

ГОСПОДАРСЬКЕ ПРАВО

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PROBLEM ASPECTS OF THE LEGAL ADJUSTING ARE IN CREDIT-FINANCIAL TO THE SPHERE OF UKRAINE

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Purpose: the article considers theoretical and legal issues of regulation of financial and credit relations, as well as the prevention of crimes in the field of lending. Emphasis is placed on the complexity of regulating these relations, which is reflected in various areas of law and legislation of Ukraine. **Methods:** part of the norms of criminal procedure law, administrative, financial, civil, economic and other branches of law, which regulate the sphere of credit relations, is analyzed. **Results:** emphasis is placed on the expediency of improving the legislation of Ukraine in the field of credit relations, and bringing it into line with European standards. **Discussion:** problems of legal regulation of financial and credit relations, and prevention of crimes in this area.

Keywords: criminal activity; processing methods; credit and financial transaction; credit resources; refinancing; problem of adaptation.

Formulation of the problem and its relevance. In Ukraine, special attention is paid to the development of the rule of law, legal institutions, improving their quality, improving legislation.

The importance of the role and possibilities of law in solving social problems is emphasized in the legal literature. The importance of law is also extremely important in the prevention of crimes in the field of credit relations. Legal measures cannot be separated from general social measures, they must complement them in their content. The law promotes the proper functioning of the entire system of criminal law influence and the bodies that apply them, organizes the social mechanism and organizational and managerial activities.

Within certain limits, the law regulates the effect of punishment for crimes. As for solving the problem of crime prevention in the field of credit,

a targeted system of legal measures is needed to ensure the reduction and complete neutralization of the causes and factors that contribute to the commission of such crimes at all stages and levels. In the legal literature, this issue is not actually reflected. The main efforts of scientists were aimed at developing the main problems of combating crime, improving the effectiveness of criminal punishment. However, this does not mean that science has not developed measures related to this problem.

Analysis of research and publications. Many authors paid attention to the prevention of crimes in the economy in general [1, p. 115], studied program measures to combat money laundering investigated the general characteristics of the criminalization of the credit and financial system of Ukraine [2, p. 115].

But some aspects of this problem were revealed in the works of such scientists as V.T. Belous, I.G. Bogatyrev, M.L. Davydenko, M.V. Emelyanov,

V.A. Karpuk, A.M. Klochka, O.V. Kryshevich, V.A. Lukyanenko, T.O. Mudryak, V.A. Myslivogo, V.A. Polivach, V.V. Topchiya, S.S. Chernyavsky, and others.

Presenting the main material. The legal problems of financial control in Ukraine were thoroughly researched, in particular, the need to improve the legislation in the researched sphere, interaction and coordination of controlling bodies. However, little attention has been paid to the study of crime prevention measures in the field of credit relations, in particular to the improvement of legislation.

Credit and financial activities are regulated by legislation, the main of which are the Laws of Ukraine: "On Banks and Banking" [7], "On credit unions" [9], "On financial services and state regulation of financial services markets" [10].

The credit system has great potential for positive impact on economic development, and at the same time has a negative impact of unresolved legal provisions, shortcomings of credit and financial technologies, document flow, insufficient professional level of credit workers, as well as the possibility of abuse by credit and financial institutions and borrowers. These circumstances exacerbate the criminogenic situation and contribute to the growth of criminal encroachments on credit and financial relations [2, p. 122].

An important step has been taken in creating a legal basis for combating crimes in the credit and financial sphere in the modern criminal law field of domestic legislation. The introduction in section 7 of the Special Part of the Criminal Code of Ukraine "Crimes in the sphere of economic activity" criminal law, which provides for liability for crimes in the field of credit relations is of particular importance for the protection of property rights of creditors.

At the present stage, the main direction of development and construction of Ukraine as a state governed by the rule of law is its integration into the countries of the European Union. Of course, the most important thing in this way is the adaptation of Ukrainian legislation to the legislation of European countries. This is due to the fact that in the priorities of European states,

the issue of legal cooperation between states to prevent crime and fair criminal justice in Europe occupies one of the most important places. The problem of adaptation of the domestic legislation of Ukraine to the legislation of European countries in the field of prevention of crimes encroaching on credit relations has not been covered at the scientific level, but it is appropriate to conduct such research in the near future.

For example, it is advisable to consider crimes that encroach on public relations in terms of securing the interests of legal entities or individuals and the state related to insolvency. It should be noticed that when committing such acts, the damage may be caused in some cases to credit relations, and in others to certain types of economic relations.

These crimes include, in particular, bankruptcy (Article 219 of the Criminal Code of Ukraine, Article 301 of the Criminal Code of Poland, Article 159 of the Criminal Code of Austria, paragraphs 2, 8 (2) of Article 283 of the Criminal Code of Germany, Article 165 of the Criminal Code of Switzerland, Article 260 Criminal Code of Spain) [7, p. 346].

