

УДК 347.447.52

Т.В. Базюк

*аспірантка кафедри кримінального права та процесу
ВНЗ «Національна академія управління»*

ТЕРМІН «ЕКОНОМІЧНІ ТА ФІНАНСОВІ ЗЛОЧИНИ» В НАУЦІ КРИМІНАЛЬНОГО ПРАВА УКРАЇНИ ТА ЗАРУБІЖНИХ КРАЇН

Bazyuk Tamara

*Postgraduate of criminal law and procedure
of Higher education institution
“National Academy of Management»*

THE TERM “ECONOMIC AND FINANCIAL CRIME” IN THE SCIENCE OF CRIMINAL LAW OF UKRAINE AND FOREIGN COUNTRIES

The term “economic and financial crime” refers broadly to any non-violent crime that results in a financial loss. These crimes thus comprise a broad range of illegal activities, including fraud, tax evasion and money-laundering. The category of “economic crime” is hard to define and its exact conceptualization remains a challenge.

The task has been further complicated by rapid advances in technology, which provide new opportunities for such crimes. The overall extent of the phenomenon is difficult to determine, owing in part to the lack of a clear and accepted concept, the fact that systems for recording economic and financial crime differ greatly from country to country and that several cases are not reported since companies and financial institutions choose to deal with incidents internally. Nevertheless, there is a growing perception that economic and financial crimes, most notably fraud, are some of the fastest growing offences [1].

It is difficult to have one legal definition of the concept of economic and financial crimes all over the world because the criminal policy, especially in the economic area, varies greatly from one country to another.

It is also difficult to determine the overall extent of these crimes because their growing perception evolves some of the most rapidly growing predicate

offences, as well as the fact that many cases are not reported and the investigation to discover these crimes requires high levels of expertise which is not well developed in many countries, especially in developing countries.

The emergence of new forms of economic and financial crimes over the past decades with a series of high-profile cases in Europe and North America, as well as in developed countries, makes the problem more complicated [2].

In legal literature, economic crimes are defined as prohibited acts or acts against, or threatening, the supraindividual goods in the economic sphere. It is also stressed that they infringe not only upon the interests of all participants on the trading market (the entrepreneurs as well as the consumers) but also the interest of public finances institutions.

The economic crimes that may be committed within an enterprise include: – crimes against property (all types of misappropriation, including embezzlement of financial assets or goods), – crimes against business institutions (procurement of bank loans, insurance indemnities and other similar actions done by false pretences), – money laundering, – accounting manipulations (falsifying figures in account books, or forging accounting reports and documentation, use of falsified documents, certification of untruth and fiddling with figures), – cyber crime (illegal downloading from the internet, using other's software for financial gain, theft of bank data base), – putting on market goods under a forged or counterfeit trademark, – sale of licensed goods without a licence, – tax crime, -crimes against the natural environment, – crimes against employees' rights, -crimes against data protection (disclosing or infringing professional secrecy and the secrecy of correspondence)[3, p.121].

Economic Offences are included in the separate category of criminal offences. Such offences not only victimize the individuals with economic and financial losses but may also have adverse impacts on the national economy. Economic offences covers the crimes such as counterfeiting of currency, fraud, financial scams, money laundering, etc. which cause a serious concern for the Nation's security and the governance. On the other hand the social offences are the criminal activities arising from the violation of the social laws and interests of the state and public in general [4, p.1].

Crime is a changing phenomenon. Some activities, such as criminal exploitation of online commerce, which were inconceivable less than a decade ago, now pose significant risks to the economy and society of many nations. Fraud is one general type of crime which, whilst as old as commerce itself, may be expected to take new forms as the twenty-first century progresses. In some cases, these forms have already begun to emerge [5].

The analysis of a changing situation in the sphere of economy shows that the economic criminality undergoes essential transformations. The main high-quality changes are connected with gradual decrease in level of violence in economy and formation of social and legal control. At the same time it is necessary to consider latency of these crimes and therefore the statistics is conditional.

Allocation of signs of economic criminality becomes complicated that in the conditions of initial accumulation of the capital participation in redistribution of

property acts as a dominant of behavior not only subjects of economic activity, but also representatives of the corrupted officials, members of organized criminal groups, criminal formations of all-criminal crime and representatives of professional criminality [6].

Economic crime including money laundering is a part of the major transnational organized crime. In order to combat economic crime, domestic, regional, and international law enforcement cooperation is required.

