

## DEFINITION OF CRIMINAL AND ILLEGAL ACTIVITIES IN THE ECONOMIC SPHERE

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**Abstract.** *The purpose* of the article is to define the essence of criminal and illegal activities in the field of economy; to clarify its determinants; to highlight the features of national prevention of socially dangerous acts that threaten the economic security of the state. The scientific discussion is presented, which highlights the problem of determining the markers of illegal activity in the field of economy. Such markers include: 1) the investigated criminal offenses always create a platform for the "shadow" economy; 2) criminal offenses in the field of economy are interconnected with corruption, which simplify such illegal activities (the subjects of criminal offenses in the field of economy are usually officials); 3) the presence of intent to obtain economic benefits; 4) the presence of only direct intent; 5) illegal actions are committed by all possible criminal means. The causes and conditions of criminal and illegal activities in the sphere of economy are determined. The groups of factors of criminal and illegal activities in the sphere of economy are considered. It is noted that mistakes in economic planning inevitably result in artificial (often unintentional) formation of conditions conducive to the commission of illegal acts. Socio-economic causes are retrospective in nature, i.e., they are historically conditioned phenomena associated with economic changes, the latter occurring over the past fifty years. Some national means of preventing socially dangerous acts in the economic sphere are proposed. *Results.* The author's approach to the concept of criminal illegal activity in the field of economy is proposed. The complex of reasons and conditions of criminal and illegal activity in the sphere of economy is developed, which include 1) insufficient level of social protection of the population; 2) unsatisfactory level of economic development of the state; 3) inconsistency of the mentality of the society with the social values recognized at the highest state level; 4) the presence of "dead" zones in the labor market; 5) insecurity of small and medium-sized businesses in the state, etc. It is found that the measures and means of national prevention of criminal illegal activities in the sphere of economy should include 1) stabilization of the political situation in the country; 2) solving the problems of small and medium-sized businesses; 3) identification of gaps in economic planning and forecasting of economic measures for the next years; 4) development of the labor market, including the creation of "dead" zones, the continuation of a number of state-owned enterprises; 5) increase the level of social protection of vulnerable categories of the population (elderly people, people with special needs, people raising children on their own, etc.); 6) improve the social package provided to employees; 7) increase the level of average wages, etc.

**Key words:** criminal offence, economy, economic security, determiners, economic sphere, prevention, 'shadow' economy, labor market.

**JEL Classification:** K14, F52

### 1. Introduction

Today, criminal illegal activities in the economic sphere constitute a significant part of the total number of criminal offenses. According to statistics published on the website of the Prosecutor General's Office, in 2016, 6940 criminal offenses were committed in the field of economic activity (12% of the total number

of illegal acts), in 2017 – 6297 cases (1.2% of the total number of illegal acts), in 2018 – 6334 cases (1.3% of the total), in 2019 – 5947 cases (1.3%), in 2020 – 5342 cases (i.e. 1.5%), as of October 2021, the number of violations in the field of economic activity was 5308 (1.8% of the total number of illegal acts) (official statistics of the Prosecutor General's

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Office). This indicates the presence of a number of determinants, the impact of which on the economic security of Ukraine is negative.

The peculiarities of criminological influence on the determination of economic illegal activity were studied by a number of scientists, including A. M. Boiko, N. O. Gutorova, V. M. Driomin, O. O. Dudorov, O. G. Kalman, V. P. Korzh, I. V. Ozersky, V. M. Popovich, Ye. L. Streltsov, V. Ya. Tatsiy, etc. However, identifying the specifics of determining the determinants of criminal offenses in the field of economic activity requires additional attention, which emphasizes the *relevance* of the topic of the article.

**The purpose of the article** is to clarify the essence of criminal unlawful activity in the economic sphere, to characterize its determinants; to highlight the peculiarities of national prevention of socially dangerous acts that threaten the economic security of the state.