Analyzing the criminal law of European states, it should be mentioned that in contrast to the criminal law of Ukraine, there is a slightly different approach to understanding the criminal acts related to insolvency. Thus, the *corpus delicti* is provided by Art. 218-1 of the Criminal Code of Ukraine is typical only for the criminal legislation of Spain. Under the laws of other European countries, such an act is not criminally punishable. Under Danish criminal law, all insolvency offenses are not criminal and are administratively liable.

The next type of crimes that should be considered are crimes that encroach on public relations in the field of ensuring the legality of financing, lending, carrying out certain activities in the field of lending.

This group of crimes, the responsibility for which is assigned in most of the Criminal Codes of European countries, includes such dangerous encroachments as money laundering (Article 209, Criminal Code of Ukraine, Article 299 of the Criminal Code of Poland, Article 165 of the Criminal Code of Austria, Article 261 of the Criminal Code of Germany, Article 301 of the Criminal Code of Spain, Article 305bis of the Criminal Code of Switzerland), fraud with financial resources (Article 222 of the

Criminal Code of Ukraine, Article 297 of the Criminal Code of Poland, Articles 152, 153b of the Criminal Code of Austria, Articles 264-1, 265 of the Criminal Code of Germany, Articles 308, 309 of the Criminal Code of Spain, Article 298 (1) of the Criminal Code of Denmark, Article 305 ter of the Criminal Code of Switzerland) [7, p. 347].

Money laundering is the most dangerous crime in this group. According to the Organization for Economic Cooperation and Development, the amount of money laundered annually is from 2 to 5 percent of world gross domestic product. Experts mention that this figure will increase significantly in the near future due to insufficient regulation of financial transactions in the field of new electronic technologies. Undoubtedly, the international nature of such a crime, causing great material damage, destabilizing the normal functioning of the world credit and financial system and have become the basis for the criminalization of these actions in most European countries.

Thus, in most countries of the European Union, in contrast to Ukraine, various types of insurance abuse have been criminalized. Although in Ukraine the situation in the sphere of insurance activity is of special attention.

Taking into account the development of the insurance system in Ukraine, the growth of socially dangerous acts in this subsystem of credit and financial relations, the latter causing significant damage, and reviewing the experience of European countries, there is a need to strengthen liability for abuse of insurance. It is proposed to criminalize acts characterized by abuse in insurance, namely: intentional, in order to obtain insurance compensation, the creation of circumstances and conditions that cause the occurrence of the event that is the basis for the payment of such compensation. In addition, the need to establish responsibility for the commission of this act is due to the requirements of practice.

Thus, in the structure of the credit and financial system of Ukraine, the largest share in attracting free cash of legal entities and individuals falls on insurance companies, and the main way of stealing such funds is their illegal

receipt by providing fictitious documentation on the validity of the insured event. There is also a need to enshrine in criminal law a rule that would establish responsibility for conducting chain games and creating financial pyramids. After all, criminal groups operating on the principle of "financial pyramids" have recently become more active in Ukraine [8, p. 110].

An analysis of criminal law shows that the vast majority of sanctions for crimes in the field of credit relations include fines, as well as restrictions and imprisonment. The sanctions include imprisonment or restriction of liberty for up to 5 years. However, the analysis of case law indicates that courts rarely use imprisonment as a type of punishment when sentencing for crimes in the field of credit relations. In most cases, fines and other alternative punishments not related to imprisonment and restraint of liberty are applied.

Scientist A.M. Klochko insists on the need to strengthen criminal liability for crimes committed in the field of banking. It may be worthwhile to include in the structure of the Criminal Code of Ukraine the article "Illegal obtaining of a bank loan".

Taking into account the peculiarities of the criminal legislation of Ukraine, cases of illegal obtaining loans in general in practice are classified as "fraud" according to Art. 190 of the Criminal Code of Ukraine. However, the subject of fraud can be both someone else's property and the right to such property, and when receiving a loan it is about money, not property [9, p. 710].

Legislation in the field of credit relations, which needs to be improved, is reflected in other areas of law and legislation. These include some of the rules of criminal procedure law, administrative, financial and other branches of law.

Thus, in criminal procedure law there are rules that directly indicate the identification of causes and conditions that contribute to the commission of crimes, as well as the obligation of the inquiry, investigation and prosecutor's office to take measures to eliminate these causes and conditions [10].

Norms of administrative law regulate the management of law enforcement agencies that prevent crimes in the field of credit relations, establish administrative influence on those released

from punishment, provide for other measures related to the prevention of crimes in this area (established liability for failure to comply with legal requirements of the National Bank of Ukraine as for elimination of violations of banking legislation - Article 166-5 of the Code of Administrative Offenses, for evasion of registration with the Pension Fund of Ukraine, the Social Insurance Fund of Ukraine - Article 165-1 of the Code of Administrative Offenses, for violation of financial legislation - Article 164-2 of the Code of Administrative Offenses) [11].

