

FOREIGN EXPERIENCE IN PREVENTING MILITARY AND ECONOMIC CRIMES

Oleh Shkuta¹, Maksym Korniienko², Mykola Yankovyi³

Abstract. The *purpose* of the study is to highlight the problematic issues of foreign experience and ways to prevent military and economic crimes. *The main content.* The article analyzes foreign countries, including the countries of the European Union. *Methodology:* the methodological basis of the study is the dialectical method of scientific knowledge, through the application of which the legal, functional, organizational and procedural aspects of methodological approaches to understanding the problematic issues of foreign experience and ways to prevent military and economic crime are considered. *Conclusions.* Based on the analyzed foreign experience in the prevention of military crime, the necessity of creating in Ukraine a special state body in the structure of the Armed Forces of Ukraine, the main tasks of which should be: determining the main directions of state policy in the field of crime prevention in the Armed Forces of Ukraine; conducting nationwide research to identify the level of latent crime in the Armed Forces of Ukraine; coordination of the activities of state structures and law enforcement agencies to implement measures to combat and prevent crime in the Armed Forces of Ukraine; generalization of the practice of combating crime in the Armed Forces of Ukraine and organization of international cooperation on combating and preventing crime in the military sphere, etc.

Key words: crime prevention, military and economic crimes, prevention, war in Ukraine.

JEL Classification:

1. Introduction

The unstable position of Ukraine in the world political and economic arenas has led to an aggravation of the crime situation in the country. A separate and rather urgent problem has become a sharp increase in the number of criminal offenses of an economic nature, as well as particularly serious crimes committed by servicemen of the Armed Forces of Ukraine.

The year 2012 was a turning point for the Ukrainian army from the economic point of view, as for the first time the state budget actually allocated UAH 14.7 billion (0.98% of Ukraine's GDP) for the expenditures of the Ministry of Defense of Ukraine. However, even this amount of money is not enough, as the sustainable development of the Armed Forces of Ukraine requires 1.45% of GDP (21.8 billion UAH). It is also necessary to bring the structure of expenditures in the military sphere closer to the best world standards, according to which the ratio of expenditures on the maintenance of military personnel,

their training and development of weapons and military equipment should be 50%: 20%: 30%, respectively (in Ukraine in 2012 this ratio was as follows: 82%: 5.7%: 12.3%).

According to the Scientific Centre for the Prevention of Corruption in the Security and Defense Sector, as of 2018, 2% of whistleblowers disclosed corruption in the ATO and military units; 22% of reports concerned other offences rather than corruption (Dmytrenko, 2022).

Strengthening the rule of law, prevention of war crimes, especially under martial law, remains extremely important for Ukraine.

The Concept of implementation of the state policy in the field of crime prevention identifies the main problems that need to be addressed, including: imperfection of legal, organizational, financial, personnel, information support for crime prevention; inadequate level of comprehensive preventive measures aimed at eliminating the causes and

¹ Kherson Faculty Odessa State University of Internal Affairs, Ukraine

E-mail: oleh_shkuts@ukr.net

ORCID: <https://orcid.org/0000-0003-0395-5710>

² Odessa State University of Internal Affairs, Ukraine (*corresponding author*)

E-mail: oduvs2015@ukr.net

ORCID: <https://orcid.org/0000-0002-6420-6169>

³ Odessa State University of Internal Affairs, Ukraine

E-mail: m-802@ukr.net

ORCID: <https://orcid.org/0000-0002-5178-084X>



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conditions of crime, as well as preventive work with persons prone to commit them.

Despite the current state of war in Ukraine, the issue of prevention of military and economic crimes is insufficiently researched.

The purpose of the study is to consider the criminological vector of the problem of prevention of military and economic crimes through the prism of analysis of foreign experience of prevention.

2. Literature review

Insufficient research into the problems of crime prevention in the armed forces and the validity of countermeasures has an extremely negative impact on the effectiveness of the Armed Forces of Ukraine.

In criminology, normative legal acts, scientific literature, the terms "prevention", "avoidance", "suppression" and "preventive measures" are used which are similar in meaning. Some scholars distinguish between the terms "prevention" and "preventive measures", associating them with different levels, directions and types of activities. Thus, A. F. Zelinsky defines the concept of "crime prevention" as "a system of measures taken by society to curb the growth of crime and, if possible, to reduce its real level by eliminating and neutralizing its causes and conditions that contribute to it, as well as by preventing and suppressing certain specific crimes." (Kovalova, 2020)

The relationship between the concepts of "prevention", "termination" and "prevention" was most accurately, according to the authors, revealed by Y. F. Ivanov and O. M. Dzhuzha, who understand crime prevention as a multi-level system of state and public purposeful measures to detect, eliminate, neutralization of the causes and conditions of crime. On this basis, prevention is considered as an activity to eliminate, neutralize or weaken the factors that give rise to crime or contribute to it.