## 2. The essence of criminal unlawful activity in the sphere of the state economy

In the conditions of modern technological and information development of the national economy, economic crime is gaining dangerous proportions. Committing crimes in the sphere of economy is a real danger for the state and individual citizens, as the development of the economy ensures the existence and development of society. The scientific interest in the problem of economic crime and the difficulties of overcoming it is caused by the fact that in the national literature there is a differentiated approach to the definition of crimes in the field of economy. In many scientific works, one can find various interpretations of this phenomenon, in particular, "crimes in the field of economy", "economic crimes", "shadow economy", "criminal economy", etc. These concepts are often identified, but there are attempts to prove the different nature of these phenomena. In particular, O. Yakovlev defined economic crime as property and mercenary crime, as well as crime in the sphere of economy; the author notes that economic crime is characterized by a combination of mercenary encroachment on property, the order of economic management, committed by persons who occupy a certain social position in the structure of the economy (Skakun, 2018). The distinction between the concepts of "economic criminal offense" and "economic offense" has the right to exist, since from a phenomenological point of view these are really different definitions. In a broader context, this study is focused on economic offences that have a negative impact on economic security as a component of the national security of the state. Economic crime is characterized

by its scale, which is mainly due to the encroachment on certain social relations, the improper functioning of which destabilizes the process of public administration.

As S. Kravchuk notes, all these concepts have a different range of illegal acts. Thus, crimes in the sphere of economy, according to the author, are mainly economic crimes; economic crime involves the commission of crimes in the sphere of economic activity, including the use of official position. S. Kravchuk classifies acts related to causing material damage or obtaining material benefits as crimes of a material nature (Kravchuk, 2009). Identifying the features of economic crime from the point of view of criminology is associated with the peculiarities of the concept of economic crime as a negative phenomenon. The founder of the theory of economic crime is considered to be E. Sutherland, who first introduced the concept of economic crime and called it "white-collar". The most important feature of the former is the abuse of power for the purpose of enrichment. Investigating the official position and social status of the offender, Sutherland defined "white-collar" crime as "anti-social, enrichment-oriented behavior of people who occupy a prestigious position in society and behave in such a way that, simultaneously with the law-abiding behavior of the rest of the people, they abuse the social trust enjoyed by another group" (Kharko, 2010). In the context of the doctrine of economic and legal sciences, economic criminal activity in some aspects is associated with corruption. At the same time, it should be noted that corruption as an institution should be considered as an independent phenomenon, which is the main risk to the economic security of the state, and relates mainly to the service sector, not to the economic sphere.

S. Kravchuk argues that economic crimes are crimes committed in the economic sphere with the use of legal technical, accounting, financial and accounting, control and administrative rights and powers. The scientist identifies eight essential features inherent in economic crime:

- has a continuing nature;
- is characterized by high latency;
- consists of criminal acts committed by state actors;
- violates the order of economic management;
- committed by legal entities (which can be explained by the fact that according to the criminal law, only a legal entity can be the subject of a crime);
- has a close connection with organized crime, corruption, "shadow" economic activity;
- forms a semi-criminal mentality among the citizens of the state (Kravchuk, 2009).

The above features seem to be reasonable, but the authors have a slightly different approach, according to which the signs of criminal activity in

the field of economy should include the following: 1) the investigated criminal acts are always a platform for the formation of the "shadow economy"; 2) criminal acts in the economic sphere are interconnected with corruption acts that facilitate such illegal activities (the subjects of criminal offenses are often officials); 3) the presence of intent to obtain economic benefits; 4) the presence of only direct intent; 5) the commission of an illegal act is committed by all possible criminal prohibited methods.

D. M. Harko in his work "Criminological problems of defining the concept and signs of modern economic crime as a factor of shadowing of the economy of Ukraine" identifies the following signs of economic crime:

- it is a type of crime that has a predominantly mass character and, accordingly, causes massive damage;
- covers various abuses of economic power;
- is committed in the course of professional activities of a manager;
- has multiple episodes of committing a crime;
- is performed by both individuals and legal entities;
- is a more complex socio-economic phenomenon than traditional crime;
- has a latent nature;
- causes significant economic damage to the interests of the state (Harko, 2010).

Summarizing the different views of scientists on the signs and features of economic crime, scientists offer the following definition of economic crime: "economic crime is an unlawful act committed in the sphere of economy with the use of official position, violating the order of economic management, and aimed at obtaining economic benefits." Given this definition, the following features of economic crime can be distinguished:

- characterized by abuse of power;
- has a property character;
- has a latent character;
- is characterized by the use of legal and illegal economic activities.

