

# Systematic Transformation Processes of Crime in the Financial and Economic Spheres and the Prevention of Criminal Leadership

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**Abstract** Our paper analyzes the system, criminal law and criminological properties of crime in the financial and economic sphere; the thesis of heuristic validity of the application of an interdisciplinary approach to the study of crime in this field was put forward and proved; the epistemological expediency of applying systemic and synergetic approaches to the study of the socio-transformational processes of crime in the financial and economic sphere is argued. It is proved that crime as a problem of shortcomings in the interaction of the system of the state of Ukraine with its environment is manifested in the improper functioning of its elements, when the prevention of criminal attacks and the observance of the rights of the country's population in the private sphere and in relations with the state are not ensured. Today, Ukraine occupies a leading position in Europe in the number and volume of crimes committed in this area. An integrated scientific approach to the study and resolution of the questions posed helps to overcome this negative "leadership." This judgment fully reflects the essence of the socio-transformational processes inherent in crime in the financial and economic sphere.

**Keywords:** *systematic transformation, crime, finances, economics, criminal leadership*

## 1 Introduction

The challenges facing Ukraine at the present stage of the historical development of the state make the rethinking of the essence of the state mechanism and promising and urgent problems arising from its improvement and functioning extremely topical. Therefore, for the Ukrainian society, the need for the latest methodological foundations of comprehensive interdisciplinary studies of social life, as well as progressive methods that would become the theoretical basis for constructive social shifts in general and in the field of preventing and counteracting the existence of certain types of crimes in particular, which will help reduce the general criminalization of society, is obvious.

Nowadays, Ukraine occupies a leading position in Europe in the number and volume of crimes committed in the financial and economic sphere. An integrated scientific approach to the study and resolution of the questions posed helps to overcome this negative "leadership."

## 2 Problem statement

Recently, many scientists who deal with the problematic issues of developing domestic criminology that is consistent with the modern achievements of world science voice their opinions about increasing the relevance of

the methodological aspects of determining the conceptual foundations of organizing and conducting research (Batyrgareieva 2006; Dzhuzha 2009; Lipkan 2003; Lukashevich 2013; Obolentsev 2012, 2016; Popovych 2010; Shakun 2010, etc.). In this regard, the importance and relevance of developing the methodological foundations of criminology as a science of the extreme form of deviant behavior - the science of crime and measures to prevent and counteract it, as well as the development of new methods and the study of crime, as well as ways and measures of social reaction to it, is also increasing. . It also becomes relevant for Russian criminology to view the established methodology and research methodology, given the availability in the world of science of progressive scientific tools of interdisciplinary research - a systematic approach and a synergistic paradigm.

Therefore, recognizing the heuristic significance and epistemological expediency of applying theoretical developments in practice, the interdisciplinary nature of the phenomenon under study, in this article we set the task, based on a systematic approach and a synergetic methodology, to determine the systemic and transformational processes of crime in the financial and economic sphere and to prevent the increase in the number crimes, leveling criminal (criminal) leadership.

### **3. Research analysis**

The solution of this problem required an interdisciplinary scientific research, which would be based on the achievements of various sectoral legal sciences. Since the criminal law characterization of a certain crime (criminal offense) or a certain group of them creates the basis for their criminological, forensic or other study (Borysov and Pashchenko 2005), the criminal law dossiers on criminal offenses in the financial and economic sphere were studied first of all. So the current Criminal Code of Ukraine in 2001 does not use the term “financial and economic crimes” (“crimes in the financial and economic sphere”, “crimes against financial and economic activities”, etc.), the question of Ukrainian criminal law is raised about definition of a circle of such crimes.

The works of Hutorova (2001), Streltsov (2000, 2001) and several other authors set forth critical considerations for structuring the Special Part of the Criminal Code of Ukraine in terms of combining a specific group of crimes within section VII “Crimes in the field of economic activity” “. In particular, Hutorova (1999) proposed the allocation of an independent group of financial crimes or crimes against public finances (Hutorova 2001), identified their differences from other economic crimes (crimes in the field of economic activity) and provided their criminal legal characteristics. A separate group of economic crimes, including some economic crimes, is singled out and described by Streltsov. Various criminal law aspects of crimes related to financial and economic, were also investigated in the works of Dudorov (2003), Kyrychko and Perepelytsia (2010) and other authors.

