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Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"  
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia  
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# **Criminal liability for the establishment or spread of criminal influence in post-Soviet countries (literature review 2011-2021)**

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**Igor Paryzkyi \***  
**Oleksii Humin \*\***  
**Roman Maksymovych \*\*\***  
**Oksana Panchak \*\*\*\***  
**Volodymyr Kantsir \*\*\*\*\***

## **Abstract**

The purpose of this study was to review the literature on the types of criminal liability for the establishment or spread of criminal influence in the countries of the post-Soviet space. Achievement of the set goal implied the resolution of the following task: the analysis of legal acts in the sphere of criminal justice. The specific subject was the social norms regulated by law, which are formed in the sphere of criminal justice in the fight against criminal action. Theoretical ideas about the activities of criminal justice bodies are also reviewed. The methodological basis of the research consists in the combination of general and special research methods. The theoretical basis was the scientific works of researchers on the issue of criminal liability. It is concluded that, in the reviewed literature, on the one hand, post-Soviet countries faced with the problem of combating organized crime and forced to take immediate measures to combat it; on the other hand, the methods and mechanisms to prevent, counter and combat organized crime, were

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\* Doctor of Science (PHD), Pro-rector, Professor of Marketing, Economics, Management and Administration National Academy of Management, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0001-6835-5930>

\*\* Doctor in Law, Professor, Head of the Department of Criminal Law and Procedure of the Educational and Scientific Institute of Law, Psychology and Innovative Education, Lviv Polytechnic National University, Lviv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-8016-945X>

\*\*\* Candidate of legal sciences (PhD), Associate Professor of the Department of Criminal Law Disciplines, Institute of Law, Lviv State University of Internal Affairs 79007, Lviv, 26 Horodotska str., Lviv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-9796-998X>

\*\*\*\* Candidate of legal sciences (PhD), Associate Professor of the Department of Criminal Law and Criminology, Ivan Franko National University of Lviv Ivan Franko National University of Lviv, Faculty of Law, Department of Criminal Law and Criminology, 1, Universytetska St., Lviv, 79000, Ukraine. ORCID ID: <https://orcid.org/0000-0001-5655-3956>

\*\*\*\*\* Doctor of Law, Professor of the Department of Criminal Law and Procedure of the Training and Research Institute of Law, Psychology and Innovative Education, Lviv Polytechnic National University, Ukraine. ORCID ID: <https://orcid.org/0000-0002-3689-4697>

relatively similar, focused mainly on preventive measures to the emergence of this phenomenon.

**Keywords:** post-Soviet space; criminal influence; criminal liability; scientific literature review; criminal law in Eastern Europe.

## La responsabilidad penal por el establecimiento o la propagación de la influencia criminal en los países postsoviéticos (revisión de la literatura 2011-2021)

### Resumen

El propósito de este estudio fue revisar la literatura sobre los tipos de responsabilidad penal por el establecimiento o la propagación de la influencia criminal en los países del espacio postsoviético. La consecución del objetivo fijado implicó la resolución de la siguiente tarea: el análisis de los actos jurídicos en el ámbito de la justicia penal. El tema concreto fueron las normas sociales reguladas por la ley, que se forman en el ámbito de la justicia penal en la lucha contra la acción criminal. También se revisan las ideas teóricas sobre las actividades de los órganos de justicia penal. La base metodológica de la investigación consiste en la combinación de métodos de investigación generales y especiales. La base teórica fueron los trabajos científicos de los investigadores sobre la cuestión de la responsabilidad penal. Se concluye que, en la literatura revisada, por un lado, los países postsoviéticos que se enfrentan al problema de la lucha contra la delincuencia organizada y se ven obligados a tomar medidas inmediatas para combatirla; por el otro, los métodos y mecanismos para prevenir, contrarrestar y combatir la delincuencia organizada, fueron relativamente similar, se centraron principalmente en las medidas preventivas a la aparición de este fenómeno.

**Palabras clave:** espacio postsoviético; influencia criminal; responsabilidad penal; revisión de literatura científica; derecho penal en Europa del este.

### Introduction

The establishment or spread of criminal influence is an extremely negative phenomenon in the life of any society, but it should be noted that this phenomenon is typical for post-Soviet countries and atypical for European countries that have established democratic traditions, effective

legislation in the field of criminal justice, as well as the developed mechanism of counteraction, fight, and prevention of organized crime.

