



2-е изд., перераб. и доп. Москва : Юрист. 2009. С. 516.

8. Морозова Л.Я. Механизм правового обеспечения сбалансированности интересов личности и государства. *История государства и права*. 2011. № 17. С. 27.

9. Фролов И.В. Административно-правовой механизм государственного управления в сфере финансового оздоровления, несостоятельности (банкротства) : дис. ... канд. юрид. наук : 12.00.14. Воронеж. гос. ун-т. Воронеж, 2010. С. 215.

10. Алексеев С.С. Теория права. Москва : Издательство БЕК, 1995. С. 216.

11. Стеценко С.Г. Адміністративне право України : посібник. Київ : Атіка, 2008. С. 351.

12. Шопіна І.М. Адміністративно-правове регулювання управління органами внутрішніх справ України : монографія. Київ : МП Леся, 2011. С. 112.

13. Колпаков В.К. Законність та дисципліна в умовах реформування органів внутрішніх справ. *Форум права: електрон. наук. фах. вид.* 2006. № 2. С. 80. URL : http://nbuv.gov.ua/j-pdf/FP_index.htm_2006_2_12.pdf.

14. Адміністративне право України : підруч. / Ю.П. Битяк, В.М. Гарашук, О.В. Дьяченко та ін. ; за ред. Ю.П. Битяка. Київ : Юрінком Інтер, 2007. С. 237–239.

ИНФОРМАЦИЯ ОБ АВТОРЕ

Филь Руслан Сергеевич – кандидат юридических наук, начальник отдела Государственного научно-исследовательского института Министерства внутренних дел Украины;

INFORMATION ABOUT THE AUTHOR

Fil Ruslan Sergeevich – Candidate of Law Sciences, Head of Department of State Research Institute of the Ministry of Internal Affairs of Ukraine;

ruslan.sn111@gmail.com

УДК 343.97

THE REASONS AND CONDITIONS FOR THE SPREAD OF CREDIT CRIMES

Gabriella Eva KHAYRUTDINOVA

Postgraduate Student of the Department of Criminal Law and Process of Uzhhorod National University,
Prosecutor of the Kiev local prosecutor's office № 8

SUMMARY

The article presents different views of scientists on determining the determinants of crime, on the basis of which we propose our own term causes of crime in the sphere of credit relations. We analyze the classification of such reasons, among which we distinguish economic, political-ideological, social-psychological, legal, organizational-administrative, law-enforcement. In the plane of such classification, we continue to investigate the causes of crime in credit relations.

Key words: credit relations, causes of crime in credit relations, determinants.

ПРИЧИНЫ ПРЕСТУПНОСТИ В СФЕРЕ КРЕДИТНЫХ ОТНОШЕНИЙ

Габриэлла Ева ХАЙРУТДИНОВА,

аспирант кафедры уголовного права и процесса
ГВУЗ «Ужгородский национальный университет»,
прокурор Киевской местной прокуратуры № 8

АННОТАЦИЯ

В статье приводятся различные взгляды ученых на определение детерминант преступности, на основе которых предлагаем собственное определение причин преступности в сфере кредитных отношений. Анализируем классификацию таких причин, среди которых выделяем экономические, политико-идеологические, социально-психологические, правовые, организационно-управленческие, правоохранительные. В плоскости такой классификации исследуем в дальнейшем причины преступности в кредитных отношениях.

Ключевые слова: кредитные отношения, причины преступности в кредитных отношениях, детерминанты.

Introduction. Our state has not the best times in political, legal and economic areas. The instability of the specified spheres leads to social tension, and as a result growth of crimes in general. The sphere of the credit relations is not an exception as well. Unfortunately process of criminalization permeates all branches of economy. Now our state gets financial support from the international organizations. The last provide such assistance for the purpose of overcoming the crisis phenomena in economy, Ukraine has enough potential to become the full-fledged, solvent member of the European Union. However, all our reforms and assistance by the European community can be leveled because of the absence of effectively working state institutes of criminalization opposition of the economic sphere. Consequently, the reasons of existence and crime increasing in the economic sphere is nearly the most important phenomena which need to be investigated for development not only

methods of fight against crime, but also for realization of preventive measures.