Termination consists in actions aimed at stopping criminal activity that has already begun and preventing the occurrence of a criminal result. Prevention is the activity of the state and society aimed at keeping crime at the lowest possible level by eliminating its causes and conditions, as well as preventing and stopping specific criminal offenses.

Depending on the hierarchy of causes and conditions of crime, there are three main levels of its prevention: general social, special criminological and individual, which were considered in Chapter 3 of the thesis.

The main task of the Armed Forces of any state is to defend its sovereignty and protect it from acts of aggression both from other states and within its borders from various dangers (e.g., terrorist groups, etc.). The creation, maintenance and use of the armed forces is the right of the state, which allows

it to remain independent and realize its national interests. The army as an institution of the state appeared with the emergence of the first states of the world. At the same time, the first need for legal regulation of the responsibility of servicemen for military criminal offenses arose (Dmytrenko, 2022).

Not only Ukraine, but also a number of other countries are engaged in the reform of the Armed Forces, and therefore borrowing positive experience of forming their own Armed Forces, solving social problems among officers dismissed from the army, creating a small professional army with highly qualified specialists, etc. is an extremely important task, especially in the current conditions in Ukraine.

3. Materials and methods

The study is based on the work of foreign and Ukrainian researchers on methodological approaches to understanding the problematic issues of preventing military and economic crimes.

With the help of the epistemological method, the essence of methodological approaches to understanding the problematic issues and prevention of war crimes was clarified, thanks to the logical and semantic method, the conceptual apparatus was deepened, the essence of the concepts of problematic issues and ways to prevent war crimes was determined. Using the system-structural method, the constituent elements of methodological approaches to understanding the problematic issues of international experience and ways to prevent war crimes are investigated. The structural-logical method is used to identify the main problematic issues of international experience and ways to prevent war crimes.

4. Results and discussion

According to the materials received from the "White Book" of the Armed Forces of Ukraine, in 2018, information on 57 persons who committed criminal corruption offenses (in 2017 – 64 persons) was processed, including: 6 criminal offences were registered in the Unified Register of Pre-trial Investigations related to misappropriation, embezzlement or seizure of property by abuse of office (Article 191 of the Criminal Code of Ukraine); 1 – abuse of power or official position (Art. 364 of the Criminal Code); 22 – acceptance of an offer, promise or receipt of an undue advantage (Art. 368 of the Criminal Code), which are quantitatively the most common in the Criminal Code; 18 – abuse of influence (Art. 369-2 of the Criminal Code); 6 – theft, misappropriation, extortion of military property or taking possession of it (Art. 410 of the Criminal Code), 4 others.

In 2018, court verdicts (decisions) against 30 people (in 2017 – against 81 people) came into force, including: 24 were convicted (3 – to imprisonment for a fixed term, 18 – to a fine, 3 – released from punishment). In addition, 6 proceedings were closed (2 – amnesty, 2 – expiration of the statute of limitations, 1 – change of circumstances, 1 – due to death).

In 2018, 27 persons were dismissed from military service in the Armed Forces of Ukraine for official offences, including: 16 were deprived of military rank and 11 were brought to disciplinary responsibility. Decisions on 15 persons are still being made by the courts.

Participated in 182 official investigations and anti-corruption inspections (32 in 2017). Losses to the state were prevented as a result of the detected facts of corruption offenses in the amount of about UAH 27.4 million (in 2017 – UAH 22 million). The management of state-owned enterprises was checked for conflicts of interest related to their private enterprises or corporate rights (364 persons were checked, 11 of them were found to work part-time, 45 (12%) – have private enterprises in their personal ownership). According to the decision of the Ministry of Defence leadership, materials on 51 persons were sent to law enforcement agencies, 18 persons were dismissed from their positions (Dmytrenko, 2022).

Misuse of budget funds is another criminal offence that is often committed in the Armed Forces of Ukraine.

Illegal use of budget funds today is a negative phenomenon of social reality, which has become widespread in many sectors. The illegal use of budgetary funds is of particular relevance in the Armed Forces of Ukraine.