The development of the crisis situation in the economy is a factor that attracts criminals to commit economic crimes, in addition, it should be borne in mind the struggle for economic power, which makes it possible to expand the number of ways to seize power, as well as to commit illegal actions in the economic sphere (Sakun, 2018). According to the authors, *criminal unlawful activity in the field of economy is a set of socially dangerous and illegal acts that encroach on the economic security of the state, the established procedure for the functioning of economic institutions of the state, the procedure for the exercise by business entities of their powers and management functions.*

### 3. The notion of causes and conditions of illegal criminal activity in the economic sphere

Criminal illegal activity in any sphere is determined by a number of reasons, which, first of all, have a national, social nature. However, there are reasons and conditions that allow differentiating criminal offenses depending on the catalysts that cause them. The causes and conditions of criminal offenses in the sphere of economic activity should be understood as negative social and economic phenomena and processes that have different determinative value, including accidental, but, interacting, create, promote, modify and determine the existence and manifestations of economic crime. Based on the analysis of socio-psychological factors, it should be noted that new conditions have emerged for the formation of social tension in connection with the sharp stratification of society by the level and quality of material security. Values have changed in society. Material well-being, regardless of the methods of its achievement, began to dominate more than work. A sharp increase in the welfare of a narrow circle of people generates not only envy, but also the desire to get the same, or a surrogate of the same benefit. Benefit shapes and determines the behavior of many segments of the population (Moiseyenko, 2020). Profit and violence are the "core" of any type of criminal offense, which remains unchanged for a long period of time. However, the gradual change of mentality and social needs transforms criminal actions, giving them new forms while maintaining the old intentions. Thus, it can be confidently stated that the main reason for committing criminal offenses is the satisfaction of material needs at a level sufficient for a certain stratum of the population.

Analyzing the determinants of criminal offenses in the field of economic activity, one should pay attention not only to short-term (current) factors, but also to long-term and medium-term factors that determine the development of this phenomenon. These are factors that arise and operate in Ukraine and are related to the primary accumulation of capital and redistribution of property. In 1997 and 2008, the negative consequences of the global economic crisis became apparent, and medium-term factors are acting at a certain stage of society transformation. These stages last about forty years, during which there are significant changes in the functioning of the economy. Long-term factors of the existence of criminal offenses in the sphere of economic activity are rooted in socio-economic contradictions of society development, in the change of forms of ownership, in the problems of the country's integration into the world market, in the traditions of economic life, in the nature of legal and information support of entrepreneurial activity, etc.

At the same time, the possibilities of forecasting crime in the sphere of economic activity in general are limited. Accounting of open criminal proceedings carried out by the prosecutor's office does not allow to see the regional peculiarities of criminal offenses of this category, as well as other types of criminal offenses. On the one hand, there is a decrease in the official statistics on the number of detected offenses and criminal proceedings opened on them, on the other hand, surveys and interviews with law enforcement officers and businessmen indicate the opposite (Moiseyenko, 2020). Thus, one can say that the causes and conditions of criminal activity in the economic sphere are as follows:

- 1) *insufficient level of social protection of the population;*
- 2) *unsatisfactory level of economic development of the state;*
- 3) *inconsistency of the mentality of society with social values recognized at the highest level of the state;*
- 4) *the presence of "dead" zones in the labor market;*
- 5) *vulnerability of small and medium-sized businesses in the state.*

The current system of recording criminal offences is based on the number of open criminal proceedings and their movement. However, it does not take into account other criteria for comparison that would allow to analyze certain issues. This is, for example, the number of persons who have committed the same crime and their criminal legal characteristics (criminal record, type of subject and social status), form and type of complicity, type of repetition, scope of the criminal offense, type and amount of damage, amount of compensation, the presence of aggravating and mitigating circumstances and their number in each criminal offense, types and geography of the criminal offense, etc. Thus, the system of accounting of criminal offenses does not allow to separate from the array of realizations such offenses that are committed in the field of economy. Also, the authors are unable to distinguish between criminal offences committed in complicity by the same officials who are employees of a business entity (legal entity), as well as those who do not work at this enterprise. The existing system of registration of criminal offences does not allow to identify those persons who have committed criminal offences repeatedly. Records are kept only on persons who have committed criminal offences repeatedly. Moreover, it is impossible to determine what types of repetition are in question: general, special or recidivism. Similar cases with statistical data that determine such qualifying features of criminal offenses of officials as the amount of damage caused by the crime (Moiseyenko, 2020). According to the authors, *the causes and conditions of committing criminal offenses in the field of economy should be understood as a complex set of socially prohibited, socially dangerous phenomena and processes that determine economic*

