

FIGHT OF CRIME: THEORY AND PRACTICE

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COOPERATION OF OPERATIVE LAW ENFORCEMENT UNITS WITH OTHER SUBJECTS OF CRIME PREVENTION IN CREDIT OPERATIONS

Current legal, organizational and practical aspects of operative and investigative units cooperation with bank security services in the area of financial (credit operations) crime prevention in Ukraine are examined.

Keywords: economic crime; crime prevention; bank credits; financial fraud; operative units; pre-trial investigation units; bank security service; private detective agencies; cooperation.

Rationale. In conditions of rapidly developing market system banking sector (credit operations) remains the most vulnerable regarding the criminal influence. During 2010–2014 approximately 13 000 crimes were registered with a third comprising crimes committed directly in banks; this period is also characterized by the 25 % increase in number of criminal proceedings opened. Crimes in the area of credit operations infringe not only on banks and their clients but affect negatively the functioning of all financial involving malevolent bank employees. Criminals conceal their system.

The percentage of crimes committed by the organized group members is constantly increasing actions in any possible way, e.g. using fraudulent legal agreements, financial documents, money laundering schemes and “failed” business reports to hide their real intentions.

One law enforcement officer – operative team member or investigator – may find it difficult to prevent such crime. This task requires a combination of specific skills and competencies to be operated – operative

teams, investigative units, forensics etc. The abovementioned circumstances determine the rationale.

Research state. Problems of operative units' cooperation with pre-trial investigation and other law enforcement agencies in Ukraine for crime prevention in credit operations sector were analyzed in works by O. Baranovskyi, V. Vasylynychuk, A. Volobuyev, O. Dzhuzha, A. Zakaliuk, O. Kalman, O. Korystyn, V. Larychev, N. Novikov, V. Pyvovarov, E. Ryzhkov, A. Savchenko, B. Tymoshenko, G. Tosunian, S. Cherniavskiy, M. Shagrodoskyi etc.

The aim of this article is to highlight the current theoretical and practical aspects of operative units' cooperation with pre-trial investigation and other law enforcement agencies in Ukraine for crime prevention in credit operations sector.

Main provisions. In our time combating organized and professional crimes requires the level of law enforcement agencies' cooperation to be updated in terms of detection and prevention of criminal acts in the banking sector.

A lot of unsolved theoretical and practical matters still cause "misunderstanding" between pre-trial investigation and operative units during performance of joint tasks resulting in undue and incomplete notification of investigator concerning outcomes of investigative actions, facts of negligence during performance of (covert) investigative actions by an operative team member tasked by investigator, prolongation of pre-trial investigation caused by uncompleted assignments etc. That is why the abovementioned issues in complex require to be analyzed separately.

After analyzing the norms of updated Criminal Procedure Code of Ukraine and legal acts regulating the law enforcement activity in Ukraine, we have separated a few forms of cooperation between investigators, operative team members and other law enforcement units on the primary stage of banking crimes investigation: during receipt of statements and notifications of criminal offences and relevant measures taken; during the referral of the operative data to pre-trial investigation agency; during operative team's activities for criminal offence investigation; completion of investigator's written assignments by the operative team members concerning pursuit of (covert) investigative actions.

Pre-trial investigation of criminal offences in the banking sector is conducted only by officers of special units of regional/local investigative departments or experts from local law enforcement agencies responsible for economic crimes investigation [1].

This leads us to conclusion that all covert investigative actions may be divided into two groups: 1) measures requiring visual analysis of specific objects as data sources: examination and extraction of correspondence

(Art. 262 of CPC); search of publicly inaccessible locations, dwellings or other person's property (Art. 267 of CPC); persons, objects or location supervision (Art. 269 of CPC); audio- and videomonitoring the location (Art. 270 of CPC); 2) measures aimed at data receipt via private communication means including data extracted from the transport communication network (Art. 263 of CPC); data extracted from the electronic information system (Art. 264); supervision of the crime committal (Art. 271); confidential cooperation (Art. 275).