Embezzlement of state finances allocated to the Ministry of Defence of Ukraine in the context of the ATO/JFO has increased the threat to national security and unity of our state, increased losses of personnel of the Armed Forces of Ukraine, complicated their modernization and reform. The prevalence of this phenomenon actually contributes to the violation of the constitutional rights of all citizens of Ukraine, as the state is unable to properly finance certain areas of foreign and domestic policy (Dmytrenko, 2022).

According to the military prosecutor's office, during 2010-2014, the number of criminal offenses related to the illegal use of budget funds in the Armed Forces of Ukraine increased by almost 2.5 times: from 31 to 72, respectively. During 2016–2020, their number almost tripled.

According to the international organization Transparency International and NATO experts, about 30% of the budget of the defense sector

of our country is stolen by corrupt officials (Dmytrenko, 2022).

The results of inspections of financial and economic activities of the Armed Forces of Ukraine also testify to the scale of the phenomenon of illegal use of budget funds in the military sphere. Thus, during 2010–2012, in certain areas of the Ministry of Defence of Ukraine, the control and audit bodies found financial violations and criminal offenses related to the illegal use of budget funds totaling UAH 1.3 billion, including those that led to losses of more than UAH 200 million (Dmytrenko, 2022).

In most countries of the world military criminal law is an independent branch of legislation. Exceptions are the CIS and Baltic countries, the republics that were part of the former Yugoslavia, as well as Bulgaria, Hungary, Vietnam, People's Republic of China, Mongolia, Poland, Romania, Czech Republic, Sweden. In these countries, provisions on military criminal offences are included in the texts of criminal codes in the form of separate sections, paragraphs or chapters. In the criminal codes of the CIS countries this section is called "Crimes against military service". In Ukraine it is Chapter XIX of the Special Part of the Criminal Code of Ukraine, which is entitled "Criminal offences against the established order of military service (military criminal offences)" (Articles 401-435) (Dmytrenko, 2020).

In most states, including Ukraine, Azerbaijan, Belarus, Kazakhstan, the Russian Federation, etc., the norms of military-criminal law are directly included in the criminal codes, in connection with which there is a fixed concept of military-criminal misconduct, military crime or crime against military service, and they have no fundamental differences between them, including with the definition of military-criminal misconduct formulated in our legislation and set forth in Article 401 of the Ukrainian Criminal Code (Dmytrenko, 2022).

In the countries of the Anglo-American (Great Britain, Ireland, Canada, Australia, New Zealand, etc.) and Romano-Germanic (Germany, France, Italy, Spain, the Netherlands, Austria, Switzerland, etc.) legal families, as noted above, issues related to military-criminal offenses are not regulated by criminal codes (some of them do not have a criminal code as such). In these countries military-criminal law has become an independent branch of law. At the same time in the legislation of this group of countries there is no unified approach to the definition of the term "military-criminal offenses" (Dmytrenko, 2022).

Thus, for example, in the United States, counteraction to offenses in the military sphere and the issue of criminal and disciplinary responsibility of

servicemen is provided by a huge number of norms of military legislation, among which one of the main places is occupied by the Uniform Code of Military Justice (1951).

The analysis of this legal act gives grounds to assert its punitive nature, since in fact 40% of its norms out of 140 articles reveal the essence of punishable acts, sanctions for their commission and punishment. In addition, the U.S. Uniform Code of Military Justice does not contain the concept of a military criminal offense or crime, but does disclose the concept of a "subject of a military criminal offense," which includes a person who has committed a criminal offense as defined in Title X of this Code, and/or a person who aids, abets, counsels, commands, provides, or ensures the commission of the act, if the act is primarily committed by him (Article 77). (Uniform Code of Military Justice, 1951)

There is no definition of the term "military criminal offence" in France, where the main source of military criminal law is the Code of Military Justice. (Code de Justice Militaire, 2006)

There is no definition of the concept of "military criminal offence" in the UK, whose main legal act in this area is the Armed Forces Act (Code de Justice Militaire, 2006). Despite this, the British Armed Forces Act implements the principle of the priority of criminal law over criminal procedure and other norms. The first section of the document (Articles 1-49) contains exclusively criminal-law provisions. It is devoted to the formulation of criminal offences and general issues of military-criminal law. (Armed Forces Act, 2006)

In Germany, in the normative legal act *Wehrstrafgesetz* (Law "On Military Punishments"), the norm defining the concept of a military criminal offense, although it exists (§2), is formal and refers to the Special part of this law. (*Wehrstrafgesetz*, 1957)