### **4. Statement of the main material**

The society is an open non-linear self-organizing system, the change of state of which occurs through its internal mechanisms. The external world, although it is the reason for its change, however, completely determines it - society has inherent properties that are absent in nature: violent reaction to the personality and its role in decision-making, ideological, nationalist, gender stereotypes, sometimes significantly affect structure and structural changes in society, a special place is occupied by the individual’s desire for leadership and the possible deviation associated with this. The purpose of the system determines the meaning of its existence, the focus and content of system processes (Liamets’ and Tevhashev 2004; Vlasov 2002).

The purpose of the state of Ukraine as an artificial system (created by people) we have determined the images of the desired future (state of the system or the results of functioning) (Liamets’ and Tevhashev 2004; Soroka 2005). We are talking about human rights and freedoms, since it is they, in accordance with Article 3 of the Constitution of Ukraine, that determine the direction of state activity.

According to the basic principles of system engineering, the state of the system and its environment at a certain point or time is called a situation and is characterized by a set of controlled indicators. If their values are unacceptable, the situation is called problematic. The problem in problem situations manifests itself as a mismatch between the desired (existing, expected, mandatory) state of things in the system and the results of its functioning. Types of problems are:

- deficiencies in the internal state of the system (in particular, the mismatch of functions, parameters, structure and purpose of the system);
- disadvantages of the interaction of the system with the environment (in the impact of the external environment on the system or system on its external environment) (Liamets’ 2015);
- the mismatch of the structure, composition and interaction processes of individual parts of the system with the goals of its creation.

In our opinion, for the state of Ukraine, cases of committing crimes can be distinguished primarily as a problem of inconsistency of the functions of the system with its intended purpose. Determining the functions of the state

system of Ukraine is the cornerstone for the study of state processes in general, and for the development of new and improvement of existing measures for the prevention and combating crime, in particular. A function is an external manifestation of the properties of an object in an existing system of relations. In system analysis, the function of an object is identified with: ability to act; influence; satisfaction of needs; role; responsibilities. In fact, we are talking about the impact of the system on actions that can be called events (Liamets' and Tevhashev 2004). The norms of Article 3 of the Constitution of Ukraine indicate that the approval and enforcement of human rights and freedoms is the main duty of the state. In accordance with this, for the system of the state of Ukraine, the functions can be considered approval and ensuring human rights and freedoms.

Systems perform their functions in the presence (by) of flows of energy, matter and information. The following types of flows are distinguished: energy, material, information, financial, human (personnel). In fact, flows are initiated by the structure, turning them through regulation and with feedback, with a limitation in space and time (Liamets' and Tevhashev 2004). Obviously, in the system of the state of Ukraine, they are implemented in the activities of domestic state entities (specific forms of their activities in accordance with the established competence).

The purpose of the system is its declared ability to implement functions that ensure the achievement of the goal (Liamets' and Tevhashev 2004). The norms of Article 3 of the Constitution of Ukraine indicate that human rights and freedoms and their guarantees determine the content and focus of the state. Based on the above, the purpose of the state system of Ukraine can be considered a guarantee of human rights and freedoms in the public sphere and in the sector of private relations. In our understanding, guarantees of human rights and freedoms can be considered their state of existence with a minimum probability of disappearance or obstacles to implementation and restoration in case of violations.

Obviously, in cases of crimes committed improper (illegal) functioning of the elements of the state, which does not provide these guarantees. Such a situation is the problem of the discrepancy between certain actual functions of the elements of the system of the state of Ukraine and its intended purpose. Therefore, crimes as a problem of deficiencies in the interaction of the state system of Ukraine with its environment is manifested in the inadequate functioning of its elements when the prevention of criminal attacks and the observance of the rights of the country's population in the private sphere and in relations with the state are not ensured. This judgment fully reflects the essence of the socio-transformational processes inherent in crime in the financial and economic sphere.

The current Criminal Code of Ukraine, as already noted, does not contain the concept of "financial and economic crime" in its conceptual apparatus, using instead the concept of "crime in the sphere of economic activity" which is still characteristic of Soviet law. Noting this, Ukrainian criminologists outline a circle of financial and economic crimes in some cases - within the framework of crimes in the field of economic activity (Hutorova 2001), in others - including some crimes from other sections of the Special Part of the Criminal Code of Ukraine, for example - crimes against property (Streltsov 2000). From our point of view, the delimitation of tribal objects of crime, which forms the basis for structuring the Special Part of the Criminal Code of Ukraine, does not give grounds for combining into a single group of crimes provided for in sections VI and VII. In addition, the development of market relations in Ukraine, further improvement of legislation, updating of the methodological tools of scientific research and lawmaking in the field of criminal law, put on the agenda the possibility of distinguishing two subgroups of "crimes in the field of economic activity": financial crimes and economic crimes, together they can be united by a single name financial and economic crimes.