Relevance of a research subject. The main problem for Ukraine development as economically stable state is the crime rate growing in various spheres of economy, including also the sphere of the credit relations. The significant role for stabilization a financial system and economic security of the country should be given to a credit system. In a balance and linkage, the financial and credit sphere influences at condition of unemployment, exchange rate and inflation, investment processes and a condition of the payment balance. Constant criminal intervention to the specified sphere has been a braking factor for development and stabilization of credit and financial systems. Besides, it should be noted that crimes in the sphere of the credit relations have high degree of latency. Criminality in the investigated by us relations rapidly acquire new methods and schemes of crimes commis-



sion. The computer in XXI century is not only the equipment for work, developing, holding many useful household and personal operations, but also one of the main assets of crimes commission in the credit relations sphere. In order to develop effective methods of fight against crimes in the credit relations, at first it is necessary to investigate and analyze the reasons because of which the last exists and grows.

Research status. The methodological basis of this work is made of general scientific and special methods of scientific knowledge among which: dialectic, systematically – structural, formally logical, a method of generalization and forecasting.

The following problem has been tackled in writings of such scientists: P.P. Andrushko, V.S. Batirgareivoi, A.M. Boyko, V.I. Borisova, V.V. Vasilevicha, I.O. Glushkova, V.V. Golini, N.A. Gutorovoi, I.M. Danshina, A.N. Dzhuzhi, V.M. Dremina, A.A. Dudorova, A.P. Zakalyuka, A.F. Zelinskogo, O.G. Kalmana, A.V. Kozachenka, A.N. Kostenka, O.G. Kulika, A.N. Litvinova, A.N. Litvaka, M.I. Melnika, T.V. Melnichuk, V.M. Popovica, A.P. Ryabchenko, E.L. Streltsova, V.Ya. Tatiya, I.O. Tulyakova, V.F. Ushchapovskogo, V.I. Shakuna, E.Yu. Shostko, S.S. Yatsenka.

Objective of article is definition of the reasons existence and crime increasing in the sphere of the credit relations. And develop the own term of the reason's existence of crime in the sphere of crediting.

Submission of the base material. It is necessary to understand set of the social phenomena and processes as the reasons and conditions of crime that determine crime as a result. The reasons of crime represent such phenomena of public life which generate crime, support its existence, cause its growth or decrease. Spheres of activity of the reasons is first of all stages of motivation and decision-making, when talking about motive formation, the purpose, definition of it achievement ways as criminal. The condition is that what itself does not generate crime, but influence on the generation processes, participates in crime determination [1, p. 45].

So, N.F. Kuznetsova specifies that the crime reasons from the point of view of dominating public relations is a system of socially negative phenomena and processes that determine crime as the consequence. As for the crime reason it carries social and psychological determinants which include elements of economic,

political, legal, household psychology at the different levels of public consciousness [2, p. 44].

M.D. Shargorodsky notes that the reasons of crime are those active forces which by their action cause its existence [3, p. 30].

According to I. B. Meditsky a certain system of the social phenomena, negative for the state, which determine crime as the investigation is the reasons of the crime [4, p. 12].

So, community of all above-mentioned terms is in the fact that reasons of crime are the phenomenon through which actually and there is the last.

The reasons of crime can be divided into two parts- general (on a type of crime) and special (on specific offence).

Scientists carry the following general reasons of economic crimes commission:

- modernization of privatization processes which is the defining generator of criminalization of economy in Ukraine, these processes create conditions for economic crime and corruption;

- raiding as it is closely related with an activity corrupted politician from state structures, and quite often bases also on the interests of the international criminal investors;

- the established habit of the most part of the population working bad, but receive the solid salary and to live at the expense of others;

- professional inability to deal with economy issues, non-fulfilment of an obligations often combined with bad manners, lack of the precise life codes;

- the Ukrainian youth generally brought up on personal irresponsibility, involved in alcoholism and drug addiction;

- discrepancy between economic requirements and economic opportunities of their satisfaction;

- inconsistency the interests of development of the separate economy branches, the separate economic entities, individuals and society [5, p. 259–260].

