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## THE ROLE AND PLACE OF ATTORNEYS AMONG ACTORS OF GENERAL SOCIAL CRIME PREVENTION

**Abstract. Purpose.** The purpose of the article is to prove the need for more efficient use of the potential legal capabilities of attorneys-at-law in the context of general social crime prevention. **Results.** Relying on the content of general social crime prevention, the article identifies the potential legal capabilities of an attorney-at-law in counteracting criminal offences among the relevant actors of this type of criminological activity. It is established that, acting as a defender of the rights, freedoms and legitimate interests of individuals in criminal proceedings, an attorney-at-law is objectively forced to take a set of measures aimed at identifying and eliminating the deterministic set of causes and conditions which contribute to the commission of specific crimes which are subject to criminal proceedings and which are ultimately assessed in a court decision regarding the guilt, degree of public danger, existence of mitigating or aggravating circumstances of a person whose interests are at stake. Moreover, in the context of general social prevention of criminal offences, it is established that an attorney-at-law, primarily as a participant to criminal proceedings, should focus on the determinants of crime which have a socio-economic, cultural, educational and other similar social origin, and take appropriate actions to block, neutralise, eliminate, etc., using the measures provided for by the criminal procedure legislation of Ukraine. In addition, as the results of this study have shown, the effectiveness of criminological activities of attorneys-at-law in this area of crime prevention is affected by a number of circumstances, which in this work include the following 1) the absence in the Law of Ukraine 'On the Bar and Practice of Law' of a direct and clear legal obligation for these participants in criminal proceedings to identify the determinants which have contributed to the commission of a criminal offence by suspects and other defendants; 2) conflict between the provisions of this legislative instrument and the Criminal Procedure Code of Ukraine, which define the principles of criminal proceedings and the activities of advocates; 3) legal insecurity and gaps related to the implementation by advocates in practice of the principles of equality and competitiveness of the parties in criminal proceedings; etc. **Conclusions.** The review of regulatory and doctrinal sources, this article states that without improving the legal framework for the activities of an attorney-at-law, it is exceptionally problematic to enhance his/her role and place among the actors of general social prevention of criminal offences and, in general, the effectiveness of the criminological component in the criminal procedure of Ukraine.

**Key words:** attorney-at-law; criminal offence prevention actor; general social prevention; criminal proceedings; subject matter of proving; principles of criminal proceedings; determinants of crime.

### 1. Introduction

Following the scientific approaches, it should be noted that general social prevention includes general social and special criminological components. Given that the subject matter of this study is general social crime prevention performed by attorneys-at-law, it is undoubtedly worthwhile to base their activities on the content of this type of criminological crime prevention.

Scientific research defines general social crime prevention as a complex of promising

socio-economic, cultural and educational measures aimed at further development and improvement of social relations and at the same time elimination or neutralisation of the determinants of this socially dangerous phenomenon (Danshyn, 2003, pp. 95-96).

For its part, practice suggests that general social crime prevention in general (without determining the impact of individual crime prevention actors) realises the anti-crime potential of society and its institutions. Moreover, the specifics of the transitional period, includ-

ing martial law, currently underway in Ukraine, are such that crises, disproportions and other negative phenomena that determine crime are more noticeable in various sectors of public life than circumstances that constantly counteract it (Kalman, 2010).

According to some researchers analysing the definition and content of legal socialisation of an individual, it can be stated that this activity is a special process of not unidirectional influence of society on an individual but interaction between them, as well as all structural elements of human nature (Dzoban, Manuilov, 2009).

Therefore, in O.M. Dzhuzha's opinion, it is impossible to interpret general social crime prevention within the same concepts and dimensions in the current conditions, especially given the current determinants of crime in Ukraine (Kolb, Novosad, 2017: pp. 169-178).

Obviously, this does not mean that the relevant type of general crime prevention has become impossible or incorrect due to the fact that crime is a direct and very serious threat to national security (Lytvak, 1997), so the importance and role of prevention under consideration for attorneys-at-law is crucial.

By relying on the above, it can be stated that general social crime prevention should be the basis for the criminological activities of attorneys-at-law in Ukraine.