Financial crimes include those that infringe on the financial interests of the state or other participants in financial relations, namely, those provided for in Art. 199 - 201-1, 204, 209 - 212-1, 216, 218-1, 219, 220-1, 220-2, 222-1, 222-2, 223-1, 223-2, 224 of the Criminal Code of Ukraine. The circle of economic crimes is determined in different ways. Among the acts provided for in Section VII of the Special Part of the Criminal Code of Ukraine, such offenses against economic relations include crimes under Art. 203-1, 203-2, 205 - 206-2, 213, 227, 229, 231-233 of the Criminal Code of Ukraine.

The social danger of financial and economic crimes lies in their encroachment on financial and economic social relations in the country by violating the state legal rules governing such relations established by the state. In this regard, all articles of the Criminal Code of Ukraine, providing for liability for the investigated crimes, are blanket in nature, which necessitates each time referring to the relevant act of regulatory legislation in the field of financial or economic activity. It is in violation of the requirements of this (and not criminal) legislation that these crimes are unlawful. Criminal legislation, in accordance with its tasks, determines which socially dangerous acts are crimes and what penalties are applied to persons who committed them (part 2 of article 1 of the Criminal Code).

Since the period of transformations in the Ukrainian economy has significantly stretched over time and today can hardly be considered completed, the legal regulation of financial and economic relations is undergoing dynamic changes. Therefore, the provisions of the criminal law on liability for financial and economic crimes have repeatedly changed. The provisions of this section are among the most changing in the Criminal Code of Ukraine, in particular, over the 18 years of the Code's operation, 17 articles have been excluded from this section, it has been supplemented with 15 new articles and each of the articles that have been in force since 2001 has undergone changes, often repeated. All this, on the one hand, indicates that the legislator continues to search for the optimal

model of criminal law protection of the country's financial and economic system, and on the other hand, it significantly complicates and imbalances the practice of applying the relevant provisions of the Criminal Code, and creates individual cases of temporal collisions of various revisions (including "Intermediate") of the criminal law, gives rise to the problems of differentiating the corpus delicti, often requires qualification of the same act on the totality of crimes. Accordingly, this affects the judicial statistics of the application of the provisions of the articles of Section VII of the Special Part of the Criminal Code of Ukraine. So, according to judicial statistics, in 2018, 868 people were convicted of various crimes in the field of economic activity by the courts of Ukraine, and the vast majority of them were convicted of illegal production, storage, sale or transportation for the purpose of selling excisable goods (Article 204 of the Criminal Code) - 282 people; violation of operations with scrap metal (Article 213 of the Criminal Code) - 192 people; fictitious entrepreneurship (Article 205 of the Criminal Code) - 141 people, etc. It is clear that such a number of convicted persons clearly does not correspond to the prevalence of these acts. At the same time, only 10 people were convicted of tax evasion (Article 212 of the Criminal Code) during 2018, not a single person was convicted of tax evasion from paying a single contribution to compulsory state social insurance and insurance contributions to compulsory state pension insurance (art. . 212-1 of the Criminal Code), manipulation of the stock market (Article 222-1 of the Criminal Code) or illegal privatization of state or communal property (Article 233 of the Criminal Code) and some other financial and economic crimes.

Among the types of punishments imposed by convicts for financial and economic crimes, property types prevail. So, in 2018, 868 people convicted of such crimes, 479 people were fined as the main punished. At the same time, 22 people were sentenced to imprisonment with his actual serving, 12 people were sentenced to restriction of freedom, 1 person was arrested. Relatively often, confiscation of property is used as an additional punishment (117 persons for 2018). At the same time, judicial statistics indicate a relatively rare use of such an effective punishment for a given type of crime as deprivation of the right to occupy certain positions or engage in certain activities. In 2018, this type of punishment was never appointed as the main one, and only 34 times as an additional one. A significant part of persons convicted of financial and economic crimes are exempted from serving their sentences with probation (Articles 75 of the Criminal Code) or are exempted from criminal liability on general (Articles 45-49 of the Criminal Code) or separate special grounds (parts 4 and 5 of Article 212, part 4, article 2121 and other Criminal Code).