Taking into the viewpoint of interviewed law enforcement officers this approach requires extension via (covert) investigative actions aimed at detection and identification of persons who committed crimes; detection of new episodes of criminal activity; creation of appropriate conditions for investigative actions; identification of location used as storage for money and other valuable items of illegitimate origin and mechanisms of potential laundering; detection of connections between members of criminal groups and their personal contribution to the crime committal; search of other potential accomplices, witnesses, objects or documents valuable for criminal proceeding; receipt of data concerning potential tactics of behavior of criminal proceeding participants during the pre-trial investigation and in court.

Practical experience clearly shows that it is a common case for bank security officers to participate in preventive operations despite the fact that their activity comprising mainly of detection and recording of abusive actions (independently and in close cooperation with law enforcement agencies) is of exclusively executive character and is not legally regulated (protection of clients' deposits and the relevant data is the only regularized obligation for the financial institutions) – in our opinion this aspect must be regulated with appropriate legislative amendments: by adoption of the Law of Ukraine "On private detective (investigative) activity" [2], amending the relevant provisions of the Criminal Procedure Code of Ukraine and the Law of Ukraine "On banking activity", development and adoption of interagency instruction on cooperation in the area of banking security (National Bank of Ukraine, MoI of Ukraine, General Prosecutor's Office of Ukraine and other state agencies concerned).

Lack of activity in crime features detection by law enforcement is often a result of legislator's partial decline from the publicity during the criminal proceeding concerning some of these crimes (decriminalization) and increase of criminal offences when proceeding is initiated only if based on victim's statement (sub. 1 sec. 1 Art. 477 of CPC), including offences under Art. 231, 232, 361, Sub. 1 Sec. 362, 364–1, 365–1 of CC of Ukraine Art. 185, 190, 191 (excluding committed by the organized group) and Art. 357 of CC, committed by the person who was the victim's subordinate

and was responsible exclusively for the property damage. This right of the bank to initiate the criminal proceeding law enforcement agencies consider as transfer of major responsibility for detection of the abovementioned criminal actions to the financial institution (bank security service).

Therefore, the majority of tasks on bank crimes detection must be performed by bank security service.

Detailed study of "internal" instructions from commercial banks shows that the common legislated security service commitments are: detection of crime preparation signs and adoption of measures aimed at crime prevention and elimination; collection of data and relevant materials for law enforcement agencies to settle the initiation of a criminal proceeding; participation in pre-trial investigation of criminal offences; active cooperation with police in terms of information sharing; adoption of all necessary measures (in the scope of one's authority) for damage compensation.

Bank security officers are obliged to: perform investigative activity; participate in scheduled and unscheduled internal administrative and financial reviews in bank departments; conduct of internal (service) inquiry upon facts of property damage and bank functioning; organization and execution of cooperation with law enforcement agencies and facilitation in adoption of any effective measures; development and accomplishment of measures for prevention of crimes in banking sector; application of forensic methods and tools.

According to the results of our previous research, proper organization of bank security service activity ensures high percent of crimes concerning credit operations to be detected and suspended at the initial stage – primary business contacts with potential clients. For example, bank employees recently interviewed stated that the total number of money transfer denials from the business subjects' accounts based on payment documents' disconformity comprises more than quarter of all clients' requests. These reviews also revealed that 5 % of all credit operations performed by the bank employees comprised fraudulent actions.

In order to get full understanding of role and place of security service it is recommended to analyze one of its essential functions – conduct of *internal investigations* concerning damage of bank property or detected violations in bank operations procedure. The analysis of reveals its specific similarity to the "pre-trial investigation" conducted within the framework of criminal proceeding in terms of organization and structure of the investigative actions.

In the process of search activity subjects of internal and pre-trial investigation are involved in data detection aimed specifically at receipt of information on absence or presence of facts stating the committal of socially

dangerous acts, delinquency of a person committing this act, and other circumstances important for proving. During the search both subjects have to oppose the persons interested in suppression of the committed crimes or their participation. Persons authorized to conduct the internal investigation (as the investigator) have to apply specific methods and means to increase the level of data search objectification.

