

## УГОЛОВНОЕ ПРАВО, УГОЛОВНО-ИСПОЛНИТЕЛЬНОЕ ПРАВО

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### ON SOME SUBSTANTIVE ELEMENTS OF THE PENSION FUND OF UKRAINE AS CRIME PREVENTION SUBJECT

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#### SUMMARY

In the article, on the basis of analysis of statistics on crime in Ukraine during 2014–2018 years, the necessity of more active involvement in the preventive activity of the pension fund of Ukraine as one of non-specialized subjects of prevention and scientifically grounded measures in this direction.

**Key words:** state of crime, Crime trends, Pension fund of Ukraine, Crime prevention, Subjects of preventive activity, criminal offence, Classification of crimes.

#### ПРО ДЕЯКІ ЗМІСТОВНІ ЕЛЕМЕНТИ ДІЯЛЬНОСТІ ПЕНСІЙНОГО ФОНДУ УКРАЇНИ ЯК СУБ'ЄКТА ЗАПОБІГАННЯ ЗЛОЧИНАМ

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#### АНОТАЦІЯ

У статті, на підставі аналізу статистичних даних про злочинність в Україні протягом 2014–2018 років, доведена необхідність більш активного залучення до запобіжної діяльності Пенсійного фонду України як одного із неспеціалізованих суб'єктів запобігання злочинам, а також розроблені науково обґрунтовані заходи в цьому напрямі.

**Ключові слова:** стан злочинності, тенденції злочинності, Пенсійний фонд України, запобігання злочинам, суб'єкти запобіжної діяльності, кримінальне правопорушення, класифікація злочинів.

**Formulation of the problem.** According to the practice of combating crime in Ukraine in 2014–2018, despite the reduction of 7,9% of the number of committed in 2018, criminal offences (total 487 133 crimes) [1] to equal from the 2014 year (529 139 crimes) [2], the state of law in Our state remains strained and complex, which testifies to improper enforcement of law enforcement bodies and courts of the requirements of Art. 3 of the Constitution of Ukraine that the state complies with the person for its activity, the content of which is to ensure the rights and freedoms of the object of legal protection and guarantees of their implementation [3]. Thus, from the total number of committed during this period, criminal offenses were warned by law enforcement bodies at the stage of preparation (Art. 14 of the Ukrainian Criminal Code) and attempted offence (Art.15 of the QA) only 0,6% (in 2014–3 220, and in 2018–2 763). Among other criminological significant in this context the data pays attention to those that constitute the content of the tendencies of crime, which have gained its development in 2014–2018, namely: a) high specific weight in the structure of the general crime of serious Crimes (Part 4 of Art. 12 KK), which number in the year 2018 to equal from 2014 year increased by 5,4% (from 29,1 to 34,5%); b) a significant number of crimes of average severity (Part 3 of Art. 12 of the QC) – respectively 40,4% (2018) and 40,8% (2014); c) Virtually unchanged there is a number of crimes of small severity

(Part 2 of Art. 12 of the CC) – In 2014–133 259 (25,2% in the general structure of crime), and in 2018–106 768 (21,9%).

Thus, there is a complex applied problem that needs to be resolved including the theoretical level. It seems that the essence of it lies in the fact that the fight against crime in Ukraine as a whole and to preventive activity is rather sluggish and ineffectual involved in the doctrinal sources of various crime prevention actors (specialized; Non-specialized; Partially specialized) [4, p. 64], including potential opportunities of the pension fund of Ukraine.

**The relevance of the research topic.** The above mentioned circumstances and determined the choice of this scientific article, and also identified its main task – to prove the necessity of more active involvement in the preventive activity of the pension fund of Ukraine, as one of non-specialized subjects. To prevent crimes and to develop scientifically justified measures in this direction.