Not all reasons determined above by the author we agreed with. Thus, we could not specify that youth of Ukraine irresponsible and inclined to deviant behavior. In fact, if we investigate statistics of crime that is reflected in reports of the Ukrainian Prosecutor General's Office, then it is clearly seen that crimes in the sphere of the credit relations were committed most often by persons at the age of 25–60 years. As well we do not agree with

a conclusion that the workable population of Ukraine, in the majority, badly works, but want to receive the decent salary. Because of our state insolvency to provide worthy working conditions, including the salary to workable population, youth left the country and work hard abroad. O.G. Kalman offered such determinant classification of economic crimes: economic, politically ideological, social-psychological, legal, organizationally administrative and factors which related to law enforcement and enforceable activity [6, p. 142].

We completely share the scientist's view for such classification of the reasons and conditions of crimes commission.

Thus, to the economic reason it is possible to carry a GDP of Ukraine which was dropped by 17,5% in 2014–2015. Besides, the rupture of the long-term economic relations with the Russian Federation led to catastrophic consequences for a significant amount of the enterprises in east regions of Ukraine focused on east market. At the same time reorientation of the industry and agriculture of Ukraine to demands which are put forward to products in the countries of the European Union, goes quite low rates. Only since 2016 slow GDP growth of Ukraine began: in 2016 for 1,5% and in 2017 for 2,1% [7]. In 2019 situation went better. So, in the II quarter 2019 the economy of Ukraine grew by 4.6% in annual measurement (y/y), having accelerated from 2,5% of y/y in the I quarter 2019 [8].

K.V. Yurtayeva notes that among the economic reasons of crime the most significant place is taken by the low level of the population income in the country that directly influences at the formation of mercenary motivation. According to the UN for 2017, 80% of the Ukraine population living below the poverty line. Besides the actual living wage more than twice exceeds official. So, if in the African countries the threshold of poverty is at the level of 1,25 US \$ per day, then in Ukraine the living wage makes 1,5 US \$ per day. Thus, tendency to impoverishment of the population and further increase of the gap between the rich and the poor are remained [9, p. 114].

We suggest to distinguish a difficult political situation from the political-ideological reasons, through the military conflicts in the east of our state, failure economic reforms, lag of the state from technological development, a good example



of it is digital money ignoring on which top there a bitcoin is, because of what the specified currency is the platform for illegally money laundering. High level of corruption in public authorities, mistrust to the last from the population of the country.

R.A. Zaporozhets allocates such social-psychological factors of commission, for example, of fraud with financial resources:

- ability of property requirements to outpace in their development formation of the economic reason for their satisfaction;
- low level of following criminal-law norms by the population which establish responsibility for profit crimes in general and in the bank sphere, crediting in particular;
- negligence to the probability of criminal prosecution for mercenary crime;
- critically low level of citizens' sense of justice, among other things in aspect of delimitation of prosecution for commission of economic crimes;
- lack of modern traditions of honest business;
- low level of credit culture;
- unpopularity of the respectable debtor status;
- a provocative role of the state concerning distribution in public economic consciousnesses of stereotypes, evasion from performance of their own responsibilities for debts;
- create the illusion of impunity of the organizations and persons who evade from repayment of debt;
- high level of mistrust to the law enforcement agencies authorized to protect legitimate interests of creditors;
- lack of public information about credit stories of legal and natural persons and so forth [10, p. 62].

The legal reasons of crime in the sphere of the credit relations can be considered the following: since 1995 the Supreme Council of Ukraine have not adopted the law "About Prevention of Crimes" and "About Fight against Economic Crime". Inefficiency of some norms of procedural law and substantive law. Inappropriate legislative stability of natural and legal entities lending, online credits, those the same digital currency Bitcoin. Also, weak legislative base. Now credit-financial activity of banks and other non-bank financial institutions is resolved by a significant amount of legislations among which there are laws of Ukraine "About Banks and Bank Activity",

"About the National Bank of Ukraine", "About a Mortgage", "About securing the claims of creditors and registration of encumbrances", "About mortgage lending, operations with consolidated mortgage debt and mortgage certificates", "About financial leasing", the Civil Law of Ukraine, the Economic Law of Ukraine, the resolutions of the National Bank of Ukraine, etc. At the same time, these normative legal acts discordant to laws of Ukraine "About National Police", "About organizational and Legal Bases of Fight against Organized Crime", "About the SBU of Ukraine", "About Prosecutor's Office", "About Operational Search Activity", "About the Public Control and Auditing Service in Ukraine" in aspect of providing information about financial transactions of institutions and clients of a credit and financial system.