This law (*Wehrstrafgesetz*) (Law on Military Punishments) is the main source of military criminal law; the scope of its action is limited to the criminal offenses formulated in the second part of this law and entitled "War crimes". (*Wehrstrafgesetz*, 1957)

Analyzing the above international normative legal acts, we cannot but agree with Ya. S. Kulkina that in modern conditions the norms of national and foreign military criminal law remain an important legal means of protecting military service relations from criminal encroachments and protecting the interests of the state in military sphere. The attention of legislators of various states is focused on this, as evidenced by its dynamic development. (Dmytrenko, 2022)

Analysis of foreign experience in combating crime shows that in modern conditions criminal manifestations pose a real threat to democratic development and national security in most countries

of the world. Criminal elements, with close interregional and international ties, are increasingly directing their efforts at establishing control over the most profitable areas of economic relations. (Dmytrenko, 2020)

Thus, the absence of a unified national concept of combating crime and the lack of coordination between the national, regional, and branch state programs of social prevention in the corresponding areas do not contribute to the prevention of crime among servicemen in the country. This situation does not correspond to the proclaimed constitutional provisions on a social, democratic and law-governed state, since the current situation does not take into account the realities of today, since the fight against war crimes has long ago become a global world problem, which has become not only national, but also international, transnational in nature. (Dmytrenko, 2022)

Over the past decade, there has been an upward trend in the level of crime in this area worldwide, and at the same time there has been a lack of social and legal control measures for the growing criminalization of social relations. In Ukraine there is no approved at the state level concept of combating crime, which is due to many economic, social, political, legal and other features and contradictions of the development of market relations in the country: the creation of a system of criminal justice has not been completed; the development of national legislation continues; state institutions are introduced, which should meet the best European and world standards in this sphere of social relations. (Shkuta, 2020)

In the early 2000s, the dynamics and trends in crime around the world remained virtually unchanged. The activities of organized criminal groups are becoming more and more sophisticated. This situation occurred in spite of the considerable system of international organizations and institutions to combat war crimes, including: The General Assembly, the Security Council, the Secretariat (sector) for Crime Prevention and Criminal Justice, the Economic and Social Council, the International Court of Justice, the Commission on Crime Prevention and Criminal Justice (created in 1991 from the Committee on Crime Prevention and Control), regional UN research institutes and centers, etc. (Dmytrenko, 2022)

It is extremely alarming that military crime is growing every year in the world as a whole. For example, according to official data, over the past 10 years the main indicators of this type of crime have been increasing in a large part of European countries.

A significant contribution to the fight against crime in the world is made by international non-governmental organizations: the International Association of Penal Law; the International Association of

Criminology and others. A special place is given to the International Criminal Police Organization (Interpol). The fight against crime at the regional level is supported by the Council of Europe (Parliamentary Assembly, Committee of Ministers, European Committee on Legal Cooperation, European Committee on Crime), the Central Criminal Police Agency (Europol).

The analysis conducted by A. M. Klochko testified that the most achievable forms of sharing experience in the fight against crime are: exchange of information on ways of committing, concealing and detecting criminal offenses; special literature; results of scientific research; delegations of practitioners and scientists, etc. The exchange of experience is facilitated by: joint preparation of collections of research papers, scientific and educational literature; information, proposals, and draft legislation; increased international specialization and cooperation in the development of measures aimed at eliminating the causes and conditions that contribute to crime; joint research and implementation of research; and agreement on current and future plans to combat crime among military personnel. (Dmytrenko, 2022)

In France, the National Council for Crime Prevention was created, composed of members of parliament, mayors, ministers, experts and representatives of the business community. The head of the National Council for Crime Prevention, both general and military, is the Prime Minister of the country.

