

**THE SECURITY SERVICE OF UKRAINE AS THE SUBJECT
OF COUNTER-CORRUPTION AND FINANCIAL CRIMES:
A COMPARATIVE ANALYSIS
AND INTERNATIONAL EXPERIENCE**

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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, the general features of protecting the state financial system from illegal encroachments in the financial sphere, and 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 new financial crimes, the difference in methods of their commission and concealment, and the dependence of the development of the state as democratic on the ability of government agencies and law enforcement agencies to counteract financial crimes.

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, different approaches to its understanding exist 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, international instruments lack the notion of a financial system, although it has been repeatedly mentioned. Proceeding from the above, it is worth paying attention to the existing scientific approaches to the definition of the "national financial system". In particular, T.A. Latkovska considers the financial system of the country, firstly, as a set of financial and legal institutions that facilitate the formation of funds, and secondly, as a set of state agencies and institutions engaged in financial activities¹.

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

¹ Латковська Т.А. Стан сучасної фінансової системи держави в контексті сучасного праворозуміння. *Право і суспільство*. № 2011. № 1. С. 166–171.

interrelated financial institutions that implement and regulate the financial activities of the state.

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

Taking into account the above facts, it should be emphasized that, despite the differences in the approaches to defining the "financial system of the state", they are united by the fact that the priority function of the country's financial system remains the satisfaction of the needs of an individual, a community and a country, and the counteraction to financial crimes plays an important role. Considering this, I.O. Revak, next to the "financial system of the state", identifies the subjects managing the national financial system of the country and the subjects counteracting financial crimes that are a threat to the financial interests of society and the state².

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, G.V. 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 agencies³.

² Ревак І.О. Механізм забезпечення фінансової безпеки України: теоретичний аспект. *Науковий вісник Львівського державного університету внутрішніх справ. Серія «Економічна»*. 2009. Вип. 2. С. 238–247.

³ Форос Г.В. Суб'єкти діяльності щодо попередження та протидії злочинності. *Кримінальне право та кримінологія*. 2012. № 14. С. 179–184.

N. Ryder 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 interests⁴.

Thus, the basis for countering 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.

1. Research methodology and the scientific novelty of the results

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.

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

⁴ Ryder N., Turksen U., Hassier S. *Fighting Financial Crime in the Global Economic Crisis*. London: Routledge, 2014. 250 p.

and definition of the concepts "financial system of the state" and "financial crime" is 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.

2. Discussion

The Security Service of Ukraine (hereinafter referred to as the SBU) 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.

Worldwide, there is a division into the actual law enforcement agencies and special services, which follows, first of all, the existence of fundamental differences between them. The activities of special services, according to O.M. Polkovnichenko, consist in combating foreign state manifestations, movements that are of an anti-constitutional nature and counterintelligence counteracting intelligence activities⁵.

⁵ Полковніченко О.М. Шляхи удосконалення практичної діяльності Служби безпеки України щодо реалізації правоохоронної функції держави. *Форум права*. 2011. № 4. С. 571–576.

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, two main lines of activity of the SBU as a subject of counteraction to financial crimes: external and internal, 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 protecting the financial system, including countering financial crime, is not less important than in Ukraine. In particular, K.M. 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 Federation⁶. 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 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 crime⁷, and the level of legalization of proceeds acquired by criminal means⁸.

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. A.N. Berdiev points out that the financial relations and the shadow

⁶ Musaeva K.M., Remikhanova D.A., Arslanbekova A.Z. Shadow economy and possible ways to decrease it as a factor of increasing tax revenues in the budgetary system of the Russian Federation. *International Journal of Applied Business and Economic Research*. 2016. Vol. 14. № 10. P. 7325–7339.

⁷ Impact of organized crime on shadow economy: social impact assessment / B.M. Nurgaliyev, K.S. Lakbayev, A.K. Kussainova, A.V. Boretsky. *Asian Journal of Applied Science*. 2014. Vol. 7. Issue 1. P. 644–651.

⁸ Money laundering as a crime in the financial sector: a new approach to quantitative assessment, with an application to Italy / G. Ardizzi, C. Petraglia, M. Piacenza, F. Schendeir, G. Turati. *Journal of Money, Credit and Banking*. 2014. Vol. 46. Issue 8. P. 1555–1590.

economy are interrelated⁹. 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, is 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.

According to the Russian legislation, the FSB, as an entity engaged in countering financial crime in comparison with the SBU as a special-purpose law enforcement agency, is a federal executive body. However, the tasks of the FSB and the SBU are very similar.

M.M. Karpenko states that the activities of the SBU are limited only to counter-intelligence, operational-investigative, analytical and preventive activities¹⁰.