The current criminal legislation of Ukraine also provides for a number of other measures of a criminal legal nature that may be applied, including for crimes in the sphere of financial and economic activity. One of the most effective of these measures is special confiscation. During 2018, special confiscation was applied to 59 convicts for financial and economic crimes.

Other effective criminal legal means that could be applied in the commission of financial and economic crimes should be criminal measures for legal entities (section XIV-1 of the General part of the Criminal Code). Thus, a legal entity is not recognized in Ukraine as the subject of a crime (Article 18 of the Criminal Code), but the basis for the use of such funds is the commission by an authorized individual on behalf of (and in some cases - on behalf and in the interests of) a legal entity of a certain type of crime. Of course, such crimes can often be committed in the financial and economic sphere. However, the current Criminal Code refers only to the commission of a financial crime such as the legalization (laundering) of proceeds of crime (Article 209 of the Criminal Code) to the grounds for applying criminal law measures against legal entities, thereby preserving substantial reserves for improving the system of criminal legal remedies in this part. Despite the rather extensive and dynamically developing system of criminal law means of responding to financial and economic crime, it (this system) cannot exhaust the entire range of means of response and in itself is not capable of significantly reducing this segment of crime. Thus, we can conclude that the very essence of crime in this area, and the determination complexes that contribute to the existence and reproduction of crime in the financial and economic sphere, are on different planes of public life - from general socio-economic (which, in turn, are determined by political factors) to the individual, inherent to individuals with distorted ideas about how to satisfy needs.

As already noted, society is an open nonlinear system. A characteristic property of a nonlinear system is that a resonant, albeit weak, action leads to a greater effect than a strong, but inconsistent with the system, action (resonant excitation). For crime in the financial and economic sphere and the problems of preventing and combating it, these reservations are as follows: there are many ways to develop the system, but it is necessary to go on the desired path of development. If there is an algorithm for reaching such a path, then time is saved and material costs are reduced. We must not build and rebuild, but derive, initiate social systems on our own mechanisms of development and improvement. Access to the desired attractor (direction) of development, that is, the search for the most acceptable and socially useful way out of the bifurcation point (the point of maximum uncertainty, system instability), the determination of constants and the search for new order parameters of the social system are the main tasks of synergetics in the field of transforming social reality by managing these processes (Voronkova 2009). In the field of social systems management, synergetics proceeds precisely from such provisions that in a certain way reflect the situation of improving existing and developing new crime prevention measures. The modern methodological and theoretical situation in the social and humanitarian (including legal) sciences is characterized by development mainly within the framework of a linear paradigm, usually represents

social evolution monistically: as a univariate and non-alternative development. Such ideas about social dynamics require change, given the wide range of problems facing researchers of social reality. Today, an acute problem has arisen of adapting to global transformations, the formation of a new worldview that is up-to-date and can expand a person's ability to understand various legal phenomena and processes around (Korunchuk 2011).

The synergetic methodology can be the basis for a fundamentally new concept of crime prevention and combating both in general and in the financial and economic sphere, because synergetic ideas allow us to explain why often a very powerful external impact on the system is much less effective than many times weaker, and vice versa. According to traditional approaches, the controlling effect on something mainly depends on the amount of energy and effort expended. But in fact, they should be not so much strong as resonant, that is, as much as possible consistent with the properties of the controlled system (Lukashevych and Gruba 2013). As you know, the desire for ultimate control, centralization, forcible processing of everything and everything has already led our society to deep crisis states.

## 5. Conclusions

The stated opinions are an additional argument in favor of the thesis about the need for interdisciplinary research of social processes in general and crime in particular, including crime in the financial and economic sphere. In this case, the determinants of crime and certain types (groups) of crimes (which, as we found out above, are at different institutional levels and in various spheres of public life) should be studied, as well as the ways of social reaction to criminogenic phenomena and processes. But the first step towards solving any problem is to separate it from other similar ones, identify its objective signs, the determinants of the existence and reproduction of problem processes, etc., and for criminogenic processes such tasks are priority.

Consequently, we can assume that the socio-transformational processes of crime in the financial and economic sphere are at different institutional levels and in various spheres of public life, and it is precisely the interdisciplinary studies of social processes in general and crime in the financial and economic sphere in particular, which will be based on the synergetic paradigm and a systematic approach, and this is the new paradigm-methodological and methodological approach that will lead to a certain scientific breakthrough in onimanii criminality in this area. And in turn, the modernization of the current criminal law will help level such a negative "leadership" as Ukraine's first place in the number and volume of crimes committed in the financial and economic sphere.

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