

БОРОТЬБА ЗІ ЗЛОЧИННІСТЮ: ТЕОРІЯ ТА ПРАКТИКА

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CURRENT ISSUES OF INTERACTION BETWEEN SUBJECTS OF PREVENTING ECONOMIC CRIME IN UKRAINE

The article describes the interaction of the main issues preventing economic crime in Ukraine. The author has given the concept of «interaction» is defined subjects and prevent their classification, and describes control of crime prevention as a component.

Keywords: prevention; cooperation; economic crime; control.

Розкрито основні питання взаємодії суб'єктів запобігання економічній злочинності в Україні. Визначено поняття «взаємодія», розглянуто суб'єктів запобігання та їх класифікацію, а також надано характеристику контролю за економічною злочинністю як компонента запобігання.

Ключові слова: запобігання; взаємодія; економічна злочинність; контроль.

Раскрыты основные вопросы взаимодействия субъектов предотвращения экономической преступности в Украине. Определено понятие «взаимодействие», рассмотрены субъекты предупреждения и их классификация, а также дана характеристика контроля экономической преступности как компонента предупреждения.

Ключевые слова: предотвращение; взаимодействие; экономическая преступность; контроль.

Interaction on preventing economic crime is marked by a variety of links, researching which will help to increase the effectiveness

of state control over neutralization of factors that contribute to economic crime. These links in the system of combating economic crime should be interconnected and coordinated. They should not be duplicated. This determines the importance of the study of interaction (coordination) of entities in charge of prevention of economic crime while exercising their own functions. Links that determine the nature of interaction between law enforcement and other state bodies combating against economic crimes should have their legal expression and be based on common principles.

Law of Ukraine «On Preventing and Combating Corruption» [1] does not provide a classification of bodies that counter corrupt practices and economic crimes. However, it is necessary to distinguish groups of public authorities with adequate powers in this area:

- prevention agencies and authorities involved in the fight against economic crime (law enforcement bodies);

- bodies in charge of decision-making on cases involving economic crimes (judiciary bodies);

- bodies exercising control over the implementation of laws on preventing economic crime (regulatory authorities);

- bodies exercising prosecutorial supervision over the implementation of laws in the field of prevention of economic crime.

The category of «interaction» with respect to the prevention of crime is studied within criminological and criminal procedures and forensic and operational search activities as well. Contents of this category are specified only with respect to the nature of each kind of the above-mentioned activities. Improving interaction between law enforcement bodies and regulatory authorities in combating economic crimes is recognized as a priority of activities on combating crime [2].

Relevance of this issue has been evidenced by numerous scientific publications of legal scholars. Proceedings of the authors focus on the specific aspects of the interaction between law enforcement bodies and regulatory authorities during the investigation of economic crimes, particularly in the financial sector, taxation etc.

The term «interaction» is used in the Laws of Ukraine, including «On Operational Search Activities» (Art. 4, para 4. Art. 7),

«On Organizational and Legal Fundamentals on Combating Organized Crime» (Chapter V) [3], Orders of the Ministry of Internal Affairs of Ukraine etc.

The concept of «interaction» should be distinguished from related categories similar in value, such as «concerted practices», «coordination», «furtherance», «implementing instructions and guidance», «assistance», etc., the content of which is explained via relevant legal rules, or which follow from their content.

Summarizing the above approaches in the literature, we may conclude that the interaction is coordinated activities of law enforcement, regulatory and other public and private bodies and officials aimed at preventing and combating economic crimes with balance of powers, methods and tools envisaged by law for each subject of these activities.

Comparative analysis of published definitions allows to distinguish the features that characterize the interaction of law enforcement bodies in the prevention of economic crime, including: organizational autonomy of interaction subjects, joint activities of cooperation, coordinated by objective, place and time, a combination of efforts, means and methods.

The basis for different types of interaction is obligatory participation of two or more subjects between which there is a mutual exchange of information stipulated by the relevant regulatory acts. In practical aspect is important and mode of interaction is also important in terms of practical aspect. Majority of the authors usually distinguish between procedural and non-procedural interaction. The first is believed to be regulated by law while the second – by departmental regulatory documents.