Norms of financial law: regulate relations in the field of banks and other credit institutions, determine the procedure for financial control (verification of financial obligations to the state and all subjects of the credit and financial system; verification of compliance with financial rules, settlements and savings these institutions, prevention and elimination of identified violations of financial discipline, etc.), establish liability for failure to comply with instructions [12, p. 7].

Thus, legal measures to prevent crimes in the field of credit relations constitute a system of measures that relate to various areas of law and legislation. To implement legal measures to prevent crimes in the field of lending, it is important to adopt the draft Law of Ukraine "On Crime Prevention" of May 12, 2015, which defines the system of measures to prevent crimes, the procedure for their implementation by relevant authorities, institutions and organizations.

However, it should be mentioned that this draft establishes measures to prevent crimes, the commission of which will be effective only for crimes (offenses, background phenomena) of a general criminal nature. The prevention of crimes in the field of credit relations, among others, should include some separate measures that are related to the nature of these crimes.

The above indicates that at present there is a need to increase guarantees as for the prevention of crimes in the field of credit. First of all, it is necessary to determine accurately and objectively the range of entities that will carry out crime prevention in this area, their competence, to increase their responsibility and interaction.

At present, the issue of creating a unified

system of legal norms in solving this problem is relevant. Accordingly, the prevention of crimes in the field of credit relations requires the improvement of the rules of various branches of law and the adoption of additional rules.

In order to reduce the crime rate, it is first of all necessary to reform and improve the criminal legislation and the legislation on crime prevention. The next step should be to reform the legislation in the field of credit relations. It should be noted that such tightening should only be applied to financial sanctions for crimes committed, as the vast majority of such crimes cause great material damage. Taking into account the importance of legal measures to prevent crimes in the field of crediting, it is necessary not to exaggerate their potential, as it goes beyond legal regulation. At the same time, one should not ignore the fact that legal measures should not eliminate punishment. Therefore, they should be joined by other measures, including measures of organizational and managerial nature.

We consider it expedient to supplement the current Criminal Code of Ukraine with independent corpus delicti of crimes "Credit fraud", "Illegal obtaining of credit", "Malicious evasion of repayment of accounts payable".

Conclusions. Thus, the whole set of legal norms that are directly or indirectly aimed at effective regulation of credit and financial relations and the system of legislative support of law enforcement agencies for the protection of rights refers to legal measures to prevent crimes in the field of credit relations.

It is proposed to solve the issues related to:

- improvement of current legislation in the field of credit and finance relations, based on the principles of the rule of law, equality in the opportunities of the subjects of this sphere;

- adaptation of the legislation of Ukraine to international norms and standards in the system of credit and financial relations and protection of the credit and financial system from criminal encroachments;

- more complete consideration of the experience of European countries, including the improvement of criminal legislation of Ukraine and the adoption of legislation on crime prevention.

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ПРОБЛЕМНІ АСПЕКТИ ПРАВОВОГО РЕГУЛЮВАННЯ КРЕДИТНО-ФІНАНСОВОЇ СФЕРИ УКРАЇНИ

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Мета: у статті розглядаються теоретичні та правові питання проблем регулювання фінансово-кредитних відносин, а також запобігання злочинам у сфері кредитування. Акцентовано увагу на складності регулювання даних відносин, які знаходять відображення і в різних галузях права та законодавстві України. Ґрунтовно досліджувались правові проблеми фінансового контролю в Україні, зокрема необхідності вдосконалення законодавства в досліджуваній сфері, взаємодії і координації контролюючих органів. Проте вивченню заходів запобігання злочинам в сфері кредитних відносин, зокрема вдосконаленню законодавства приділено досить мало уваги. Свідчить про те, що на даний час виникла необхідність у підвищенні гарантій щодо вирішення проблем запобігання злочинам у сфері кредитування. Перш за все необхідно точно та об'єктивно визначити коло суб'єктів, які будуть здійснювати запобігання злочинам в даній сфері, їх компетенцію, підвищити відповідальність та взаємодію. На даний час є актуальним питання щодо створення єдиної системи правових норм при вирішенні даної проблеми. Відповідно, запобігання злочинам у сфері кредитних відносин потребує удосконалення норм різних галузей права та прийняття додаткових норм. **Методи дослідження:** аналізується частина норм кримінально-процесуального права, адміністративного, фінансового, цивільного, господарського та інших галузей права, які регулюють сферу кредитних відносин. **Результати:** наголошується на доцільності удосконалення законодавства України у сфері кредитних відносин, та приведення його до Європейських стандартів. **Обговорення:** проблеми правового регулювання фінансово-кредитних відносин, та запобігання злочинів у даній сфері.

Ключові слова: злочинна діяльність; методи обробки; кредитна та фінансова операція; кредитні ресурси; рефінансування; проблема адаптації.