At the same time internal investigation can be characterized as separate type of search and cognitive activity different from operative search activity and pre-trial investigation. Firstly, the priority task for the security service is to protect the relevant interests of the private structure (bank). Any data stating the facts of material damage or violation of internal regulations in the financial institution resulting in endamage. Detection of crime features out of the bank interest area does not necessarily lead to appropriate reaction.

Therefore investigation of bank endamage by the unlawful credit operation is admitted to be the form of internal organizational activity of the financial institution aimed at identification of facts, participants, damage amount and relevant conditions. This activity stipulates public collection and fixation of data concerning the crime via employees and other persons (upon consent) interviewing, familiarization with the documents, examination of service premises, items and locations and processing of conclusions and recommendations.

In order to conduct effective investigation bank employees are authorized to: invite employees and other persons (upon consent) for interview; receive written pleadings on facts concerning investigation; (with the permission of the superior who initiated the investigation) analyze the relevant documents and include these documents (copies) to the review materials; in the established procedure take experts' opinions from bank and other state and private structures (also on compensational basis) concerning specific issues; examine items, documents, objects, locations; apply forensic methods and means for search and registration of relevant information.

Practical aspects prove that internal investigation conducted in parallel with the operative search and criminal procedure activity by the law enforcement agencies in order to prevent crimes in the banking sector appears to be even more effective. The priority issues to be improved concerning legal basis for the bank security service to detect and investigate crimes are:

amendments to the basic provisions of state policy (strategy) on crime combating establishing principles and forms of private structures participation (including bank security service);

adoption of the Law of Ukraine "On private detective (investigative) activity" for regulation of detection, non-procedural investigation and

prevention of crimes by private detective and security service (including bank security service);

development of principles and forms of cooperation between bank security service and law enforcement agencies with adoption of relevant interagency instruction [3].

Necessity of cooperation with bank security service conducting their own investigations is essential for operative team members due to the following reasons:

1) bank security service employees are qualified experts in this area (they are mostly staffed by former employees from operative and investigative units) and their experience is important for receipt of relevant recommendations and enhancing the interpersonal communication;

2) bank security service are better informed of the current state of credit operations criminalization;

3) according to law bank security services have no right to perform any type of search and operative activity as the members of relevant operative teams must be involved at the initial stage to investigate the criminal actions.

Not of the less importance is the cooperation between operative units, pre-trial investigative units and supervising departments of National Bank of Ukraine. According to the Laws of Ukraine "On banks and banking business", "On National Bank of Ukraine", National Bank of Ukraine performs supervising functions concerning activity of commercial banks. With this aim the bank supervising service was created – via authorized structural departments (including regional departments of National Bank of Ukraine) performs supervision of statutory compliance by the subjects of banking business.

Bank supervising service is responsible for provision of financial stability and security of financial system, protection of clients' interests, regulation of bank activity under established norms and legislative requirements (bank supervisors must pay extra attention to specific types of operations including credit operations of legal bodies and individuals. Cooperation during reviews performed by bank supervising service and law enforcement agencies (Ministry of Interior, State Security Service, General Prosecutor's Office of Ukraine) gives an opportunity to detect fraud and plundering and prevent money laundering through banking system on state and international levels. At the same time this cooperation helps to detect crimes at preparatory stage, prosecute persons guilty of a violation and protect interests of depositors and contractors.

Conclusion. In order to enhance the cooperation between operative team members and bank employees it is recommended to initiate the creation of interagency working group to monitor the credit operations performance and analyze the typologies of detected criminal schemes. "Internal" investigation is one of the methods to detect the crimes in

banking sector along with search and criminal procedural activity. Therefore improvement of the crime detection procedure is closely connected with legal fixation of principles and forms of authorized bank employees participation by adoption of the Law of Ukraine "On private detective (investigative) activity" with amendments to the provisions of legislation regulating organization of operative teams and pre-trial investigation units' activities.

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