

## Research Article

# Prosecutorial Supervision of the Detection and Investigation of Drug Crimes: Criminal Law Aspect

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### Abstract

The article's goal is to expose the criminal law component of prosecutorial supervision over drug crime detection and investigation.

**Methods:** The system-structural method was used to determine the internal structure of the phenomenon under study, in particular to isolate its main elements (detection, investigation, prosecutorial supervision) and establish their functional relationships. This allowed us to consider prosecutorial supervision as a holistic system that encompasses both operational and investigative activities and pre-trial investigation.

The rules of the Ukrainian constitution, the criminal code, the criminal procedure code, and the Ukrainian legislation "on the prosecutor's office" and "On operational and investigative activities" were all analyzed using the formal-legal (dogmatic) technique. Its use allowed for the clarification of legal norms' content, the identification of their flaws, conflicts, and gaps, as well as the determination of the characteristics of legal control of prosecutorial supervision in the area of drug crime prevention.

**Results:** The prosecutor, investigators, and operational units must coordinate their efforts in order to effectively combat drug crime. Additionally, the prosecutor's supervisory powers must be properly implemented. Inadequacies at any point in the process result in the loss of evidence, procedural mistakes, and ultimately the inability to prosecute the guilty.

**Conclusion:** The balance of public and private interests, the rule of law, proportionality, and public administration openness are determined to be the foundation of an efficient model of administrative and legal regulation of investments in the medical profession. By putting the suggested areas of improvement into practice, the pharmaceutical business will become more appealing to investors, the state's pharmaceutical security will be strengthened, and Ukraine's healthcare system will continue to grow sustainably.

**Keywords:** Prosecutorial supervision; Drug crimes; Criminal law; Pre-trial investigation; Illicit drug trafficking; Procedural guidance

### Introduction

One of the most intricate and dynamic types of international crime in the modern world is the illegal trafficking of narcotic drugs, psychotropic substances, and precursors, which is marked by a high degree of organization, flexibility, and latency. The state of public safety, the population, the state's economic growth, and the operation of civil society organizations are all directly impacted by its proliferation. International analytical reports, particularly those from the United Nations Office on Drugs and Crime (UNODC), indicate that the global drug market exhibits a tendency towards diversification, an increase in the production of synthetic drugs, and the active use of digital technologies for their distribution, all of which considerably complicate the mechanisms for combating such offenses.

Given the current socioeconomic and security issues brought on by martial law, the issue of drug crime is especially pertinent to Ukraine. The change in the logistical routes of illicit drug trafficking, the use of temporarily occupied territories as potential transit zones, the spread of contactless sales methods *via* the Internet, and the growing role of organized criminal groups necessitate the improvement of criminal law response mechanisms. The actions of prosecutors, who carry out the role of procedural management of pre-trial investigations and guarantee adherence to the law at every step of criminal proceedings, are especially significant in this context.

One of the most important components of the system for carrying out the state's criminal policy is prosecutorial oversight of legal compliance during the identification and investigation of drug offenses. Its essence lies not only in formal control over the activities of pre-trial investigation bodies, but also in ensuring an effective, complete and impartial investigation of the circumstances of the criminal offense, the proper legal qualification of the acts, and also in guaranteeing compliance with the rights and freedoms of participants in criminal proceedings. The peculiarity of prosecutorial supervision in cases of this category is due to the need for widespread use of covert investigative (search) actions, control over the conduct of operational-search measures, as well as assessment of the admissibility and relevance of evidence obtained in difficult procedural conditions [1].

The provisions of the Ukrainian constitution, the criminal code of Ukraine, the criminal procedure code of Ukraine, the law of Ukraine "On the prosecutor's office," and international legal acts that Ukraine has ratified, particularly the UN convention against Illicit traffic in narcotic drugs and psychotropic substances of 1988, serve as the normative foundation for prosecutorial supervision. However, there are still some gaps and contradictions in the current legal regulation of this field that have a detrimental impact on the efficiency of law enforcement. Determining the boundaries of acceptable intervention in an individual's private life, prohibiting law enforcement agents from provoking a crime, and the procedural registration of the outcomes of covert investigative (search) acts are among the specific challenges that fall under this category [2].

There are several systemic issues in the area of prosecutorial supervision of drug crime investigations, according to the examination of law enforcement practice. Among them, it is worth highlighting the difficulty of proving the subjective side of the crime, especially in cases of possession of narcotic drugs without the purpose of sale; difficulties in distinguishing adjacent criminal offenses; violation of requirements for the admissibility of evidence; the impact of corruption threats and the inadequate level of cooperation between operational units and pre-trial investigation organizations. All of this calls for a thorough scientific examination of the criminal-legal facets of the prosecutor's actions in this field.