*criminal activity by creating unsatisfactory living conditions for citizens of the country.*

#### **4. Groups of factors of criminal illegal activity in the sphere of economy**

The determinative complex of criminal offenses in the field of economy includes a fairly large number of reasons that are associated with the mechanism of criminal unlawful activity. Scientists point out that according to the latter, they should be divided into general (indirect impact) and special (factors of direct action). General factors affect the criminal situation in general. According to it, criminologists distinguish the following groups of factors: socio-economic; regulatory and legal and organizational-managerial. Socio-economic factors in the system of criminological determinants of economic crime are decisive, since they determine the criminal behavior of not only an individual, but also the criminogenic situation in society as a whole. Socio-economic factors are a complex of historically variable negative phenomena in the economic life of society, which, on the one hand, form a certain level of economic and legal consciousness of people, and on the other hand, create conditions in the sphere of production, distribution and exchange of material wealth for the realization of their vital needs for material support by criminal means. At the same time, mistakes in economic planning inevitably result in artificial (often unintentional) creation of conditions favorable for committing illegal actions. It is also interesting that socio-economic factors are retrospective, that is, they are historically conditioned phenomenon associated with a number of economic transformations that have taken place in the country over the past fifty years. The shadow economy, which began to develop even before Ukraine gained independence, laid a solid platform for the formation of forms of economic theft, which has been transforming from year to year and has already acquired its final form in the current criminal legislation.

The intensification of criminogenic economic factors in the late 90s of the twentieth century was caused by the formation of monopoly associations and the granting of privileges by state officials in financing; illegal transfer of state resources to non-state economic entities; distortions in pricing. The general economic crisis that gripped Ukraine during this period was characterized by a decline in production, imbalance of the economy, falling living standards, inflation and hyperinflation, declining labor productivity, etc. This finally aggravated the crime situation in the country, creating ideal conditions for the intensification of criminal offenses in the field of economic activity and further criminalization of society. Shadowing processes

covered, first of all, the sphere of legal production, ordinary entrepreneurship associated with concealment of additional profits from accounting. At the level of a particular business entity, the boundary between official and hidden economic activity has virtually disappeared, which has given rise to the circulation of shadow and legal capital, driven by business expediency. The concentration of criminal capital led to the replacement of leaders of the underground trade union format with oligarchic leaders of financial and industrial groups. The criminal scheme of connections between financial and industrial groups, corrupt officials and shadow business has become a reflection of the official system of governance (Moiseyenko, 2020). Today in Ukraine there is no well-established system of money circulation, imperfect tax system, there is a number of debts that will not be "closed" in the near future, and all available funds are mostly spent on solving urgent economic needs of the state. In this context, the development of criminal activity in all spheres is inevitable. Criminalization of any prohibited act is always socially conditioned and, almost always, the first reason for this is the unsatisfactory material condition of citizens, lack of stability in the political and economic sphere, etc. Thus, the number of cases of tax evasion, engagement in prohibited activities, and so on begins to grow.

Pseudo-economic shadow relations are reproduced according to their own laws, creating the material basis for organized crime and corruption. The latter becomes a norm, an effective regulator of distribution and redistribution of shadow profits and excess profits at the level of individuals, social groups (corporations) included in this system, and the state as a whole. The causes of criminal offenses in the field of economic activity are both objective and subjective in nature. In order to understand this type of crime, it is important to identify the circumstances that not only give rise to it, but also support it both at the macro level and in a specific area of organizational and economic activity, as well as at the individual level of life of people in solving personal economic problems. The objective socio-economic determinants of economic (commercial) crime include the socio-economic crisis in the state, the loss of historical traditions and moral norms based on respect for private property, honest earnings, honest financial business, a fairly high tax burden, a high level of the shadow economy, the passive attitude of the state to the existence of the criminal "elite", a significant level of corruption, lack of transparency and fair competition (Zhuzha, Chernei, 2020). In this way, there is a redistribution of values and moral needs of citizens, in the absence of sufficient resources for normal existence, materialism in its purest form comes to the fore. The symbiosis

of social and economic issues in the framework of the considered illegal activity is due to the nihilism of the state, the lability of law enforcement agencies and the gradual transformation of the mentality of Ukrainian society. The same reasons, in fact, underlie corruption. Unfortunately, modern society will have to go a long way to learn to live without corruption, and the legislator urgently needs to develop a modern mechanism to counter such actions, which will include not only repression, but also appropriate ways to raise living standards to a higher level.