Money laundering damages the reputation for integrity of financial institutions, and frightens away honest investors. Money launderers are criminals and, if the proceeds of crime are successfully laundered, will cause or risk causing further substantial loss to the financial sector and other large sectors of the economy. It is therefore important for each government to institute a comprehensive domestic regulatory and supervisory regime for bank and non-bank financial institutions, and to do everything possible to prevent and detect economic crime within its system. It is also important for all financial institutions to do their best in strengthening their cooperation with respective governments, especially with law enforcement agencies or prosecutors [7].

Money laundering generally involves a series of multiple transactions used to disguise the source of financial assets so that those assets may be used without compromising the criminals who are seeking to use them. These transactions typically fall into three stages: (1) placement — the process of placing unlawful proceeds into financial institutions through deposits, wire transfers, or other means; (2) layering — the process of separating the proceeds of criminal activity from their origin through the use of layers of complex financial transactions; and (3) integration — the process of using an apparently legitimate transaction to disguise illicit proceeds. Through these processes, a criminal tries to transform the monetary proceeds derived from illicit activities into funds with an apparently legal source [8].

Given the fact that fraud appears in various forms and as phenomenon poses a threat in many spheres of life, especially to the economy and property in generally, I am determined to present in this paper knowledge, forms, analyzing scientific basis, the incrimination of this offense by law, and some of the causes of the appearance of fraud as a form of economic crime. Today no country is immune against the crime in generally and especially is not immune against fraud in various commercial economic segments of property [9].

In order to fully understand all the signs of economic crimes must take into account international experience.

For example, the phrase “Economic and Financial Crime” is not a common usage under Islamic criminal law. This is not to suggest that Islamic law does not consider as imperative crimes that may adversely affect the economy, political cum social wellbeing of the people. The common theoretical usage of the phrase “Economic and Financial Crime” might not have been widely embraced by early Islamic scholars and most probably the contemporary Islamic jurists. The fact remains that in content and substance these classes of crime that constitute the generic phrase “Economic and Financial Crimes” are adequately proscribed under Islamic law as will soon be examined in this paper. Under Islamic law, economic and

financial crimes have been classified within the division of criminal law which forms part of the corpus of Islamic jurisprudence [10].

The Republic of Mongolia has undergone a transition period from a so-called closed society to an open society. During the last few years, the country experienced an increased number of cases that are considered economic crimes such as corruption, bribery, and tax evasion. However, it is really difficult to investigate such crimes because some of the prosecutors and even some of the judges are corrupt.

Other contributing factors in dealing with those economic crimes are the apparent inability of investigators because they do not possess the necessary skills and knowledge in those fields; lack of physical equipment and resources; the absence of a sound legal framework; and the inadequate compensation packages offered to the judiciary, prosecutors and law enforcement officials, which makes them so vulnerable to be bribed or get involved in corrupt practices [11].

Financial and economic crimes are the bane of Nigerian development efforts. Most of the laws involved or violated are not part of the traditional criminal code. Such crimes are corruption, corporate fraud, public fraud, tax evasion, goods smuggling, stock manipulation, currencies forgery, credit card fraud, environmental crime, intellectual property infringement and the more recent phenomenon of Cyber crime. A criminal committing an economic crime steals large sums of money and employs technology and communication to carry out unlawful commercial transactions, disturb database or orchestrate massive frauds. Another characteristic of economic, commercial, corporate or white-collar crimes is that they are often perceived as good business: and good business often requires „cutting corners“. Legal violations by corporations are often viewed as part of the business system, much like industrial spying or psychologically suggestive marketing techniques [12].

Crimes in sphere of economic activity contains in Section VII of the Criminal Code of Ukraine.

Depending on the object of the crime included in this group, all the crimes in the sphere of economic activity can be summarized as follows: crimes in the sphere of financial, banking and fiscal systems (Articles 199-201, 204, 207, 208, 210-212, 215,216); crimes in the field of entrepreneurship, competition, bankruptcy and circulation of securities (Articles 203, two hundred and third, 205, 206, 209, two hundred and ninth, 213, 214, 222-224, 228-232); crimes in the sphere of consumer service (article 217, 225-227); crimes in the sphere of privatization of state and municipal property (Articles 233-235) [13].

Thus, the study of foreign experience for the modern criminal law of Ukraine can become the basis for building own legal traditions in the global dimension. The comparative method is one of the leading and universal in system of methodological basis of scientific research, because a lawyer who does not know or does not want to know nothing but the legal system of his country is unlikely to be able to understand the truth of law, its history and to predict its development.