The extent of the problem's scientific growth shows that a sizable number of research have been conducted on both specific areas of fighting drug crime and general issues of prosecutorial supervision. The relevance of the selected topic is determined by the fact that a thorough analysis of the criminal-legal aspect of prosecutorial supervision of the identification and investigation of such crimes is still not properly systematized [3].

## Materials and Methods

The dialectical method serves as a general methodological basis for the study and allows us to consider phenomena in their development, interconnection and interdependence.

Thanks to its application, prosecutorial supervision over the detection and investigation of drug crimes was analyzed as a dynamic legal category that changes under the influence of transformations of the criminogenic situation, the development of legislation and the practice of its application.

The comparative legal method was used to compare national legislation with approaches used in foreign legal systems, as well as to identify universal and specific features of legal regulation of the relevant sphere. This aided in the development of suggestions for enhancing domestic laws while taking the best international practices into consideration.

The analytical method was used to process scientific sources, generalize law enforcement practice and formulate conclusions regarding the effectiveness of prosecutorial supervision. It was used to critically understand scientific approaches to defining the concepts of "detection of crimes" and "investigation of crimes", and also to assess the current state of their regulatory consolidation [4].

The logical-legal approach guaranteed the validity and consistency of the information presented, the creation of definitions, and the elucidation of the study's conceptual and categorical apparatus, particularly with regard to the terms "drug crimes," "prosecutorial supervision," and "procedural guidance."

Proposals for enhancing criminal and criminal procedural laws were developed using the generalization and forecasting approach, which was also utilized to assess the future of prosecutorial supervision in the fight against illegal drug trafficking [5].

Law enforcement practice materials, a generalization of law enforcement agencies' operations, and the findings of the examination of scholarly publications on the topics under investigation serve as the study's empirical foundation [6].

Therefore, the adoption of a thorough methodology guaranteed the study's integrity, allowed for the formulation of supported scientific findings, and revealed the essence of prosecutorial supervision over the detection and investigation of drug crimes in the criminal-legal aspect.

## Results and Discussion

The lack of a well-defined concept of "Prosecutorial supervision over the identification and investigation of drug crimes" in the current legislation is a major contributing factor to the intricacy of the examined topics. Such a situation requires, in order to achieve the set goal, a consistent solution to a number of scientific tasks, namely: Clarifying the content of each element of this category, establishing their internal relationship, as well as substantiating the appropriateness of using this particular terminological combination [7].

First of all, it is advisable to determine the content of the concept of "drug crimes", since it is a basic element in the structure of the researched issues. Despite the lack of

its regulatory consolidation, the specified term is actively used in the scientific community, in particular in works on criminology, forensics and operational-detective activities, as well as in educational literature and practice of law enforcement agencies [8]. According to a generalization of the pertinent sources, “drug crimes” are typically interpreted as a collection of criminally chargeable conduct covered by Articles 305–320 of the Ukrainian criminal code [9]. This approach is justified because it allows for the simplification of terminological construction while covering the entire spectrum of charges related to the illegal trafficking of narcotic drugs, psychotropic substances, their equivalents, and precursors [10].

There is a difficulty with the statutory division of criminal offenses into felonies and criminal misdemeanors. According to this viewpoint, drug offenses should be considered crimes involving the illegal trafficking of narcotics and related substances, which is punishable by harsh penalties or jail time. However, criminal activity in this sector should be viewed as a byproduct of law enforcement organizations’ efforts to combat more hazardous types of crime [11]. They conduct their probe as an inquiry, which calls for an independent scientific examination [12].

It is worth emphasizing that the detection and investigation of drug crimes are closely related components of a single process of criminal prosecution [13]. Detection of offenses is actually a prerequisite for their further investigation and bringing the guilty to justice. It is also obvious that the investigation is impossible without prior establishment of the fact of committing a criminal offense [14].

The legislation of Ukraine does not contain legal definitions of the concepts of “detection of crimes” or “detection of criminal offenses”, as well as a separate definition of “investigation of crimes”. Simultaneously, the concept of pre-trial investigation is established in Article 3 of the criminal procedure code of Ukraine [15]. This stage of criminal proceedings starts with the entry of information into the unified register of pre-trial investigations and concludes with the adoption of one of the legal procedural decisions. Pre-trial investigation is sometimes described as a type of pre-trial inquiry that is used to conduct criminal investigations [16].