One may also differentiate between departmental (internal) interaction, which is understood as interrelated activities of departments of one agency (e.g., the interaction between the investigator and the body of inquiry in the Ministry of Internal Affairs) as well as interagency (external) interaction of different agencies (such as the Security Service of Ukraine, the Customs Service of Ukraine, the tax police, State Financial Monitoring Service of Ukraine etc.). In case of external interactions, interagency coordination of activities of a significant number of subjects are

relevant i.e. when there is a need to achieve ordering, interlinkage, consistency of their joint efforts.

In the context of the legal mechanism for preventing economic crime it is advisable to apply scientific classification of subjects preventing economic crimes, which divide the said subjects as those who:

1) identify and ensure the implementation of the state policy of countering and combating economic crimes;

2) establish and improve the regulatory framework to counter those crimes;

3) provide direct law enforcement in preventing economic crimes;

4) conduct proceedings in cases on economic crimes (court);

5) direct activities to prevent corruption;

6) coordinate the activities of countering and combating economic crimes;

7) implement control and supervision over direct law enforcement activities in combating and countering economic crimes;

8) carry out renewal of legitimate rights and interests of individuals and legal entities, eliminating the consequences of criminal acts;

9) provide financial, material and technical, informational support and guidance for the prevention of economic crimes.

Interaction of subjects in charge of preventing economic crimes is characterized by a variety of links. These links between subjects of preventing economic crime are already interrelated and interdependent, their division and separation are possible only in theory. This determines the interdependence of all kinds of interaction (coordination) of these bodies while exercising their functions. Links that determine the nature of interaction between law enforcement and other state bodies combating against economic crimes should have their legal expression and be based on common principles.

Each specified element of the mechanism for preventing economic crime also gets its defined legal confirmation. For example, in case of the system of bodies (subjects) in charge of countering economic crime and its prevention, it means their functions and powers.

The state is scarcely taking any steps to improve corporative social responsibility. In addition, during implementation of market reforms under the pretext of improving the competitiveness of

enterprises their welfare sub-system established in Soviet times had been actually destroyed. Some charitable campaigns of business entities are purely advertising and promotional in their nature; they do not change business overall anti-social orientation, it still prone to committing fraud resulting into hundreds of thousands and millions of depositors and shareholders as its victims. Executive power avoids solving the problem of restoring impaired savings and insurance premiums of the population by taking minor measures to assuage public opinion in the first place. All this is at variance with government calls for trust, accord and social partnership in the country. These negative effects on the Ukrainian economy and the social sphere may not be considered short-term and episodic. They have become a stable trend for seven – eight years. They are difficult to interpret through only Soviet heritage and errors of the transformation period.

To create necessary moral, political, ideological, educational means of state influence on economic crimes objectives and tasks have been established as follows:

- stabilization of enterprises and organizations aimed at ensuring the safety of workers during economic downturns;

- citizen's income leveling according to market environment (progressive income tax, subsidies for children and housing, free alimentation).

This is not an exhaustive list of government measures which, in our opinion, should definitely be considered when creating a mechanism for the prevention of crime in the sphere of non-bank financial institutions in Ukraine. Many countries and in particular Ukraine have the experience of transition from a planned economy to a market one, but unlike Ukraine, these processes are not accompanied by avalanche growth of economic crime level.

An important component of the mechanism of economic crime prevention is an establishment of control over it on the part of the state.

Control over economic crimes may be defined as state and local government and non-governmental organizations activities regulated by the law and aimed at the prevention, detection and suppression of violations of law to ensure normal functioning of economic system. This definition reflects the common understanding of the control and captures its two main objectives – to prevent economic crime and combat it.

Therefore, control over economic crimes should be treated as a component of prevention. Depending on the purpose, there are two types of such control: social-legal and criminal.

Control over economic crime as a prevention component is that by fighting crime an administration carries out accounting and inspection of how the state of the managed object corresponds to a desired state – an objective (combating economic crime). Let's consider peculiarities of the control over economic crimes in Ukraine. Such control is divided into:

- state control;

- non-governmental organizations' control;

- social control (mechanism of parliamentary oversight).