**Status of research.** The study of scientific literature showed that the above question in criminology was not developed enough (in general terms only). Along with this, a significant methodological basis in the context of classification of crime prevention subjects have been developed by such scholars as: G. Avessov, Yu. Antonin, L. Bakriy-Shakhmatov, M. Bazhanov, A. Banddurka, V. Batirgareva, Yu. Baulin, A. Boyko, V. Borisov, V. Vasylevych, B. Volkov, V. Golina,

V. Hrytchuk, A. Gumin, A. Gurov, L. Davydenko, I. Danshyn, V. Dremyn, A. Dzhyzha, A. Zabkaliuk, A. Zelinsky, K. Ithosov, V. Kaminska, O. Kvasha, A. Kolb, A. Kostenko, N. Kuznetsova, O. Kulyk, A. Lyvak, A. Litvinov, V. Lyholob, V. Luneev, O. Martynenko, M. Melent'yev, V. Merkulova, G. Minkovsky, P. Mikhaylovsky, I. Noi, P. Osipov, M. Panov, S. Pozyshev, V. Pomelkin, A. Ryabchinskaya, L. Savrasov, G. Sarkisov, A. Sakharov, E. Stryeltsov, V. Tulyakov, P. Fefelov, P. Fris, A. Frolova, V. Shatkun, M. Shargorodsky, Yu. Shamshukenko, I. Shmagov, A. Yarysh, etc.

**The Object and Purpose of the Article.** Along with this, given the current state of crime in Ukraine, as well as the results of criminological research on the specified issues, it is necessary to acknowledge that the subject of the research is topical and that has a theoretical and practical significance.

**Presentation of the main material.** In criminological literature under the subjects of crime prevention understand organs, institutions, organizations, enterprises, as well as officials (employees) and individual citizens, on which the law is assigned the tasks and functions of identification, elimination, Weakening, neutralization of the causes and conditions that contribute to the existence and spread of crime in general, its individual species and specific crimes, as well as from the content from the transition to the criminal path and to ensure the re-socialization of persons prone to committing crimes (Relapse) [4, p. 63]. At the same time, putting in the basis of functional sign, first of all the real influence of the performed functions and their corresponding activities on elimination (neutralization) of the Determinants of crime and criminal manifestations, A. Zaskaliuk Subjects of prevention The crime divided into several groups, namely-on:

a) bodies and organizations that manage this activity, organize it, create a control system (public authorities and management, local authorities);

b) bodies and organizations, in respect of which the prevention of crime and criminal manifestations is attributed or should be attributed to the main tasks and functions (Mia, SSU, prosecutors, court, specialized public organizations);

c) organs, institutions, organizations, functions and powers that do not have a target for the prevention of crime and criminal manifestations, but their activities are mediocre to influence the precautionary processes concerning the determinants of crime and certain crimes ( Institutions of education, culture, health care, social assistance, administration of enterprises, institutions, organizations, etc.) [5, p. 346].

At the same time, as it is proven at scientific and practical levels, the activities of all crime prevention entities must be organized in such a way that:

1. The purposeful implementation of preventive activities as their functions was organized.

2. Has been supplied with the elements of the system "horizontally" (interaction) and "vertically" (subordination).

3. The control mechanism of the system was steadily carried out.

4. There was a choice of line of conduct in accordance with the State of the object of preventive influence [4, p. 63].

Along with this, it is necessary to note that other criteria of classification of crime prevention are found in scientific sources. As for this reason, the conclusion of A. Zaskaliuk, it is important that at the same time provided observance of general principles and Rules of classification, in front of all its one-decency, holding on a single basis, etc. [5, p. 346]. Thus, in place in the state and public system, the actors of crime prevention are classified as: a) state; b) non-governmental, including enterprises, institutions and organizations, community associations and specialized formations; c) Individual citizens [4, p. 64]. In its turn, by tasks, competencies and content of preventive activity, crime prevention actors are divided into:

1. Authorities of the general competence (their institutions, organizations, enterprises).

2. Not specialized.

3. Partially specialized.

4. Specialized bodies [4, p. 64].

Based on the classification, it is necessary to acknowledge that the pension fund of Ukraine belongs to the so-called non-specialized subjects of crime prevention, as the task of preventive nature concerning the sphere of crime control, Normative legal regulations that determine the legal status of the state authority are not defined as the main. At the same time, given that the pension fund of Ukraine enters the system of public administration, one of its tasks of facultative direction is to prevent crimes and violations that are committed in the field of social population.