In contrast to the countries of the European community, the countries that were part of the Soviet Union, after the termination of its existence, went through a long process of formation of their statehood and the formation of their nation, accompanied by crises in the political, social and economic life of their societies. The processes of development of statehood in post-Soviet countries and these crisis phenomena entail an increase in the level of organized crime.

The unlawful act of criminal liability for occupying the highest position in the criminal hierarchy was the result of the development of two trends in the criminal legislation of post-Soviet countries. The first trend is related to the legislator's desire to respond with a criminal reprisal to the challenges of organized criminal activity. The second trend can be traced in connection with the expansion by the legislator of the criminal-legal meaning of public danger of the person who committed a crime, or other socially dangerous act or offense.

The desire of legislators of post-Soviet countries to respond with criminal repression to the challenges of organized crime lies primarily in the long-term search for the most optimal model of criminalization of socially dangerous activities of leaders of the criminal environment, aimed at its cohesion to commit unlawful acts.

The result of this search in the countries of the post-Soviet space was the enshrinement in the criminal codes or special laws of these countries of norms on criminal liability for the establishment or dissemination of criminal influence.

## **1. Theoretical Framework or Literature Review**

The effective fight against organized crime and the spread of criminal influence in Ukraine and other post-Soviet countries is possible only in conditions of effective functioning of the entire criminal justice system, not excluded from this list and the police. In recent decades in our country, there is a reform of their activities and functional load, as noted in his scientific study R. Peacock, Ukraine has followed an aggressive "shock therapy" approach in this process since the beginning of 2015, after the February 2014 Maidan protests. and the subsequent change of government (Peacock and Cordner, 2016).

The scholar also draws attention to the fact that various factors of internal and external nature and political, economic, and social content, aimed at demonstrating loyalty to our country in the fight against organized

crime, primarily against corruption, as well as criminal influence and compliance with the rule of law in the administration of justice, guided its reforms towards the Georgian model of police shock reform (Peacock and Cordner, 2016).

Hrechyn and Burba (2019) explored the impact of corruption as one of the forms of organized crime that exists in the field of foreign economic activity, and also illustrates his own research with examples of illegal actions in this area (Hrechyn and Burba, 2019). The scientist, based on the results of the study of the indicated problems, concludes that organized crime in the foreign economic sphere significantly goes beyond the violation of the regime and procedures of customs service, evasion of customs and other payments, which directly threatens the functioning of all sectors of the economy of post-Soviet countries (Hrechyn and Burba, 2019).

It is also necessary to agree with the position of Tokubayev, who notes in his scientific research the importance of theoretical developments in the field of criminal justice for the implementation of practical solutions and mechanisms in the fight against organized crime in the world:

One of the reasons of the circumstances existing in the field of combating organized crime is the insufficient scientific analysis of the problem, the lack of clear ideas about the strategy and ideology of the fight, as well as legal, criminological, forensic, and investigation concepts for identification, detection, investigation, and prevention of organized crime (Tokubayev, 2015: 32).

## **2. Methodology**

The methodological basis of the study consisted of general and special legal methods. To achieve the goals and objectives of the study we used methods of induction, deduction, generalization, synthesis, to perform general analysis, highlighting common trends in the functioning and further development of such phenomenon of the criminal community as the establishment or spread of criminal influence in post-Soviet countries.

Also, the comparative legal method was used to study the provisions of normative legal acts of post-Soviet countries in the sphere of criminal justice on criminal liability for the establishment or distribution of criminal influence. The combination of methods of research allowed to achieve its goals and objectives.

## **3. Results**

Analysis of the provisions of the criminal codes and special laws of Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, and Ukraine shows that they

criminalize the establishment or distribution of criminal influence. This unlawful act is especially socially dangerous and poses a threat not only to the economic but also to the political and social life of the society of a particular country.

The establishment or spread of criminal influence occurs on the verge of the decline of the existence of the Soviet Union and the moment of the termination of its existence, the independence of its constituent countries. The main reason for the emergence of this phenomenon of criminal association can be defined as economic, the consequences of the inefficient functioning of the planned economy of the Soviet Union, the limited material and financial resources in its constituent countries after its collapse.

The reason for the establishment or spread of criminal influence can be defined as the consequences of the unviable public administration of the state authorities in the Soviet Union, the widespread committing the crimes of bribery, financial fraud, and other mercenary crimes among their representatives associated with abuse of their official position.