Depending on the subject matter and scope, the types of control are as follows:

- financial control (including tax, monetary, fiscal and audit control);

- registration control – control over compliance with the law at the time of registration of business entities;

- licensing control and supervision – monitoring of compliance with legislation in activities subject to licensing;

- antimonopoly control – monitoring the adherence to antitrust law of entities and state bodies and local authorities;

- monitoring of compliance with legislation on consumer protection;

- monitoring of compliance with legislation in certain sectors of the economy and in certain markets, particularly in the securities market, insurance, private pensions, trade, sales of alcoholic beverages;

- other types of control (migration, export, customs, assay, commercial) [4; 5; 6; 7; 8].

An important condition for effective control over economic crimes is harmonious, balanced mix of effective legal control for socio-economic and political processes in the country and respect for fundamental human rights. Successful achievement of this goal requires the implementation of a range of immediate measures. According to experts, the most important among those are:

- 1) establishing openness («transparency») in significant economic decision-making (on privatization, corporatization,

auctioning) by public officials. Failure to comply with this fundamental principle is the most important factor in the development of corruption and related criminalization of state financial system;

2) The most important direction is to strengthen a number of controls over socio-economic processes, over financial and commodity flows (budget, banking, currency, customs and other controls). At that this trend may give stronger results in the medium term than control over certain individuals. The complexity of the problem is that the deepening of discretionary control is a factor of corruption and economic crime;

3) it is necessary to envisage criminal penalties for: lobbying corruption, favoritism, protectionism, contributions for political purposes, contributions for elections, provision of sensitive information, traditions of state officials transition to positions of honorary presidents of corporations and private companies, investment into commercial structures from the budget, transfer of state property into joint-stock companies, training of children abroad by sponsors and many other dangerous subtle forms of corruption;

4) important anti-criminogenic measure is a prompt legislative solution to the problem of provision of information on the financial situation of their families by government officials. Financial control of income and assets of officials and their families exist in all civilized countries. This is reflected in the International Code of Conduct for Public Officials;

5) implementation of mandatory anti-corruption expertise of economically significant legislative and other legal acts drafts in order to prevent provisions (gaps, etc.) that directly or indirectly contribute to the commission of economic crimes. Practical implementation of the constitutional principle of equality before the law and the courts should be carried out. It shall update the adoption of laws on parliamentary immunity specification, on liability of first class officers as well as of political figures for violation of the laws, on elimination of unjustified privileges;

6) Important direction of legal control over economic crimes is an effective use of legal instruments. These measures are not associated with the use of the criminal procedure law, thus they allow undermining the financial and economic basis of the most

dangerous types of crime significantly, including corruption on the basis of quite legitimate grounds without dubious repressive actions. Let's consider the situation in the area of privatization as an example.

Initially cash privatization resulted into a transfer of large share of state-owned property to private ownership for a low, sometimes very symbolic price. This was primarily the result of malicious agreement between representatives of one party – the buyer, with the other party – state representatives. As a result of these corrupt agreements the state had suffered a substantial damage.

REFERENCES

1. Про засади запобігання і протидії корупції : Закон України від 7 квіт. 2011 р.
2. Дудніков А. Л. Проблеми взаємодії правоохоронних і контролюючих органів при розслідуванні злочинів у сфері економічної діяльності / А. Л. Дудніков // Проблеми законності. – 2002. – Вип. 52. – С. 136–140.
3. Про організаційно-правові основи боротьби з організованою злочинністю : Закон України від 30 черв. 1993 р. // Відомості Верховної Ради України. – 1993. – № 35. – Ст. 358.
4. Савченко Л. А. Правові проблеми фінансового контролю в Україні : дис. ... доктора юрид. наук : 12.00.07 / Савченко Леся Анатоліївна. – Ірпінь, 2002.
5. Радионова В. М. Финансовый контроль : [учеб.] / В. М. Радионова, В. И. Шлейников. – М. : ИД ФБК-ПРЕСС, 2002.
6. Башкатова Т. А. Сущность и функции финансового контроля / Т. А. Башкатова // Финансы : [учеб.] / под ред. Л. А. Дробозиной. – М. : ЮНИТИ, 2001.
7. Калюга Є. В. Фінансово-господарський контроль у системі управління : [моногр.] / Є. В. Калюга. – К. : Ельга ; Ніка-центр, 2002.
8. Устинова І. П. Правовий статус органів фінансового контролю в системі органів державної виконавчої влади в Україні : дис. ... канд. юрид. наук / Устинова Ірина Петрівна. – К., 1997. – 199 с.