

# ЮРИДИЧЕСКИЕ НАУКИ

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## CRIME IN THE SPHERE OF TRADE AND ECONOMIC COOPERATION OF UKRAINE: CURRENT TENDENCIES AND PROSPECTS

**Abstract.** In the paper, the widespread types of crime in the sphere of trade and economic cooperation of Ukraine are defined and the most widespread of them are described. On the basis of the obtained results, the definition of the concept of “crime in the sphere of trade and economic cooperation” is offered. Specific features that distinguish crime in this sphere from that one in other spheres of public relations are revealed. Current tendencies and prospects for further development of the sphere of trade and economic cooperation of Ukraine are suggested.

*Key words: crime, crime mechanism, trade and economic cooperation, pseudo-export, pseudo-import, national interests.*

**Introduction.** According to the International Monetary Fund (hereinafter – IMF) working paper “Shadow Economies Around the World: What Did We Learn Over the Last 20 Years?” [1], Ukraine is 23rd among 158 countries of the world according to the estimates of the size of the shadow economy over the last 25 years, leaving ahead only Georgia and Africa and South America countries. According to IMF experts, the size of the shadow sector within the national economy in relation to gross domestic product (hereinafter – GDP) is 44.8%. The Ministry of Trade and Economic Development of Ukraine suggests slightly lower indicators – 32% GDP [2], which still proves that almost one third of the national economy is currently in the shadow. We consider such situation to be significantly influenced by recent activation in trade and economic cooperation of Ukraine and other countries of the world.

Thus, Ukraine is now in the process of integration into the world economic space as an equal member of the global community that is why the development of trade and economic cooperation of Ukraine with EU countries, the USA and Eastern partners is a priority direction of the national economy. At the same time, Ukraine's transition to a market economy, development of entrepreneurship, promotion of competition, expansion of foreign trade in goods and services create favorable conditions for improving the existing ones and emergence of new unlawful mechanisms in the sphere of trade and economic cooperation of Ukraine. In this context, the urgency of the present research is explained by the need in timely detection of signs of the mentioned crime, their prevention and termination in order to protect the national interests of the state.

**Analysis of recent research and publications.** Detailed studies of economic crime have been carried out by the following foreign scholars: P. Newman, G. Edelhertz, M. Clinard, R. Quinney, G. Kaiser, N. Tideman, M. Schneider and others. The theory of economic crime was founded by the American

criminologist E. Sutherland, who in 1939 had introduced the concept of “white-collar crime” in the economic sphere. Academic interest in the problem of determining the nature and features of illegal activity in various sectors of the economy was demonstrated by such domestic researchers as: M. Bazhanov, I. Bazaruk, V. Bilous, S. Kravchuk, O. Litvak, O. Yakovlev and others. However, the problem of defining and characterizing crime in the sphere of trade and economic cooperation of Ukraine has not been properly studied yet, and therefore requires a comprehensive scientific research.

**The goal of the paper** is to identify and analyze the main types of crime in the sphere of trade and economic cooperation of Ukraine, define their specific features and develop a definition of the corresponding concept.

**Presentation of the basic material.** In order to solve the above-mentioned research issue, let us first determine the nature of the concept of crime as a whole. Thus, the authors of the Great Explanatory Dictionary of modern Ukrainian language consider “crime” as a violation of the norms of behavior established by law or other normative and legal acts [3, p. 1102]. In the legal encyclopedic literature crime is defined as a socially dangerous or harmful act (or inaction) that violates the rule of law [4, p. 696]. O.F. Skakun views crime more comprehensively, namely, as a socially dangerous or socially harmful unlawful guilty act (or inaction) of a delictual person, which assumes legal responsibility according to the current legislation [5, p. 598].

Considering the above-mentioned general theoretical approaches to the definition of the concept of “crime”, we suggest that its peculiar features are: social danger / harm to the individual, society or state; wrongful act (inaction); violation of the established rules/requirements, prohibition and restriction.

In order to define the concept of “crime” in terms of trade and economic cooperation of Ukraine and to

distinguish its characteristic features, let us consider the most common types of crime in the specified sector of the national economy.