Criminal liability for the establishment or spread of criminal influence in the post-Soviet countries is provided as a grave or especially grave crime, given the high level of public danger of this illegal act.

#### 4. Discussion

“Widely accepted findings in developmental and life-course criminology cannot be extended to criminal careers of organized crime offenders” (Meneghini and Calderoni, 2022: N/P), however, with regard to “thieves in law”, there is a tendency for them to maintain their status in the criminal community and to have a significant influence on participants in illegal activities. It is obvious that «organized crime influences important political and social processes in the state, interferes with the work of public authorities, which damages the efficiency of these bodies and reduces the level of trust in the state apparatus (Perelyhina and Dmytryshak, 2019).

The most common reason for the emergence and spread of criminal influence in Ukraine, as well as in most post-Soviet countries, can be defined as corruption, bribery, and other crimes committed by representatives of public authorities related to abuse of their official position. For example, “the criminalization of the foreign economic sphere is caused by a wide range of factors, among which the internal ones prevail, which are connected with the institutionalization of corruption in the state authorities and administration” (Hrechyn and Burba, 2019: 268).

It is the imperfection of public administration in the former Soviet Union, as well as “inadequacies of the Soviet system of central planning

led to the criminalization of the Soviet economy and the emergence of the thief's in-law as critical players" (Terzyan, 2019: 6).

Crisis phenomena in the economy, the aggravation of the political situation with regard to the domestic and foreign policy of the Soviet Union, the social conflicts occurring in the country inevitably led to the death of the Soviet empire. In turn, the collapse of the Soviet Union, loosening of border and immigration controls, and lack of cooperation between law enforcement agencies in the post-Soviet space all contributed to the development and growth of transnational criminal groups and the planning and execution of criminal activities involving more than one country (Orlova, 2021).

At the present stage, organized crime in the post-Soviet countries "covers six key areas: drug-related issues; human trafficking and prostitution; sports and crime; procurement and corruption; and enforcement and prevention" (Nelen and Siegel, 2021: N/P).

It is obvious that overcoming the consequences of the spread of organized crime and the spread of criminal influence that followed the collapse of the Soviet Union proved to be a difficult task for the countries that were part of it, as evidenced by the review of scientific literature. Each country dealt with the said problem in accordance with its own political, social, economic realities and established legal traditions.

As noted in his study A.M. Pasha, the Republic of Azerbaijan has carried out a number of effective reforms, in particular relating directly to the updating of national criminal legislation in accordance with international standards, which allowed effective fight even with such a widespread crime in the post-Soviet area as corruption. The scholar notes that:

"In particular, the State program for fighting corruption for 2004-2006, the adoption of the new National strategy for increasing transparency and fighting corruption in 2007, and the action plan for 2007-2011 constitute important progress in the criminalization of corruption in that country" (Pasha, 2022: 603).

In addition to overcoming corruption, the fight against terrorism and money laundering, crimes that have become widespread at this stage as a result of their transnational nature, has proved effective (Pasha, 2022). Another important tool in the fight against organized crime and the spread of criminal influence in the Republic of Azerbaijan has been the extensive use of international cooperation mechanisms in the field of criminal justice and the conclusion of bilateral and multilateral agreements in this area with other countries (Pasha, 2022).

International cooperation in the field of criminal justice has proven to be an effective tool for combating organized crime, more rational use of resources and targeted identification and solution of priority tasks (Korniienko *et al.*, 2021).

As for combating organized crime in the Republic of Azerbaijan, the Criminal Code of Azerbaijan Republic stipulates criminal liability for the crimes committed in this way and also refers the crime itself to the grave and especially grave crimes (Article 34 of the Criminal Code of Azerbaijan Republic), also a special type of criminal liability for persons who organize criminal groups (Criminal Code of Azerbaijan Republic, 1999) is taken into account.

“After the collapse of the Soviet Union in 1991, Georgia quickly gained a reputation as a corruption-ridden country and a hotbed of racketeers” (Campana, 2015: n/p), which significantly complicated the economic and socio-political life of this country.

The situation became more complicated when “...out of Georgia by some of the most authoritative thieves made mutual monitoring harder, agency costs increased, and the network, therefore, got larger and took on factional characteristics” (Slade, 2013). In order to combat the rapid spread of criminal influence, the Georgian government enacted the Law on Criminal Activity and Racketeering, which provided for the criminal prosecution of perpetrators as well as confiscation of their property in favor of the state (Law of Georgia on Criminal Activity and Racketeering, 2005).