The Council carries out the following tasks: finances crime prevention programs; informs the public about the state of crime; develops national crime control policies; and stimulates state anti-crime initiatives. (Dmytrenko, 2022)

In Britain there is a Standing Conference on the Prevention of Military Crime, which includes representatives of the Confederation of British Industry, the Chamber of Commerce, trade unions, and the Association of Chief Police Officers. This organization includes working groups that specialize in preventing crimes among members of the armed forces. (Dmytrenko, 2022)

A significant achievement of the system of prevention of criminal offenses in developed foreign

countries should be recognized as its thorough legal support. State programs include determining the areas of sociological research, developing their methods, training personnel, financing, organizing and conducting preventive measures with an emphasis on early prevention. (Dmytrenko, 2021)

Programs often include a system of special measures of criminological prevention related to criminal, procedural and penitentiary law. A characteristic feature of the fight against crime among military personnel in the United States in recent decades is the desire for centralized planning and coordination of this sphere of activity, the creation of special bodies for this purpose and giving them fairly broad powers. (Arkusha, 2019)

Similar bodies have been established in many countries around the world that systematically analyze the state of affairs in the area of preventing military-criminal offenses and make appropriate recommendations to government structures for making appropriate decisions. For example, Austria has an advisory service for crime prevention with 143 regional offices; Belgium has a High Prevention Council; Denmark has a High Prevention Council with 46 organizations. (Dmytrenko, 2022)

Therefore, strengthening the rule of law and the prevention of war crimes remains a very topical problem that requires a separate scientific study and legal regulation.

5. Conclusions

Thus, based on the above, it can be concluded that, using the analyzed foreign experience of prevention of military crimes, it seems necessary to create in the structure of the Armed Forces of Ukraine a special state body, whose main tasks should be: to determine the main directions of state policy in the field of prevention of crime in the Armed Forces of Ukraine; conducting nationwide research to identify the level of latent crime in the Armed Forces of Ukraine; coordinating the activities of state structures and law enforcement agencies in implementing measures to combat and prevent crime in the Armed Forces of Ukraine; generalizing the practice of combating crime in the Armed Forces of Ukraine and organizing international cooperation to combat and prevent crime in the military sphere, etc.

References:

- Law of Great Britain. 2006. Armed Forces Act. Available at: <http://www.legislation.gov.uk/ukpga/2006/52/contents>
- Law of France. 2006. Code de Justice Militaire. Available at: https://www.legifrance.gouv.fr/affichCode.do;jsessionid=7310BCC1B7043F38727A23D0C345C797.tpdila10v_3?cidTexte=LEGITEXT000006071360&date
- Larysa Arkusha, Maksym Korniienko, Anastasiia Berendieieva. Criminal activity in Ukraine in the light of current conditions. Amazonia Investiga . Vol. 8 Núm. 24: 386 – 391 / diciembre 2019. (Web of science 2019)

- Dmytrenko, N. (2020). Criminological Characteristics of a Person Who Commits Crimes in the Armed Forces of Ukraine. *European Reforms Bulletin*, vol. 2, pp. 8–11.
- DoD Instruction 5210.91 August 12, 2010. Available at: www.dtic.mil/whs/directives/.../521091p.pdf
- Olena Kovalova, Maksym Korniienko, Yurii Pavliutin. The role of public organizations in ensuring national security of Ukraine Vol. 37, N° 65 (julio-diciembre) 2020, 136–155 *Cuestiones Políticas* Esta revista fue editada en formato digital y publicada en julio de 2020, por el Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela. DOI: <https://doi.org/10.46398/cuestpol.3865.11>
- Iacono, W. G. (2001). Forensic ‘lie detection: Procedures without scientific basis. *Journal of Forensic Psychology Practice*, vol. 1, no. 1, pp. 75–86.
- Saldziūnas, Vitas, Kovalenka, Aleksandras (2013). Legal Régulation and Practice of Psychophysiological Polygraph Examinations in the Republic of Lithuania. *Polygraph*, vol. 42(3), pp. 137–145.
- Shkuta, O. (2020). Crimes in the Military Sphere: Reasons and Conditions. *European Reforms Bulletin*, vol. 2, pp. 74–77.
- Law of USA (1951). Uniform Code of Military Justice. Available at: <https://www.law.cornell.edu/uscode/text/10/subtitle-A/part-II/chapter-47>
- Law of Germany (1957). Wehrstrafgesetz. Available at: <http://www.gesetze-im-internet.de/wstrg>
- Dmytrenko, N., & Shkuta, O. (2022). Crime in the Armed Forces of Ukraine: criminological characteristics and prevention: monograph. Kherson, Ukraine.
- Armed Forces Act, 2006.
- Code de Justice Militaire, 2006.
- Dmytrenko, N. A. (2020). Criminological Characteristics of a Person Who Commits Crimes in the Armed Forces of Ukraine. Odessa, Ukraine.
- Shkuta, O. O. (2020). Crimes in the Military Sphere: Reasons and Conditions. Odessa, Ukraine.
- Uniform Code of Military Justice, 1951.
- Wehrstrafgesetz, 1957.

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