⁹ Berdiev A.N., Saunoris J.W. Financial development and the shadow economy: a panel VAR analysis. *Economic Modelling*. 2016. Vol. 57. P. 197–207.

¹⁰ Карпенко М.М. Проблеми адміністративно-правового закріплення повноважень органів служби безпеки України. *Наше право*. 2014. № 10. С. 64–67.

At the same time, counterintelligence activity, is the priority area of the SBU, as well as one of the ways to counter financial crime. Initially, this is due to the fact that the SBU, as a specially authorized body in the sphere of counterintelligence, both conducts counterintelligence and coordinates the activities of other Ukrainian agencies in this sphere, develops a system of counterintelligence protection of the state security. In the structure of the Security Service, counterintelligence protection of the financial interests of the country is considered a duty of the Main Directorate of Counterintelligence Protection of the State Interests in the Sphere of Economic Security.

As for the FSB, according to the norms of the Law of the Russian Federation "On the Federal Security Service" and the Regulation "On the Federal Security Service of the Russian Federation and Its Structure", it is possible to note the following areas of activity of this agency in the sphere of protecting the state financial system from illegal encroachments: 1) the fight against the intelligence and subversive activities of special services of foreign states and organizations that aim to weaken the financial and credit sphere of the Russian Federation; 2) assisting the authorities in opposing international financial communities and banks seeking to establish control over the financial system of the Russian Federation; 3) ensuring the security of the financial and credit sphere through the protection of state secrets; 4) counteraction to organized crime, which, due to corrupt individuals in the financial and credit sphere, creates positions with the aim of promoting private interests. In general, the activities of the FSB are focused on important aspects of protecting the financial system of the Russian Federation.

Thus, it can be concluded that the activities of the FSB also allow identifying and eliminating the causes and conditions of financial crime, implementing measures of general and individual prevention.

To ensure financial security, according to A.A. Khabibulina, the FSB authorities were given the right to carry out operational search, intelligence and counterintelligence measures in the areas of financial and economic programs, foreign investment, circulation of precious stones and metals, foreign economic activity, financial and banking system¹¹. Since the FSB, in accordance with the norms of the legislation of the Russian Federation, is authorized to carry out counterintelligence, it is worth noting the Economic Security Service in the structure of the FSB, which carries out counterintelligence support of both industrial enterprises and the financial and credit sphere.

¹¹ Хабибулина А.А. Теоретико-правовые основы деятельности ФСБ России в сфере обеспечения финансовой безопасности : автореф. дисс. ... канд. юрид. наук : 12.00.01 «Теория и история права и государства; история учений о праве и государстве». Казань, 2013. 20 с.

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. 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 (laundry) 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 other financial crimes. In addition, it is worth paying attention to the development of a common practice of combating crimes in the financial sphere.

R.V. Zhubrin notes that it is relevant for Russia to set up an investigative and operational group that will continuously identify and investigate the legalization of international criminal proceeds at the Investigative Committee of the Prosecutor's Office, the FSB, the Ministry of Internal Affairs and other bodies¹². At the same time it is obvious that the issue of the interaction of the FSB with the special services of other countries remains relevant.

The KGB of Belarus, unlike the SBU and the FSB, is considered the state government body of the Republic, which manages the security agencies and implements policies to ensure the security of the individual, society and the country, and directly participates in the implementation of the main activities and tasks of the state security agencies, which allows asserting that the KGB both contributes to countering financial crimes and directly implements that activity.

It is worth noting that the ISS of Moldova carries out activities that are similar to that of KGB. In particular, Article 8 of the Law "On the Information and Security Service of the Republic of Moldova" No. 753 dated December 23, 1999 defines the activities of the ISS as combating crimes, counterintelligence and intelligence activities.

¹² Жубрин Р.В. Борьба с легализацией преступных доходов: теоретические и практические аспекты. Москва, 2011. 488 с.

The National Security Committee of the Republic of Kazakhstan (NSC) also organizes and carries out reconnaissance and counterintelligence, as evidenced by items 11), 21) of para. 3 of the Regulations on the National Security Committee of the Republic of Kazakhstan, with a view to protecting the economic potential of the Republic.

According to S.M. Shaptala, the intelligence activity in the economy is one of the effective means of counteracting economic crimes in the country¹³. However, if the legislation of the CIS states identifies two lines of activity of security agencies, namely counterintelligence and intelligence, the Law of Ukraine "On the Security Service of Ukraine" does not indicate the responsibility of the Security Service to carry out intelligence activities. In Ukraine, intelligence is considered a priority task of the Foreign Intelligence Service. A withdrawal of the external intelligence function from the SBU and the creation of a separate service, as noted by S. Pik, is due to the existence of such a model in Western countries¹⁴.