Analysis of the above provisions shows that the legislator actually outlines the time limits and organizational forms of the relevant activity, but does not reveal its substantive content. At the same time, clarifying the essence of any activity, including legal, is impossible without determining its content [17].

Specifically, they define investigation as the process of the prosecution’s knowledge of the circumstances of a particular criminal offense, which is carried out through a system of procedural actions within the framework of the pre-trial investigation, whereas crime detection is an activity aimed at searching for and recording information about the preparation, attempt, or commission of a crime [18].

Simultaneously, the aforementioned authors primarily link criminal detection to operational unit operations, which aligns with investigative and operational tasks [19]. In this regard, the method of identifying drug-related offenses is taken into account within the parameters of this research. However, it is not impossible for law enforcement officials to unintentionally discover such crimes while carrying out their official tasks [20].

Both detection and investigation of drug crimes are subject to prosecutorial supervision, which follows from the provisions of Article 14 of the law of Ukraine “On operational and investigative activities” and Article 36 of the criminal procedure code of Ukraine. Simultaneously, the category of “prosecutorial supervision” is actively employed in both scholarly literature and practical actions, despite the lack of direct consolidation of the corresponding terminological construction in the Ukrainian constitution [21,22].

Clause 2 of Article 131-1 of the Ukrainian constitution states that the prosecutor’s office arranges and oversees the conduct of covert and other investigative (search) activities in addition to pre-trial investigations. At the same time, an analysis of the current legislation indicates a certain inconsistency between the constitutional provisions and sectoral regulations. In particular, the scope of prosecutorial supervision in the constitution is formulated rather narrowly, while special legislation actually expands its boundaries [23].

More consistent in this aspect is the wording enshrined in Article 2 of the law of Ukraine “On the prosecutor’s office”, which deals with supervision over compliance with laws by bodies carrying out operational and search activities, inquiries and pre-trial investigations. This approach allows us to cover both the activities of operational units in full, and procedural actions within the framework of criminal proceedings [24].

According to Part 2 of Article 36 of the Ukrainian code of criminal procedure, the pre-trial investigation’s procedural management is essentially an implementation of prosecutorial supervision since it gives the prosecutor a set of powers to ensure the investigation’s legality [25].

Furthermore, the examination of Article 14 of the law of Ukraine “On operational and investigative activities” provides support for the claim that prosecutorial supervision is not restricted to specific covert actions but rather encompasses the full cycle of operational and investigative activities, from the start of the pertinent measures to their conclusion [26].

At the same time, a discussion continues in the scientific doctrine regarding the definition of the content, boundaries, subject and correlation of prosecutorial supervision with other functions of the prosecutor’s office [27]. Despite numerous proposals to improve the legislation, the relevant changes are being implemented rather slowly, which leads to the preservation of a certain regulatory uncertainty and conflicts [28].

It should also be mentioned that the lawmaker concentrates primarily on oversight over conformity with the legislation. Therefore, the law of Ukraine “On the prosecutor’s office” refers to adherence to the law by entities engaged in pertinent activities, whereas the law of Ukraine “On

operational and investigative activities” refers to adherence to the law while conducting operational and investigative activities. This strategy highlights the prosecutor’s office’s crucial function in the criminal justice system as a guarantee of legality (Table 1) [29].

**Table 1:** Comparative characteristics of stages and prosecutorial supervision

Criterion	Detection of drug crimes	Investigation of drug crimes	Prosecutorial supervision
Essence of activity	Search and recording of information about the preparation or commission of a crime	Procedural examination of a criminal offense's circumstances	Control over compliance with legality and procedural guidance
Main subjects	Operational units of law enforcement agencies	Investigators, investigators	Prosecutor
Regulatory framework	Law "On operational and investigative activities"	CPC of Ukraine	Constitution of Ukraine, Code of criminal procedure of Ukraine, Law "On the prosecutor's office"
Form of activity	Operational and investigative measures	Pre-trial investigation	Procedural guidance, supervision
Goal	Establishment of the fact of a crime	Proving the guilt of a person	Ensuring legality and human rights
Result	Entering information into the ERDR	Indictment or closure of proceedings	Legal procedural decision
Role of evidence	Primary information	Admissible and proper evidence	Evidence assessment
Risks of violations	Illegal surveillance, provocation	Procedural violations	Improper control

The above table allows for a comprehensive assessment of the relationship between the three key components: Detection, investigation, and prosecutorial supervision in the field of combating drug crime.

First, detection and investigation are interrelated, but functionally different stages of a single criminal process. Detection is mainly of an information-search nature and is implemented within the framework of operational-search activities, while investigation is a procedurally regulated activity aimed at proving the guilt of a person. Accordingly, the first stage forms the basis for the second, but in itself does not create a full-fledged evidentiary base [30].

