

# INTERNATIONAL ASPECT OF A LEGAL REGULATION IN THE FIELD OF FINANCIAL CRIME COUNTERACTION BY THE EXAMPLE OF SPECIAL SERVICES OF UKRAINE AND THE CIS COUNTRIES

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## ABSTRACT

*The article analyzes the legislation of Ukraine, the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Republic of Moldova, which regulates the activities of the special services of the above countries in the area of countering financial crimes.*

*Based on the analysis, it is concluded that these special services are directly related to countering for financial crimes. In this connection, the article discusses and compares the peculiarities of the status and activities of the special services of Ukraine and the above-mentioned states as the entities engaged in counteraction to financial crimes. At the same time, it is noted that the activities of all special services are accompanied by certain disadvantages, which include the function of pre-trial investigation, the lack of established cooperation with law enforcement agencies, including foreign countries, for the effective counter of financial crimes.*

*The study focuses on the international regulations, which are aimed at counteracting organized crime, including crime in the financial sphere. The analysis of the national and international legislation revealed the areas for improving legislation, which regulates the activities of the special services of Ukraine, the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Republic of Moldova.*

**Keywords:** National Financial System, Financial Crime, Financial Crime Counteraction.

**JEL Classification:** K21

## INTRODUCTION

Before presenting the main material and analyzing the legislation of Ukraine and foreign countries regarding the legal regulation of counteraction to financial crimes, it is advisable to pay attention to the financial system of the country as an object of a financial crime, to the general

features of protecting the state financial system from illegal encroachments in the financial sphere, and to the role of special services in its implementation.

Protection of the national financial system is relevant for each country. Such attention is due to the emergence, in the context of globalization, of the new financial crimes, to the difference in methods of their commission and concealment, and to the dependence of the development of the state as democratic on the ability of government agencies and law enforcement agencies to counteract financial crimes (Wright, 2017).

Despite the importance of the financial system for state security, the definitions a “*financial system of the state*” and a “*financial crime*” are not formalized in the Ukrainian legislation; accordingly, there exist different approaches to its understanding in scientific doctrine. In Russia, the understanding of the financial system at the normative level is ambiguous, while the concept is not specified in the regulatory acts, including those that specialize in the regulation of the financial system. Moreover, there is a lack of the notion of a financial system in the international instruments, although it has been repeatedly mentioned. Proceeding from the above, it is worth to pay attention to the existing scientific approaches to the definition of the “*national financial system*”.

In this regard, for the introduction of a unified approach to the definition of the concept of the “*national financial system*” in the legislation of Ukraine and CIS countries, it is proposed to regard it as an aggregate of separate but interrelated financial institutions that implement and regulate the financial activities of the state.

The main threat to financial systems of the country is financial crimes and despite the growth of financial crime, the data of criminological research shows less and less its actual scope (Antinori, 2018).

If we talk about the management of the national financial system, then according to the legislation of Ukraine and the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Republic of Moldova, we can allocate the parliament-the state legislative body, which adopts laws that establish the basis for the existence of a stable financial system, in particular, the list of financial crimes and punishment for them; the government-the body that executes the program of economic development of the state, including the financial system; the head of the state-president, who signs the laws passed by the parliament and owns the veto over the laws.

Thus, there are all legislative grounds to assert that the parliament, the government and the head of state act as controls for the national financial system, contribute to activities on the crime counteraction, including financial, since the country’s security is one of the main functions of the state. In particular, the Decree of the President of the Republic of Belarus “*On the Approval of the Concept of National Security of the Republic of Belarus*” No. 575 dated November 9, 2010 refers the state to the subjects of national security exercising its powers in this sphere through legislative, executive and judicial bodies; public and other organizations; citizens. At the same time, Foros, taking into account the fact that the management bodies only contribute to counteracting financial crimes, emphasizes that counteraction to crimes is the main task and function of law enforcement agencies (Foros, 2012).

Rider also draws attention to the importance of interaction between state authorities and law enforcement agencies in the fight against financial violations. Since, under the conditions of the economic crisis, the financial system of each country is exposed to a number of factors that create conditions for unlawful encroachments on the state financial interests (Rider et al., 2014).

Thus, the basis for countering to financial crimes is effective management of the national financial system, which is carried out by the parliament, the government, the head of state and the activities of law enforcement agencies entrusted with the task of counteraction to financial crimes.

## RESEARCH METHODOLOGY

The methodological basis of the study is a set of general and special methods of scientific knowledge. The systematic approach as a common scientific method allowed identifying problematic issues of legal regulation of counteraction to financial crimes in the aspect of the activities of special services of Ukraine, the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Republic of Moldova. The logical semantic method was used to study the categorical apparatus within the framework of this research, in particular, the concepts of “*financial system*”, “*financial crime*” and “*counteraction to financial crimes*”. The method of documentary analysis was used to formulate proposals and recommendations on improving the legal regulation of countering financial crimes by special services. A comparative legal method was used to compare the legislation of Ukraine, the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Republic of Moldova regarding legal regulation of the activities of special services as an important entity engaged in counteraction to financial crimes. Normative basis of the study is the legislative acts of Ukraine, the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Republic of Moldova, regulating the status and activities of special services as entities engaged in counteraction to financial crimes, as well as international acts that establish the legal framework for the fight against financial crimes at the international level.