Also, to the legal reasons of crimes commission in the credit sphere R.A. Zaporozhets classify the following:

- existence of gaps and contradictions in the financial, tax, budgetary, currency law concerning regulation of the economic relations;
- improper level of official interpretation of criminal justice norms in relation to responsibility for causing material damage as a result of commission of fraudulent crimes in the bank crediting sphere;
- unduly soft punishment for certain profit crimes of economic orientation, including the crimes in sphere of bank mortgage lending that makes impossible effective counteraction against them at a preparation phase (regarding preparation for crime of a misdemeanour not involve criminal liability). For example, preparation for commission of the crime provided by art. 222 of the Crimes Act of Ukraine "Fraud with financial resources";
- ambiguity of sanctions, set of rules concerning responsibility for crimes in the sphere of bank crediting that deprives the guilty persons and persons applying legal rules opportunities to determine public danger of crimes;
- terminological inconsistency of the criminal and civil legislation concerning determination of blanket signs of separate types of crime;
- a lack of effective legal regulation of criminal liability of entities for the crimes committed in the sphere of bank crediting [10, p. 65].

Concerning the reasons, related to law-enforcement activity we need to note that now the new authority which will be engaged in fight against economic crime – Bureau of financial investigations is created. We agree with O.V. Dobrovolsky who noted that the pluses of Bureau of financial investigations creation are accumulation of authorities on investigation of economic crimes only in one authority and submission to The Cabinet of Ministers of Ukraine and to the Ministry of Finance. Such subordination gives hope on the objectivity of this authority and efficiency of its work [11].

We hope that the new created entity will carry all its duties, investigation of financial crimes, including also the credit sphere, faithfully, fair and professionally.

Conclusions. Thus, on the understanding basis of the of crime general reasons, we suggest formulating definition of the crime reasons in the credit relations sphere. Thus, the crime reasons in the credit relations are economic, political ideological, social and psychological, legal, organizational and administrative-enforcement factors which on the existence act as certain provokers of crime, causing not only emergence of the last, but also remain with it in dependent from each other dynamics. Among the most widespread and the most powerful, in our opinion, reasons of crimes in the credit sphere the legal nihilism of the population, lack of severe punishment on some standards of the Criminal code of Ukraine (art. 222), an inadequate legal resolution of all aspects of credit activity, corruption in public authorities and among workers, and among heads of banking institutions, inefficiency of preventive measures, the low standard of living of citizens are.

References:

1. Закалюк А.П. Курс сучасної української кримінології : у 3 кн. Київ : Ін Юре, 2007. Кн. 1 : Теоретичні засади та історія української кримінологічної науки. 424 с.
2. Кузнецова Н.Ф. Проблемы кримінологической детерминации. Москва, 1984. 238 с.
3. Преступность и ее предупреждение : сборник статей / под ред. Н.П. Кена, М.Д. Шаргородского. Ленинград : Издательство Ленинградского университета, 1971. 224 с.



4. Медицький І.Б. Вплив соціальних факторів на злочинність в умовах становлення незалежної Української держави. Івано-Франківськ, 2007. 214 с.

5. Кримінологія : підручник / заг. ред. : І.Г. Богатирьова, В.В. Топчія. Київ : ВД «Дакор», 2018. 352 с.

6. Кальман О.Г. Злочинність у сфері економіки України: теоретичні та прикладні проблеми попередження : дис. ... докт. юрид. наук : 12.00.08. Харків, 2004. 431 с.

7. Коментар Національного банку України щодо зміни реального ВВП у 2017 році. URL: https://bank.gov.ua/control/uk/publish/article?art_id=66364139&cat_id=55838 (дата звернення: 17.11.2019).