Given the above and the current criminologically significant crime rates in Ukraine (Batyrgareieva, Babenko, 2020, pp. 39-54), the purpose of the article is to prove the need for more efficient use of the potential legal capabilities of attorneys-at-law in the context of general social crime prevention.

On the other hand, the main objective of this work is to clarify the role and place of an attorney-at-law among the actors of general social crime prevention, with due regard for his/her legal status as a participant to criminal proceedings.

The literature review has determined that the following scholars are quite actively and substantively deal with the issues of preventive activities of the relevant actors: V.S. Batyrgareieva, Yu.V. Baulin, V.V. Vasylevych, A.A. Vozniuk, V.V. Holina, B.M. Holovkin, O.M. Dzhuzha, V.M. Dremin, O.H. Kolb, O.M. Kostenko, V.Ya. Konopelskyi, V.A. Myslyvyi, D.M. Tychyna, V.O. Tuliakov, V.I. Shakun, and others.

However, it should be noted that in the context of the subject matter of the present scientific article, this issue has been poorly studied at the doctrinal level that is decisive in choosing the topic of this work, and thus determines its relevance and theoretical and practical significance.

## **2. General social crime prevention with the participation of attorneys-at-law**

The results of the present study suggest that the content of general social crime prevention, including the legal capabilities of attorneys-at-law in criminal proceedings, is that its implementation reduces social contradictions and criminal confrontation between different segments of the population, as well as reduces unemployment and improves living standards, and also generally allows for an effective impact on the process of eliminating, blocking, neutralising, etc. the determinants which contributed to the commission of a particular criminal offence.

Moreover, practice proves that the general social crime prevention with the participation of attorneys-at-law covers a wide range of spheres of life of Ukrainian society. For example, in the economic sector, it encourages the development of production on the basis of modern technologies, the implementation of a well-thought-out structural and investment strategy for each redistribution of property, the strengthening of the national currency and the entire financial system, as well as the reduction of inflation and the improvement of many other areas of economic relations (Vozniuk, 2016).

Meanwhile, in the political sector, this type of criminal offence prevention by advocates is closely related to the processes of formation and development of the new Ukrainian statehood, as well as strengthening of democracy and all branches of state power, implementation of political will in confronting socially negative phenomena and processes in a multi-party system (Liubchenko, 2008) and the presence of potential threats to the national security of Ukraine (Kolb, Pyrozhyk, 2020).

On the other hand, in the social sector, this is the criminological activities of lawyers aimed at eliminating various social stratifications of society; supporting poor citizens, strengthening family values; ensuring proper conditions for socialisation of alienation and limiting the negative effects of unemployment, as well as reducing the level of forced migration, etc. (Maksymov, 2009).

## **3. Legal measures to prevent crimes committed by attorneys at law**

Finally, in the legal field, the measures of general social crime prevention performed by attorneys at law determine the content of activities on improvement of legislation which is not directly aimed at crime prevention, considering various social relations arising in the course of criminal proceedings (labour, family, civil, etc.) to be subject to legal regulation. Although these legal relations are disordered (not systematised),

they undoubtedly play a criminogenic role in the mechanism of criminal conduct of the perpetrator (Kolb, Prysiazhniuk, 2018, pp. 71-73).

Therefore, general social crime prevention is a positive effect of well-thought-out social policy, implemented by attorneys at law, not only and not so much for the purpose of direct prevention of socially dangerous acts, since the relevant social measures are aimed at establishing the rule of law, respect for constitutional human rights and freedoms, as well as at strengthening public order and solving problems of combining social, industrial, family and household interests of a person and his or her family in general, which arise in the course of criminal proceedings (Dzhuzhy, 2011).

As established in the course of this study, the main focus of the general social crime prevention with the participation of attorneys-at-law in criminal proceedings is to identify, neutralise, block, etc. the determinants of crime. That is why the measures of this type of crime prevention have an extremely wide range for the criminological activities of attorneys-at-law, since they affect almost all types, groups and other determinants of crime related to the activities of other participants to criminal proceedings. In addition, in practice, the multidimensional, comprehensive nature of the crime prevention by attorneys-at-law is most clearly manifested at the general social level. Furthermore, its content and practical value are due to interrelated measures, including victimisation, which have an impact on various fields of activities of society and the State (economic, social, legal, etc.) (Holovkin, 2020).