Thus, crime in the sphere of trade and economic cooperation is related, first of all, to the activities of different entities:

- exporters who use transfer prices for the purpose of exporting financial resources and tax evasion;
- importers using “shady” schemes to avoid paying taxes.

In particular, in the process of cross-border trade (“unorganized” imports), the legal imports of goods to the country by physical entities (both residents and non-residents) with further resale on the domestic Ukrainian market can be observed. In the course of such trade, in addition to loosing customs taxes, Ukraine also loses income taxes on sales of imported goods. Moreover, goods imported by individuals for their personal use do not undergo any checks and therefore can be harmful to health and life (toxic toys, radioactive kitchenware, etc.). However, such kind of trade, despite its social harm, is considered legal since it is almost impossible to prove that someone imports goods not for his own consumption.

Moreover, in the sphere of trade and economic cooperation of Ukraine, sham agreements are also very common. They are used to hide a real transaction in order to:

- pay less taxes;
- export financial resources.

The best example of a sham operation is pseudo-export. Its essence lies in the fact that during the implementation of the contract, which assumes the export of goods, the latter ones do not cross customs border, and are sold on the domestic market. However, the documents are processed as on the exported goods to get illegal refund of the value added tax (hereinafter – VAT). The main tendencies in terms of VAT administration are: reduction of economic efficiency of VAT administration against the background of increasing sectoral and inter-regional disparities in its compensation, annual increase in the number of law violations in the structure of economic crime and the amount of harm caused, high level of latent criminality, imperfection and instability of domestic legislation, corruption processes in the state and low efficiency of law enforcement and regulatory bodies [6].

Thus, the unlawful widespread use of VAT benefits that are supposed to stimulate domestic exports and improve the investment climate in the process of trade and economic cooperation is observed. Such situation leads not only to the irreparable damage to the state budget, but also prevents the state from making proper payments to law-abiding taxpayers.

Another widespread crime in the process of making foreign trade operations in Ukraine is the *export of goods/services at underestimated prices*. Thus, as a rule products are sold at low prices to companies registered in offshore zones and controlled by Ukrainian enterprises or individuals. As a result, the offshore company is reselling products at world prices, leaving all profits in its own accounts.

Another illegal mechanism in the sphere of trade and economic cooperation of Ukraine is the *export of*

*goods/services at overcharged prices*. Such mechanism is more complex than the previous one in terms of identifying and documenting it. It can be organized:

- a) *using the chain of the official manufacturer*.

Thus, products purchased from manufacturing plants at the regular factory price are exported at a much less price than the original cost. As a result, the amount of VAT that is claimed to be reimbursed during the further exports is unreasonably increased. The price is artificially overcharged by the “transit” enterprise involved in the scheme. Tax obligations of the “transit” enterprise are compensated by means of making various deliberately unprofitable transactions involving “bubble” enterprises. The export of these products is carried out at the address of an “affiliated” offshore enterprise. Whereas one of the characteristic features of this scheme is that the goods are further shipped to another non-resident, but already at their real value, and are then re-exported to Ukraine for reuse in VAT-free tax credit schemes.

- b) *imitating the production of exported goods*.

Thus, recently, the widespread schemes have been those whose main link is a real enterprise that has production facilities and simulates the production process of exported products. In this case, “bubble” and “transit” enterprises are used at the stage of supply of raw materials at significantly overcharged prices to the address of such producer. This makes it possible to artificially raise the cost of manufactured products in many times and then export them at the prices set at the production stage. It should be noted that these schemes have the following characteristic features: being manufactured at the manufacturing company, the products with the technological cycle of production which requires a minimum volume of industrial operations (assembling products from several components, etc.) are used; final products are selected in such a way that, firstly, their value is not limited by the local legislation in force, secondly, that, if possible, there is no similar production in Ukraine, and third, that it is difficult to establish the real price of the components of the final product. Payments for the purchased components and finished goods are made with the manufacturer, usually by means of promissory notes. Such an enterprise receives only a small amount of money in return for the work performed.