REFERENCES

1. Economic and financial crimes: challenges to sustainable development // Electronic resource: http://www.unis.unvienna.org/pdf/05-82108_E_5_pr_SFS.pdf
2. Al-Sarraj Abboud. Concept of Economic Crimes as Perceived Across the World – Typology, New Trends and Countermeasures / Dr. Abboud Al-Sarraj // Electronic resource: [http://www.unafei.or.jp/english/pdf/Money_Laundering_pdf/3-A-1%20\(P1\)_p107_121.pdf](http://www.unafei.or.jp/english/pdf/Money_Laundering_pdf/3-A-1%20(P1)_p107_121.pdf)
3. Kamiński Fraud Ryszard. Economic Crime in Poland and Worldwide, with Particular Focus on Financial and Accounting / Fraud Ryszard Kami ski // Rev. Integr. Bus. Econ. Res. Vol 2(1). – P. 120-132.
4. Ranga Ajay. Socio economic offences in India. / Ajay Ranga // Research Dimensions. – Volume 2, № 8 / Oct 2014. – P. 1-5.
5. Grabosky Peter. The prevention and control of economic crime / Peter Grabosky // Electronic resource: <http://press.anu.edu.au/wp-content/uploads/2013/03/ch091.pdf>
6. Езикан В.И. Криминология. – Новочеркасск: ЮРГТУ, 2011. – 159 с. [Electronic resource]. – Mode of access to a site: <http://txbt.ru/67/index.html>.
7. Measures to combat economic crime including money laundering // Electronic resource: http://www.unafei.or.jp/english/pdf/RS_No67/No67_27RC_Group3.pdf
8. McDowell John. The consequences of money laundering and financial crime / John McDowell, Senior Policy Adviser, Gary Novis. – Economic Perspectives // Electronic resource: <http://www.ait.org.tw/infousa/zhtw/DOCS/ijee0501.pdf>
9. Hyseni Bahri. Corruption and fraud as forms of economic crime and as an impediment to economic development in Kosovo / Bahri Hyseni // Electronic resource: <http://www.idpublications.org/wp-content/uploads/2014/12/.pdf>
10. Arowosaiye Yusuf Ibrahim. Economic and financial crimes and its infrastructure: the Islamic criminal law perspective / Yusuf Ibrahim Arowosaiye // Electronic resource: <https://www.unilorin.edu.ng/publications/arowosayeyi/ECONOMIC%20AND%20FINANCIAL%20CRIMES%20AND%20ICT.pdf>
11. Economic crime in a globalizing society // Electronic resource: http://www.unafei.or.jp/english/pdf/RS_No66/No66_24RS_Group3.pdf
12. Samuel Adeniran. Economic and Financial Crime in Nigeria : Forensic Accounting as Antidote / Dr.Fakile,Adeniran Samuel // Electronic resource: http://www.bjournal.co.uk/paper/BJASS_6_1/BJASS_06_01_05.pdf
13. Criminal Code of Ukraine // Electronic resource: <http://www.legislationline.org/documents/action/popup/id/16257/preview>

Bazyuk Tamara. The term “economic and financial crime” in the science of criminal law of Ukraine and foreign countries

In the article analyzed the problem of the concept of “economic and financial crime” in the science of criminal law of Ukraine and foreign countries. Based on the review of legislative consolidation of the provisions of the institute of responsibility for economic crimes concluded that it is necessary to study foreign experience for the modern criminal law of Ukraine.

Keywords: *economic activity, economic and financial crimes, foreign legislation, criminal law.*

Базюк Т.В. Термін «економічні та фінансові злочини» в науці кримінального права України та зарубіжних країн

У статті аналізується проблема поняття «економічні та фінансові злочини» в науці кримінального права України та зарубіжних країн. На підставі розгляду законодавчого закріплення положень інституту відповідальності за господарські злочини зроблено висновок про те, що необхідно вивчати зарубіжний досвід для сучасного кримінального права України.

Ключові слова: економічна діяльність, економічні та фінансові злочини, закордонне законодавство, кримінальне право.

Базюк Т.В. Термин «экономические и финансовые преступления» в науке уголовного права Украины и зарубежных стран

В статье анализируется проблема понятия «экономические и финансовые преступления» в науке уголовного права Украины и зарубежных стран. На основании рассмотрения законодательного закрепления положений института ответственности за хозяйственные преступления сделан вывод о том, что необходимо изучать зарубежный опыт для современного уголовного права Украины.

Ключевые слова: экономическая деятельность, экономические и финансовые преступления, зарубежное законодательство, уголовное право.

Стаття надійшла до редакції 01.09.2015.