## RESULTS

The scientific novelty of the results is that a comparative analysis of the legislation of Ukraine, the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Republic of Moldova made it possible to identify the specifics and existing problems of the legal regulation of the activities of the special services of the above countries as entities engaged in counteraction to financial crimes. The scientific approach to the understanding and definition of the concepts “*financial system of the state*” and “*financial crime*” are considered. It is substantiated that the special services of the above-mentioned countries are the entities engaged in counteraction to financial crimes as one of the significant threats to the financial security of the state, as evidenced by the legislative acts of these countries. It is determined that the legislation of Ukraine, the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Republic of Moldova has certain differences, which significantly affect the

role of special services of these states in the sphere of prevention and detection of financial crimes that arise in the sphere of formation and distribution of finance, and increasingly become transnational.

Based on a comparative analysis of the legal regulation of the activities of the special services of Ukraine and CIS countries, the main areas for improving their activities are proposed with a view to effectively counteracting financial crimes both within a single state and on a more global level: the concepts of “*financial system*” and “*financial crime*” were clearly defined and enshrined at the legislative level; based on the experience of the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Republic of Moldova, it is proposed to withdraw powers to conduct pre-trial investigations of financial crimes from the jurisdiction of the Security Service; to create an effective mechanism of cooperation between special services and public authorities, law enforcement agencies within the country; to improve the mechanism of cooperation between the special services of different countries among themselves and international institutions with a view to effectively counteracting transnational financial crime, which generally corresponds to international acts.

## DISCUSSION

The Security Service of Ukraine is among the law enforcement agencies of Ukraine. In particular, the Law of Ukraine No. 2229-12 “*On the Security Service of Ukraine*” dated March 25, 1992 defines it as a special-purpose law enforcement agency thereby securing its special purpose in the law-enforcement system of the country.

According to the national legislation, the SBU, within its competence, is entrusted with protecting the economic potential of Ukraine, which integral part is the financial system. Therefore, the tasks of the Security Service in the sphere of protecting the financial system of the country include prevention, detection, suppression and disclosure of financial crimes that directly threaten or are harmful to the financial system of Ukraine, including the facts of organized criminal activity of corruption and in the sphere of money management of the country.

In accordance with the above mentioned, there are two main lines of activity of the SBU as a subject of counteraction to financial crimes: external and internal, which are aimed at creating the proper conditions for ensuring the financial security of Ukraine, as well as the security of its financial interests, respectively, from external or internal unlawful attacks.

In the CIS countries, the issue of the financial system protection, including countering financial crime, is not less important than in Ukraine. In particular, Musaeva analyzes the problems of the shadow economy of the Russian Federation and suggests ways to reduce its level to increase tax revenues to the budget of the Russian Federation (Musaeva et al., 2016). For example, about 26 trillion rubles of taxes were collected from 80 trillion rubles of official GDP in 2015 in Russia. If the size of the shadow economy is 46%, the budget has lost less than 9 trillion rubles. The level of shadow economy in Russia, among the CIS countries, is not the highest. For comparison, it is worth paying attention to Moldova where the level of shadow economy reaches 50%. Taking into account the indicators of the shadow economy of Russia,

Ukraine and Moldova, the level of the shadow economy in Belarus is very low, reaching only 12-13% of GDP.

In our view, proceeding from this, it would be expedient to agree with scientists who draw attention to the close relationship between the level of the shadow economy in the country, the level of organized crime (Nurgaliev et al., 2014), and the level of legalization of proceeds acquired by criminal means (Ardizzi et al., 2014).

At the same time, the opposition to the manifestations of the shadow economy as a threat to the financial system of the country is relevant for all states. Berdiev points out that the financial relations and the shadow economy are interrelated (Berdiev & Saunoris, 2016). After all, the lower the level of the shadow economy, the higher the level of development of financial relations. Therefore, financial relations as a component of the country's financial system can only develop if they are protected from a number of criminal encroachments.

Accordingly, the detection of possible or existing dangers for the financial system of the state, disclosure of offenses that damaged financial relations and bringing to justice those responsible, in CIS countries, as in Ukraine, is entrusted to specialized agencies.

In particular, in the Russian Federation such task is assigned to the Federal Security Service (hereinafter referred to as the FSB), National Security Committee in the Republic of Kazakhstan (hereinafter referred to as the NSC), the State Security Committee in the Republic of Belarus (hereinafter referred to as the KGB), and the Information and Security Service to the Republic of Moldova (ISS).