#### 4. Conclusions

Thus, if we summarise the current scientific approaches to this issue and allow for the organisational forms and types of the Practice of Law (Articles 13, 14, 15, 19 of the Law of Ukraine 'On the Bar and Practice of Law'), then 'general social crime prevention by attorneys-at-law' should be understood as a set of measures of a legal, economic, social and other nature, performed by the attorneys-at-law on a voluntary basis in the course of criminal proceedings and in accordance with the law, both individually and jointly with other attorneys-at-law, aimed at identifying the determinants of crime in Ukraine and taking actions to eliminate, block, neutralise, etc. in cooperation with other actors of criminological practice.

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## РОЛЬ І МІСЦЕ АДВОКАТА СЕРЕД СУБ'ЄКТІВ ЗАГАЛЬНОСОЦІАЛЬНОГО ЗАПОБІГАННЯ ЗЛОЧИНАМ

**Анотація.** *Метою* статті є обґрунтування необхідності більш ефективного використання потенційних правових можливостей адвокатів у змісті загальносоціального запобігання злочинам. **Результати.** У науковій статті, виходячи зі змісту загальносоціального запобігання злочинності, визначено потенційні правові можливості адвоката у протидії вчиненню кримінальних правопорушень серед відповідних суб'єктів даного виду кримінологічної діяльності. Зокрема, встановлено, що виступаючи захисником прав, свобод і законних інтересів фізичних осіб у ході кримінального провадження, адвокат об'єктивно вимушений здійснювати у зв'язку з цим комплекс заходів, спрямованих на виявлення та усунення в подальшому детермінаційного комплексу причин і умов, які сприяють вчиненню конкретних злочинів, що стають предметом кримінального процесу та, в кінцевому підсумку, отримують оцінку у рішенні суду щодо вини, ступеня суспільної небезпеки, наявності пом'якшуючих або обтяжуючих обставин особи, інтереси якої пред'являє адвокат. При цьому констатовано, що при здійсненні загальносоціального запобігання кримінальним правопорушенням адвокат, у першу чергу, як учасник кримінального провадження, звертає на увагу на ті детермінанти злочинності, які мають соціально-економічну, культурно-виховну та іншу тому подібну суспільну природу походження, та вчиняє відповідні дії щодо їх блокування, нейтралізацію, ліквідацію тощо, використовуючи передбачені кримінально-процесуальним законодавством України заходи. Поряд з цим, як показали результати даного дослідження, на ефективність кримінологічної діяльності адвокатів з означеного напрямку запобігання злочинам впливає низка обставин, до яких у вказаній роботі віднесені наступні із них: 1) відсутність у Законі України «Про адвокатуру та адвокатську діяльність» прямого та чіткого обов'язку для цих учасників кримінального провадження юридичного обов'язку щодо виявлення детермінант, які сприяли вчиненню кримінального правопорушення з боку підозрюваних та інших підзахисних осіб; 2) колізійність норм зазначеного законодавчого акту та Кримінального процесуального кодексу України, що визначають принципи кримінального провадження і діяльності адвокатів; 3) правова незабезпеченість та прогалини, що пов'язані з реалізацією адвокатами на практиці принципів рівності та змагальності сторін у кримінальному провадженні; ін. **Висновки.** Виходячи з проведеного аналізу нормативно-правових і доктринальних джерел, у цій науковій статті констатовано, що без удосконалення правових засад діяльності адвоката вкрай проблематично підвищити його роль і місце серед суб'єктів загальносоціального запобігання кримінальним правопорушенням та у цілому ефективність кримінологічної складової у кримінальному процесі України.

**Ключові слова:** адвокат; суб'єкт запобігання кримінальним правопорушенням; загальносоціальне запобігання; кримінальне провадження; предмет доказування; принципи кримінального провадження; детермінанти злочинності.

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