*Pseudo-import*. Equally widespread are pseudo-import operations, which are accompanied by the withdrawal of large amounts of foreign currency, which is an additional factor of the national currency devaluation, especially in terms of crisis in the national economy development. Thus, the Law of Ukraine “On Foreign Economic Activity” allows to import goods without their actual importation into the customs territory of Ukraine, when the importation is carried out to third countries according to the Incoterms-2000 [7]. Therefore, a steady trend is observed in Ukraine: foreign currency funds are transferred abroad and subsequently transferred to accounts with foreign banks or, at best (in the post-crisis period), returned to Ukraine under the guise of foreign investments.

Another common type of crime in the sphere of trade and economic cooperation of Ukraine is one more synthetic method of money laundering – “carousel”

commodity schemes, which are accompanied by VAT reimbursement from the state budget. The general “carousel” scheme includes receiving money by the exporter from non-resident importer; a break in the scheme of transactions at the moment of money transfer from the resident exporter to the resident importer; the subsequent withdrawal of money to a non-resident exporter for further “slew”. Thus, payments sent abroad can be repeatedly returned by non-residents to the country in the carousel scheme of documentary (shell) export-import trade flows.

In the money laundering schemes import operations without importing goods into the customs territory of Ukraine are often used. In this case, the resident enters into an agreement with the bank to obtain a foreign currency loan under foreign trade contracts for the supply of goods. The funds are transferred on his behalf to the accounts of non-residents in foreign banks. In fact, goods are not coming to Ukraine.

In this context, it should be noted that, in accordance with the Law of Ukraine “On the Procedure for Settlements in Foreign Currency”, a foreign economic contract must be executed within 180 calendar days since the first transfer of funds to a non-resident account. Upon the expiration of this term (180 days after the payment according to the foreign economic contract), the business entity – the resident – is liquidated.

These trade and economic transactions are widely used for laundering (legalization) of capital by enterprises that are members of domestic financial-industrial groups (FIG).

In the recent years, a significant spread of crime in the sphere of trade and economic cooperation has also taken place on the temporarily occupied territories of Ukraine, where this activity is not regulated and taxed by Ukrainian laws and is in fact a “black hole” for the domestic economy. Corruption at the checkpoints between the occupied areas and the territory that is under state control creates conditions for the development of new shadow schemes. Thus, according to the experts of the real sector

It should be noted that not only foreign and domestic economic entities, but also other stakeholders in the sphere of trade and economic cooperation may also be involved in committing crime in the sphere of trade and economic cooperation of Ukraine. Among them: officials of state regulatory and administrative bodies, who carry out regulatory policy in this direction, representatives of foreign intelligence services, who influence certain processes in this sphere, in particular from legal positions – members of foreign trade missions, employees of economic and trade departments of embassies, representatives of foreign trade delegations in Ukraine, etc.

Such opinion is explained by the fact that at the present stage of development of the domestic economy, foreign financial and industrial capital is actively penetrating into all its strategically important sectors, including and the sphere of trade and economic cooperation. Thus, the dominant part of the Ukrainian GDP (over 40%) is formed by enterprises controlled by financial-industrial groups (FIG). Positioning

themselves as Ukrainian, such FIGs often have foreign jurisdiction (including offshore), which promotes a comprehensive lobbying of foreign interests in the above mentioned sphere.

The types of crime analyzed in this paper are the most widespread in the sphere of trade and economic cooperation of Ukraine, however their list is not complete, and moreover, has a steady tendency for constant modification and improvement, as it was already emphasized.

Based on the above mentioned and taking into account the theoretical provisions, we consider that the essential features of crimes the sphere of trade and economic cooperation of Ukraine are as follows:

- they are a more complex socio-economic phenomenon than traditional crime;
- have high latency and intellectual character;
- often look like legitimate trade and economic activities;
- combine legal and illegal business activities;
- adapt to new forms and methods of business activity;
- are widespread on the temporarily occupied territories of Ukraine;
- cause significant damage to the national interests due to non-payment of obligatory charges to the state budget of Ukraine, concealment of crime-generated incomes, getting money out of the state;
- damage the international reputation of the state and its image as a reliable trading partner;
- offenders (natural or legal persons, residents and/or non-residents) have a perfect knowledge of market situation, quickly get familiar with new banking, tax and customs technologies necessary for business operations, etc.;
- persons who commit these crimes use the imperfections and gaps in the current legislation that regulates the corresponding economic activity.