“The socio-economic changes since the collapse of the socialist system in the early 1990s contributed to the rise of organized crime and corruption in Kazakhstan” (Siegel and Turlubekova, 2019).

The Government of the Republic of Kazakhstan is actively combating the establishment and spread of criminal influence in the country, in particular, the Criminal Code of Kazakhstan stipulates that “the establishment or leadership of a criminal association, as well as the creation of an association of leaders or other participants of organized groups (criminal organizations) or coordination of criminal actions of independently operating organized groups (criminal organizations) to commit one or more crimes, shall be punished by imprisonment for a term of 12 to 15 years with confiscation of property” (Criminal Code of the Republic of Kazakhstan, 2014).

In addition, this Government has other measures to combat organized crime, “include development of a unified government strategy to combat organized crime, involvement of the whole society in the struggle against this crime, as well as the study and implementation of the international experience” (Tokubayev, 2015: 40).

“Organized crime groups in Kyrgyzstan have reached a level where they are competing with governmental authorities and institutions, leaders of OC groups can assign members of their groups into law enforcement positions and parliament” (Bakiev, 2021). The Government of the Kyrgyz Republic adopted the Law “On Combating Organized Crime,” which, in particular, provides that “the leader of an organized group, criminal



community (criminal organization) and the gang is a person, who enjoys recognized authority in the criminal hierarchy and has the highest and personal position.

Influence on the coordination and organization of the activities of organized groups, criminal communities (criminal organizations) and gangs, ensuring the formation and structures of such groups or communities” (Law of the Kyrgyz Republic “On Combating Organized Crime”, 2013). Consequently, the government of this country has also taken measures to combat the establishment and dissemination of criminal influence, as well as the criminal liability of persons found guilty of such unlawful acts in accordance with the law.

As evidenced by the literature review of 2011-2021, in most post-Soviet countries the criminal justice system was reformed, the existing legal acts in this area were amended or new legal acts were adopted when the existing ones did not meet the requirements of modern realities and could not be used effectively to combat organized crime and the spread of the criminal influence.

The Constitution of Ukraine defines basic human rights and freedoms, as well as the protection of human life and health from unlawful infringements (Constitution of Ukraine, 1998). Also the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Liability for Crimes Committed by Criminal Organizations” provides that unlawful acts of organization of a criminal group: “...committed by a person having criminal influence or who is a person in the status of a subject of increased criminal influence, including the status of a “thief in law” - shall be punished by imprisonment for a period from twelve to fifteen years with confiscation of property” (Law of Ukraine “On Amendments to the Law of Ukraine on Criminal Organizations”).

However, despite the obvious positive changes that have taken place in Ukraine in recent decades in the sphere of combating the establishment and spread of criminal influence, many problems remain unresolved. In particular:

...including sustaining the reform political coalition, overcoming bureaucratic resistance to change, surviving the armed insurgency in eastern Ukraine, downsizing the old police, reshaping the culture of corruption that permeates the entire government and much of society, and convincing the citizenry that the new police are truly committed to serving the public, not regime protection” (Peacock and Corder, 2016: 88).

“The world community recognizes that organized crime in the financial system has become a global threat to economic security that requires states to adopt measures agreed to combat this socially dangerous activity,

both nationally and internationally” (Holovkin and Marysyuk, 2019: 52). In addition, post-Soviet organized crime is extremely dangerous for the entire global community because of its own access to nuclear materials, as evidenced by the threat of nuclear weapons use against Ukraine in the context of armed aggression against it.

## **Conclusions**

Based on our research, we can conclude that:

1. Post-Soviet countries were faced with the problem of combating organized crime and were obliged to take immediate measures to combat it.
2. Methods and mechanisms to prevent, counteract and combat organized crime in post-Soviet countries, was similar, focused primarily on preventive measures to the emergence of this phenomenon.
3. The countries of the former Soviet Union have criminalized in their respective national legislation the establishment or dissemination of criminal influence.
4. Criminal liability for the establishment or dissemination of criminal influence is provided for in the criminal codes or special laws of post-Soviet countries.
5. Criminal liability for the establishment or dissemination of criminal influence in post-Soviet countries is provided for as a grave or especially grave crime.

The above testifies to the relevance, importance, and timeliness of the chosen research topic.

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