Secondly, prosecutorial supervision is not a separate stage, but has a cross-cutting nature and extends to both the detection stage (through control over operational-search activities) and the pre-trial investigation stage (through procedural guidance). This indicates its integrative role in the criminal justice mechanism [30].

Thirdly, a significant difference is the nature of the result of the activity: If only primary information is formed at the detection stage, then the investigation is completed by making a legally significant decision. In turn, the prosecutor ensures the legitimacy of such a decision by checking compliance with the requirements of legality, reasonableness and admissibility of evidence.

Fourthly, each of the stages is inherent in specific risks of human rights violations. The most sensitive are the issues of provocation of a crime and unlawful interference with private life at the detection stage, as well as the inadmissibility of evidence at the investigation stage. In

this context, prosecutorial supervision is a key guarantee of minimizing such risks [31].

In general, the effectiveness of countering drug crime largely depends on the coordination of actions between operational units, investigators and the prosecutor, as well as on the proper level of implementation of the latter’s supervisory powers. Deficiencies at any of the stages lead to the loss of evidence, procedural errors and, as a result, make it impossible to bring the guilty to justice [32].

## Conclusion

The following generalizations and scientific and practical recommendations were developed as a consequence of the analysis of the criminal-legal aspects of prosecutorial supervision over the identification and investigation of drug crimes.

First, it was determined that the legislation’s vague description of “prosecutorial supervision over the detection and investigation of drug crimes” demands a doctrinal understanding of the idea. The study’s interpretation of this category enables us to view it as a prosecutor’s all-encompassing effort to guarantee legality when conducting operational-search operations and pre-trial investigations in the area of illicit drug trafficking.

Second, it is justified to use the phrase “drug crimes” as a catch-all for offenses covered by Articles 305–320 of the Ukrainian criminal code. Simultaneously, it has been demonstrated that, considering the legislative division of criminal offenses, it is advisable to differentiate between crimes and criminal misdemeanors, as the latter require a distinct scientific examination and have a different

procedural form of investigation.

Thirdly, it has been demonstrated that drug crime detection and investigation are interconnected phases of a single criminal prosecution procedure. While investigation is a procedurally regulated activity intended to establish someone in guilt, detection is a prerequisite for investigation and is mostly carried out within the context of operational and investigative operations. As a result, the quality of the initial criminal crime detection directly affects the investigation's efficacy.

Fourth, it has been shown that prosecutorial supervision encompasses both the pre-trial inquiry stage and the detection stage. It is put into practice by procedural guidelines and oversight of legal compliance while conducting operations and investigations. Thus, the prosecutor is a key entity in ensuring legality, which integrates the activities of various law enforcement agencies.

Fifthly, a number of problems of law enforcement practice were identified, including: Imperfection of the regulatory regulation of covert investigative (search) actions; the complexity of ensuring the admissibility of evidence; difficulties in qualifying acts; insufficient level of coordination between law enforcement agencies; as well as the presence of corruption risks. The problem of the lack of a clear legislative definition of the boundaries of prosecutorial supervision, which leads to its ambiguous interpretation, is separately emphasized.

Sixth, it is contended that there are certain inconsistencies between the provisions of the Ukrainian constitution and sectoral law about the extent of prosecutorial supervision in the existing regulatory regulation. Specifically, the criminal procedure code of Ukraine and special laws actually broaden the scope and content of the constitutional model of supervision, which is more constrained.

Seventh, it has been demonstrated that prosecutors' expertise in combating drug offenses, their degree of professional training, and their application of contemporary techniques for information and evidence analysis all have a significant role in the efficacy of prosecutorial supervision. The prosecutor's capacity to handle electronic evidence and the outcomes of covert investigations is crucial in the context of the digitalization of criminal activity.

Eighth, proposals have been formulated to improve the legislation and the practice of its application, in particular: clarifying the boundaries and content of prosecutorial supervision at the legislative level; improving the procedures for conducting covert investigative (search) actions; strengthening guarantees of compliance with human rights; increasing the level of interagency cooperation; introducing modern information and analytical tools into the activities of prosecutorial bodies.

Thus, prosecutorial supervision of the detection and investigation of drug crimes is a complex multi-level activity that combines elements of control, coordination and procedural guidance. Its proper implementation is a necessary condition for effectively combating illicit drug trafficking, ensuring the legality of criminal proceedings, and respecting

human rights and freedoms.

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## Conflict of Interest

Authors have no conflict of interest to declare.

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