8. Коментар НБУ щодо зміни реального ВВП у II кварталі 2019 року. URL: <https://bank.gov.ua/news/all/komentar-nbushodo-zmini-realnogo-vvp-u-ii-kvartali-2019-roku> (дата звернення: 19.11.2019).

9. Юртаєва К.В. Сучасні тенденції економічної злочинності в Україні. *Вісник Кримінологічної асоціації України*. 2018. № 2(19). С. 109–119.

10. Запорожець Р.А. Причини й умови вчинення шахрайств у сфері іпотечного кредитування. *Юридичний часопис Національної академії внутрішніх справ*. 2017. № 1(13). С. 60–71.

11. Добровольський О.В. Ліквідація підрозділу МВС, що здійснює боротьбу з економічною злочинністю. Що далі? URL: https://jurliga.ligazakon.net/experts/218/910_lkvdatysya-pdrozdlymvs-shcho-zdysnyu-borotbu-z-ekonomichnoyu-zlochinnstyu-shcho-dal (дата звернення: 19.11.2019).

INFORMATION ABOUT THE AUTHOR
Khayrutdinova Gabriella Eva Olegovna – Postgraduate Student of the Department of Criminal Law and Process of Uzhhorod National University, the Prosecutor of the Kiev local prosecutor's office number 8;

ИНФОРМАЦИЯ ОБ АВТОРЕ
Хайрутдинова Габриэлла Ева Олеговна – аспирант кафедры уголовного права и процесса ГВУЗ «Ужгородский национальный университет», прокурор Киевской местной прокуратуры № 8;

khairutdinova.eva@gmail.com

УДК 342.951:351.82

ПОНЯТИЕ СИСТЕМЫ ПРИНЦИПОВ АДМИНИСТРАТИВНО- ПРОЦЕДУРНОГО ПРАВА

Анна ШАРАЯ,

кандидат юридических наук, докторант,
доцент кафедры административного и хозяйственного права
Запорожского национального университета

АННОТАЦИЯ

В статье проводится теоретическое исследование сущности понятия системы принципов административно-процедурного права. Осуществляется анализ юридической литературы по исследованию понятия системы принципов административно-процедурного права. Проанализированы теоретические подходы к определению содержания понятия «система» и ее соотношение с понятием «структура». Предложено авторское понимание дефиниции «система принципов административно-процедурного права».

Ключевые слова: система, принципы, административно-процедурное право, системный подход, структура.

THE CONCEPT OF THE SYSTEM OF ADMINISTRATIVE AND PROCEDURAL LAW

Anna SHARAIA,

Ph.D. in Law, Doctoral Student,
Assistant Professor of the Department of Administrative and Commercial Law
of Zaporizhzhia National University

SUMMARY

The article is a theoretical study of the essence of the concept of the system of principles of administrative and procedural law. An analysis of the legal literature is carried out to study the concept of a system of principles of administrative procedural law. Theoretical approaches to the definition of the content of the concept “system” and its relation with the concept of “structure” are analyzed. The author’s understanding of the definition of “system of principles of administrative procedural law” is proposed.

Key words: system, principles, administrative procedural law, systematic approach, structure.

Постановка проблеми. Всесторонній аналіз сутності і значення принципів административно-процедурного права буде неповним і необ'єктивним без характеристики їх системи. Побудова сбалансованої системи принципів административно-процедурного права являється основою любых процесів реформування в сфері взаимоотношень частних і публичних лиц, при наявності которых забезпечується баланс частних і публичних інтересів. Особенностю регулюючого впливу принципів административно-процедурного права являється те, що функціональне призначення кожного окремого принципу залежить не тільки від його змісту, але і від властивостей і сутності всіх інших принципів, которые об'єднані в одну систему.

Актуальность темы исследования подтверждается недостаточной степенью исследованности темы и достаточно новаторским пониманием административно-процедурного права как подотрасли административного права.

Состояние исследования. Научный анализ проблем системы принципов административно-процедурного права осуществляется отечественными учеными в пределах изучения административного права, его составляющих, среди которых административно-процедурное право. Также в отечественной науке исследуются принципы административных процедур, которые не являются синонимическим понятием, но влияют на формирование системы принципов административно-процедурного права.