The fight against financial crimes is based on the norms of national legislation, at the same time; other countries in the context of globalization are trying to combine efforts and resources to effectively counter this type of crime. Such intentions find their reflection in international legal acts. Such acts that directly relate to the fight against financial offenses are: Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005; The UN Convention against Transnational Organized Crime, 2000; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998, etc.

It is worth noting that Art. 7 of the United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/22 in 2000, are fully devoted to specific aspects of combating money laundering. At the same time, special attention is drawn to the ability of law enforcement and other agencies to combat money-laundering in order to cooperate, as well as to exchange information on possible money laundering cases, both nationally and internationally.

The analysis of the legislation regulating the activities of the FSB allows defining its tasks as the organization, in cooperation with federal government agencies, combating organized crime, corruption, smuggling, legalization of criminal proceeds, illegal circulation of arms etc.

At the same time, it is important that intelligence agencies cooperate with law enforcement agencies of foreign countries, because crimes in the financial sphere become international (Pik, 2013). Today, the interaction of states in the fight against the legalization of proceeds from crime is regulated by the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime and on Financing of Terrorism dated May 16,

2005 and the Treaty of the CIS Member States on Counteracting Legalization laundering) of criminal proceeds and financing of terrorism dated October 5, 2007. These acts make the main emphasis on information interaction, including: 1) the exchange of reports on the activities of entities engaged in combating the legalization of proceeds from crime for evaluation by other states with the purpose of identifying problems and their prompt elimination; 2) the organization of general investigation teams to identify and stop the legalization of proceeds from crime, as well as the other financial crimes. In addition, it is worth to pay attention to the development of a common practice of combating crimes in the financial sphere (Zubkov, 2007).

It should be noted that the Criminal Procedure Code of the Russian Federation refers only to the illegal transfer of monetary instruments and/or cash in an especially large amount by a group of individuals across the border of the Customs Union within the framework of the EurAsEC, which is rather the exclusion from the investigative authorities of the remaining agencies of the pre-trial investigation of the Russian Federation through its special social danger. According to the Recommendation of the Parliamentary Assembly of the Council of Europe 1402 (1999), the institutions of the European Union consider it expedient to deprive special services of the right to conduct pre-trial investigation of crimes.

Another important point is that the legislations of the Russian Federation and Moldova define the functions that the security agencies of these countries perform for the implementation of assigned tasks, while the Ukrainian legislation does not provide for a list of the functions of the SBU. Taking into account the fact that the functions of law enforcement agencies are an important elements of its administrative and legal status of the SBU, it is advisable to develop and adopt a new specialized normative legal act the Law of Ukraine “*On the Security Service of Ukraine*”, which will define all the components of the SBU, including a list of its functions. At the same time, this list of functions should exclude pre-trial investigation of financial crimes from the competence of the SBU.

In turn, the activities of the special services of the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Republic of Moldova, despite their compliance with the legal nature of special services that do not carry out pre-trial investigations but they are nevertheless important entities engaged in counteracting financial crimes, require improvement within the framework of establishing cooperation with the agencies of the national law enforcement system and with law enforcement agencies of other countries. It is the only way to minimize the level of transnational organized crime in the financial sphere.

On the basis of the author's research, it was firstly determined the influence of the state services for the national safety defense on the state of financial crimes of the different according to the economic status countries, it was determined the peculiarities of the functioning of the countries depending on the chosen political and economic development vectors.

## CONCLUSIONS

Counteraction to financial crimes as the main threat to the stability of the national financial system is relevant for all countries, including Ukraine, the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Republic of Moldova. At the same

time, the lack of a unified approach to the definition of the “*national financial system*” complicates the counteraction to illegal encroachments. Thus, there is a need to define a single concept of the “*national financial system*”.

As for the entities engaged in counteraction to financial crimes, they belong to the special services of Ukraine and CIS countries. Their status as a whole and as entities engaged in counteraction to financial crimes is similar, that is due to the similarity of forms and methods of counteracting crimes, as well as the history of being a member of the USSR. Accordingly, these countries have become successors to a unified model of the organization and activities of such an authority. In addition, it is important to establish cooperation between the special services of Ukraine and CIS countries. Such interaction both corresponds to the norms of international acts and is an important step on the way to counteraction of transnational financial crimes.

The financial crimes are affected by a variety of external factors, due to the fact that each of the countries, which are considered in the article, has different relations with the other countries. In such a way, Ukraine defined the way of its community development through the processes of the European integration. Therefore, the formation of legislation regarding financial crimes, legalization of incomes, received in a crime manner, the use of offshore zones, electronic incomes declaration of the officials comply with the requirements of the EU Directives (Tetiana et al., 2018). The Russian legislation is against the world economic sanctions go own way-the defense of State interests. The directions for future researches in this sphere is precisely the consideration of the peculiarities of the considered states, functioning in the unstable political environment, the formation of national legislation, taking into account the necessity of harmonization with the world trends, particularly the EU.

### **DISCLOSURE STATEMENT**

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