrying out terrorist activities, with delineation of functions, certain rules of conduct, mandatory for these persons during preparation and commission of terrorist acts. An organization is recognized as terrorist if at least one of its structural subdivisions carries out terrorist activities with the knowledge of at least one of the leaders (governing bodies) of the entire organization (part 1 of Article 1 of the Law of Ukraine "On Combating Terrorism")*) (Verkhovna Rada of Ukraine, 2003) does not solve the existing gap, but creates additional inconsistencies in the quantitative composition of "***the criminal organization***" (*five or more people (part 4 of Article 28 of the Criminal Code of Ukraine)*). Compliance with the principle of legal certainty requires a clear distinction and definition of the concepts of "*terrorist group*", "*terrorist organization*" and "*organized group*" and "*criminal organization*", characteristic differences between them. A "*terrorist organization*" is a "*criminal organization*", isn't it? And in current situation, law enforcement agencies, in case of merger of two "*terrorist organizations*" are deprived of the opportunity to qualify the actions of members of a "*terrorist organization*" as creation of a ***terrorist community***, in contrast to the creation of such a stable group as a "***criminal community***" (part four of Article 255 of the Criminal Code of Ukraine), characterized by the highest degree of public danger.

Since the unlawfulness of the act, as well as its punishability and other criminal consequences are determined only by the Criminal Code of Ukraine (part 3 of Article 3 of the Criminal Code of Ukraine), this state of legislative regulation of the fight against organized crime and terrorism, especially in conditions of open aggression of the Russian Federation, is extremely vulnerable and complicates enforcement of the analyzed provisions by law enforcement and judicial authorities. And it significantly narrows the possibilities of qualifying the criminal acts of the aggressor and organizations homogeneous with it.

Under provisions of the Convention, each State Party shall consider analyzing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved, ***and shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency*** (parts one and three of Article 28 of the Convention).

Conclusions. Ukraine today is endowed with a unique opportunity to solve the outlined and other problematic issues in the fight against organized crime not only on the basis of its international obligations (part one of Article 34 of the Convention), but also taking into account the fact that only one calendar year is left before the 20-year term of entry into force of the UN Convention against Transnational Organized Crime in Ukraine until 2024.

And martial law and open aggression of the Russian Federation forces do not allow to delay bringing the criminal law provisions of national legislation into logical coherence for the sake of their most effective enforcement by law enforcement and judicial bodies of Ukraine in compliance with the constitutional principle of legal certainty, which is the guarantor of ensuring the rule of law and protection of human rights and freedoms.

Based on the above mentioned results, it should be concluded that the Law of Ukraine "On the Organizational and Legal Basis for the Fight against Organized Crime" should determine that the bodies fighting organized crime are law enforcement agencies that have pre-trial investiga-



tion bodies in their structure in accordance with Article 216 of the Criminal Procedural Code of Ukraine (investigators of the National Police, Security Service of Ukraine, State Bureau of Investigation, detectives of the Bureau of Economic Security of Ukraine and the National Anti-Corruption Bureau of Ukraine). A separate institution in the fight against organized crime should also be the prosecutor's office, which is entrusted with *supervision* over the observance of laws by bodies conducting investigative operations, pre-trial investigation, and *procedural guidance* in criminal proceedings, as well as coordination of activities of law enforcement agencies of the appropriate level in the field of combating crime (Article 36 of the Criminal Procedural Code and Article 25 of the Law of Ukraine "On the Prosecutor's Office").

Performance by units of the State Bureau of Investigation (operational units, operational-technical units, internal control units, units on ensuring personal safety) of operational and search activities (regarding organized crime) and the exchange of information and materials on organized crime should be regulated by amending the Law of Ukraine "On the organizational and legal basis for combating organized crime".

The provisions of Articles 258-258-4 and Article 258-6 of the Criminal Code of Ukraine (*committing a terrorist act, involvement in a terrorist act, public calls to commit a terrorist act, creating a terrorist group or terrorist organization, facilitating the commission of a terrorist act, undergoing terrorist training and crossing the state border of Ukraine for terrorist purposes*) should be brought into a structurally logical sequence with the provisions of parts 3 and 4 of Article 28 and Article 255 of the Criminal Code of Ukraine and the definitions given in Article 1 of the Law of Ukraine "On Combating Terrorism" by amending the Criminal Code of Ukraine and the Law of Ukraine "On Combating Terrorism".

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