**Conclusions.** Based on the results of the conducted research, we offer to define the concept of “crime in the sphere of trade and economic cooperation of Ukraine” as a socially dangerous action (inaction) of domestic economic entities and their foreign partners arising in the process of mutual trade, production, economic, financial and other relations in terms of cross-border movement of goods, capitals, services, etc., that contradict with national and international legislature and pose a threat to the social order and economic well-being both at national and global scale.

Various essential features of the crime in this area indicate that they can slow down the pace of economic development, cause significant economic losses to the state, reduce budget revenues, reduce credit and investment ratings, as well as become a major obstacle to Ukraine’s integration into the global economic space.

Prospects for further research consist in the development of a system of measures aimed at identifying, preventing and terminating crime in the sphere of trade and economic cooperation of Ukraine.

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## FEATURES OF MODERN FRAUD DISGUISED BY BUSINESS ACTIVITIES

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## ОСОБЛИВОСТІ СУЧАСНИХ ШАХРАЙСТВ ЗАМАСКОВАНИХ ГОСПОДАРСЬКОЮ ДІЯЛЬНІСТЮ

**Summary.** The article reveals the features of fraud committed under the guise of economic legal relations. Given the modern forms and manifestations of these crimes, their essence is determined, as well as the specifics of the subject of the attack, methods of commission, typical traces, personality characteristics of fraudsters and their victims.

The characteristics of the methods of fraud carried out under the guise of business transactions are disclosed taking into account their division into the following groups: 1) frauds that have the shell of investment companies; 2) fraud disguised by insurance relations; 3) fraud disguised by credit and banking operations; 4) fraud committed under the guise of carrying out trading activities or activities to provide services; 5) fraud in the form of seizing money from the state budget as compensation for the payment of value added tax on manufactured products. Examples of schemes for the commission of such crimes, on the facts of which criminal proceedings have been instituted, are given.

**Анотація.** У роботі розкрито особливості шахрайств, що вчиняються під прикриттям господарських правових відносин. З урахуванням сучасних форм і проявів цих злочинів визначено їх сутність, а також специфіку предмету посягання, способи вчинення, типові сліди, характеристику особи шахраїв та їх жертв.

Характеристику способів шахрайств, що вчинюються під прикриттям господарських операцій, надано з урахуванням їх поділу на наступні групи: 1) шахрайства, що мають оболонку діяльності інвестиційних компаній; 2) шахрайства, що маскуються відносинами у сфері страхування, серед яких виокремлено обманне залучення клієнтів страховими компаніями з наступним заволодінням страховими внесками, та отримання страхових виплат клієнтами шляхом обману страхових компаній; 3) шахрайства, що маскуються кредитно-банківськими операціями; 4) шахрайства, що вчиняються під прикриттям здійснення торгівельної діяльності або діяльності з надання послуг; 5) шахрайства у формі заволодіння грошима державного бюджету в якості компенсації за сплату податку на додану вартість виробленої продукції. Наведено приклади схем вчинення таких злочинів, за фактами яких відкрито кримінальні провадження.

**Keywords:** *fraud, fraud in the insurance industry, fraud in the field of investment, fraud in the provision of services, fraud in the field of trading, fraud by realtors, fraud in the sale of dietary supplements.*

**Ключові слова:** *шахрайство, обман у сфері страхування, обман у сфері інвестиційної діяльності, обман під час надання послуг, обман у сфері торгівельної діяльності, обман ріелтерами, обман під час продажу біологічно активних добавок.*

**Постановка проблеми.** До шахрайств, вчинених під прикриттям господарської діяльності, відноситься заволодіння чужим майном або правом

на нього шляхом обману у сфері діяльності інвестиційних і страхових компаній, банківських установ, організацій, що займаються торгівельною