Regulatory and legal determinants. Shortcomings of legal regulation of economic relations are one of the leading factors of sustainable criminal development of the economy. These include, first of all, the imperfection of the legislative framework and other regulations governing both the activities of business entities and the activities of law enforcement and regulatory authorities. Legal measures to regulate economic relations, if they do not meet the objectives of socio-economic development of society and the requirements of objective economic laws, have a great negative impact on the criminogenic situation. From the criminological point of view, this is crucial for explaining the legal factors of determination of criminal offenses in the field of economic activity. One of the shortcomings of the regulatory and legal nature, which affects the level of criminal offenses in the field of economic activity, is the lack of clear specialization of law enforcement and regulatory authorities at the legislative level, which, in fact, gives rise to duplication of functions by their various structural units. Another problem is legal conflicts in the mechanism of obtaining by law enforcement agencies of information constituting commercial or banking secrets or data that became known in connection with the performance of control functions by state regulators. Quite often in practice there are cases of unjustified refusal to provide such information to the initiators of the request. As a result, the latency of criminal offenses increases, the effectiveness of preventive work decreases. No less difficult task during the investigation of criminal offenses in the field of economic activity is the search by the pre-trial investigation authorities for legal grounds to involve specialists of regulatory or other specialized bodies as specialists (Moiseyenko, 2020). It should be emphasized that the unstable regulatory situation caused by constant changes in the criminalization of certain illegal acts, decriminalization of a number of economic criminal offenses, as well as the narrowing of the subject composition of abuse of power or abuse of authority only to law enforcement officers, gave a new impetus to the commission of socially dangerous acts in the field of economy.

Organizational and managerial determinants. The growth of negative trends in the economy of the transition period was facilitated by the destruction of the management system that developed within the administrative command system. Partial reduction of the specialized control and audit apparatus and then its complete liquidation (simultaneously with the disbanding of state control bodies at all levels) created unlimited opportunities for various financial frauds. The control and audit apparatus was unprepared for the new economic conditions. It was not mentioned in any of the economic programs for the transition to market relations. In fact, the activities of officials in such important areas as, in particular, the formation and use of the budget, privatization, licensing of certain types of economic activity, foreign economic activity, etc. remained outside the control of the state (Zhuzha, Chernei, 2020). Another manifestation of organizational and managerial determinants of criminal offenses in the field of economic activity is the shortcomings in the activities of law enforcement agencies. First, there is no clear mechanism for interaction between law enforcement agencies, as well as with regulatory authorities and business entities. Second, law enforcement officers often face problems in their activities due to lack of funds to ensure audits, inspections, engagement of specialists, etc. Third, in practice there are cases when employees, whose main task is to detect criminal offenses in the field of economic activity, are assigned with functions that are not typical for them (for instance, of a different nature) (Moiseyenko, 2020). Therefore, taking into account the determinants, measures, means and methods of nationwide prevention of criminal and illegal activities in the economic

sphere, which were discussed above, should include 1) stabilization of the political situation in the country; 2) addressing the problems of small and medium-sized businesses caused by the events of recent years; 3) identifying gaps in economic planning and forecasting economic activities for the coming years; 4) development of the labor market, including the creation of "dead" zones, expansion of the number of state-owned enterprises; 5) increasing the level of social protection of vulnerable categories of the population (elderly people, people with special needs, people raising children on their own, and so forth); 6) improvement of the social package provided to employees; 7) increase of the minimum wage, etc.

## 5. Conclusions

Thus, the study has led to the conclusion that criminal illegal activities in the economic sphere is quite common, which is due to a number of state transformations. The absence of an established social base for the realization of the basic needs of the population, the lack of a clear system of economic planning and forecasting, regular (not always positive) revision of criminal legislation and regulations governing economic relations – all these are the main reasons that negatively affect the criminological picture in terms of criminal offenses in the field of economy.

A positive change in this situation is possible only through the creation of a unified economic and legal mechanism for the protection of the state and citizens through the integration into modern practice of a number of criminological measures and means of prevention, which should be implemented at all levels: from the national to the social.

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