Such a conclusion is derived from the socio-legal nature of the pension fund of Ukraine, namely:

1. Provisions of the Constitution of Ukraine, in particular from the contents of the article. 46, which states that citizens have the right to social protection, including the right to ensure them in case of complete, partial or temporary disability, loss of a survivor, unemployment from independent circumstances, as well as in old age and other Cases stipulated by law. Moreover, as it flows from the content of the specified legal norm, this right is guaranteed public social insurance due to the insurance contributions of citizens, enterprises, institutions and organizations, as well as budgetary and other sources Social Security; The creation of a network of public, communal, private institutions for caring for non-working, and pensions, other types of social payments and assistance, which is the main source of existence, should ensure the standard of living, not lower than the living wage, Established by law.

2. The Law of Ukraine from 09.07.2003 № 1058-IV "On compulsory State pension insurance", in Part 1 of Art. 7 which is determined by the principle of responsibility of the subjects of mandatory state pension insurance for violation of the rules of this Law, as well as for failure or improper fulfillment of the duties imposed on them [6].

3. The Law of Ukraine of 05.11.1991 of the year № 1788-XII "On pension provision", which guarantees social protection of pensioners by establishing pensions at a level oriented at the subsistence minimum, as well as regular revision of their size in connection with Increasing the size of the minimum consumer budget and increasing the efficiency of the Republic economy.

However, section V of the mentioned Law determines the responsibility of enterprises, organizations and citizens for the damage caused to citizens or the state due to untimely execution or presentation of pension documents, as well as for issuing unreliable documents [7].

4. The Law of Ukraine dated July 8, 2010, № 2464-VI "On collection and accounting of a single payment for compulsory State social insurance", Part 2 of the Art. 3 which determines the principle of liability of payers of the single payment and the body that carries out the collection and maintains a single payment, for violation of the norms of this law, as well as for failure or improper fulfillment of the duties assigned to them. So, Paragraph 9 Part 1 of Art. 13 The right of the executive authority, which provides the formation and implements the state tax policy, in case of finding of facts violation of the order of accrual, calculation and payment of a single payment, shall be obtained in accordance with the procedure established by law Appropriate law enforcement agencies, and Art. 26 establishes responsibility for violation of the law as the officials of the single payment and insured persons and the Pension Fund and its bodies. The law also identifies the rights and obligations of the pension fund of Ukraine and other social insurance funds [8].

5. The Law of Ukraine from 26.06.1997 № 400/97-BP “On the collection of compulsory state pension insurance” in the Art. 1 which is indicated that control over payment (keeping) the fee for compulsory state pension insurance is carried out by the central body of executive power, which implements the State policy on administration of a single contribution to the mandatory state Social Insurance [9].

6. Law of Ukraine of 23.09.1999 № 1105–XIV “On compulsory State social insurance”, Part 10 Paragraph 1 of Art. 3 which determined the principles of responsibility of employers and the Fund for realization of the right of insured person for financial provision and social services under this Law [10].

7. Other normative and legal acts (more than 40-a), which also only in general terms, is conducted on the following task of the pension fund bodies, as prevention of crime and crimes in the sphere of social security.

In general, if you summarize all the specified and other normative-legal sources of the mentioned problem, it should be stated that the pension fund is attributed to non-specialized subjects of crime prevention. Along with this, it pays attention to the fact that in the structure of all the bodies of the pension fund there are also subdivisions that perform in their essence and tasks of partially specialized subjects of preventive activity. In particular, in accordance with the Law of Ukraine “On prevention of corruption” [11], in the system of this fund there are units to prevent corruption (sectors and key specialists on these issues). In addition, the fund created and operated internal audit and financial control units, and is now developed a question on the creation of the units of control and verification work and internal audit.

In this regard, it is necessary to acknowledge that the Fund carries out the functions of a partially specialized subject of infringement and crime prevention. At the same time, given that the mentioned functions do not belong to the main, and the essential areas of the pension fund of Ukraine are clearly defined at the constitutional and legislative levels, which in greater order regulate the issues of its social activity, all the same It should be stated that the tasks to prevent crimes of its units perform “passing”, and therefore for these reasons, in general, the Fund should be considered a non-specialized subject of preventive activity.

**Conclusion.** Thus, based on the dualistic socio-legal nature of the functions and tasks of the pension fund of Ukraine, its bodies and separate subdivisions, it is necessary to acknowledge that there is a specific theoretical and applied problem, which should be the subject of the active scientific discussion and relevant doctrinal developments, taking into account the current state of crime in Ukraine and the low level of involve-

ment in combating the potential opportunities of other actors to prevent violations, including the present state Body.

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