Despite the similarity of certain elements of the status of the SBU, FSB, KGB, NSC and ISS as subjects of counteraction to financial crimes, it is worth noting their differences. In particular, only Article 15 of the Law "On State Security Agencies of the Republic of Belarus" specifies that one of the duties of the security agencies of Belarus is to ensure the security of the financial and credit system. While the norms of specialized laws of Ukraine and the Russian Federation do not assign the task of protecting the financial-credit or simply financial system to these agencies. Thus, the national and Russian legislation is based on the fact that the financial system is an inalienable and important component of the economy, and accordingly the economic security of the state. That is why, in order to determine the role of the SBU and the FSB as subjects of counteraction to financial crimes, it is necessary to proceed from an explanation of the norms that are uniform for all areas of their activities as state security agencies.

It is also worth noting that the KGB under the Article 37 of the Code of Criminal Procedure of Belarus does not carry out pre-trial investigation of financial crimes, as this obligation is vested in the financial investigation authorities. The Criminal Procedure Code of the Republic of Kazakhstan does not include any financial and economic crime in the jurisdiction of the NSC, but this does not mean that they do not eliminate the causes and conditions of financial crime. The SBU can carry out pre-trial investigation on the crimes under Article 209 and Article 209-1 of the Code of Criminal Procedure.

¹³ Шаптала С.М. Розвідувальна діяльність правоохоронних органів у сфері охорони економічної безпеки України. *Юридичний вісник*. 2012. № 2(23). С. 132–136.

¹⁴ Пик С.М. Розвідувальна діяльність у сучасному світі та її пріоритети. *Вісник Львівського університету*. 2013. № 32. С. 70–76.

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.

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 "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, which 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. However, by comparing the status of the Security Service and the FSB, the KGB, the National Security Committee, the NIB, we can assert that the status of the KGB of Belarus is best regulated. Therefore, we consider it expedient to formalize in the new Law of Ukraine "On the Security Service of Ukraine" both the tasks of the Security Service and functions that are currently not available, as well as the responsibility of the Security Service as "ensuring the security of the national financial and credit system" and combating crimes will be among the main areas of its activities. In our opinion, using the experience of the KGB of the Republic of Belarus and the National Security Committee of the Republic of Kazakhstan, it is necessary to deprive the SBU of the authority to carry out pre-judicial investigation of financial and economic crimes. 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.

SUMMARY

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.

The article examines various approaches to understanding the national financial system, the specifics of financial crimes, as well as the importance and essence of countering financial crimes. It studies the legislation regulating the activity of the Security Service of Ukraine. The main activities of the SBU as an entity engaged in counteraction to financial crimes are determined. Particular attention is paid to the legislation regulating the activities of the Federal Security Service of Russia, the State Security Agency of the Republic of Belarus, the National Security Committee of the Republic of Kazakhstan and the Information and the Information and Security Service of the Republic of Moldova.

Based on the analysis, it is concluded that these special services are directly related to countering 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, to effectively counter financial crimes.

The study focuses on 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 regulating the activities of the special services of Ukraine, the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan and the Republic of Moldova.

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SOME ASPECTS OF THE APPLICATION OF SPECIAL CONFISCATION AND LITIGATION IN CASES OF DECLARING ASSETS UNJUSTIFIED, THEIR RECOVERY

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INTRODUCTION

In the current circumstances of building democratic, social state of law, corruption poses one of the biggest threats to state and public administration as corruption offences destroy and destabilize them. By ratifying Criminal Law Convention on Corruption in 2006 and United Nations Convention against Corruption (UNCC) of 2003, Ukraine committed to promoting and strengthening measures aimed at more efficient and effective corruption prevention and fight against it. Therefore, researches on legal mechanism of assets forfeiture illicitly obtained from the standpoint of international standards and European Court of Human Rights (ECtHR) case-law in Ukraine remain relevant.

Compared with a traditional concept of confiscation, whereby the deprivation of property (crime instrumentalities and proceeds) follows a conviction for a specific crime, the new forms of confiscation provide for a loosened link between offences and confiscated proceeds. Assets may be confiscated even if they are not proceeds of the crime for which the offender has been convicted (*extended confiscation*), if they belong to persons other than the offender (*third party confiscation*), or if they are the proceeds of an offence which has not been proven at trial (*non-conviction based confiscation*); in some cases, even if criminal proceedings against the suspect have not started at all (*civil asset forfeiture*). In all these cases, the fact that a previous fully-fledged assessment of the criminal conduct, and of the link with the assets, is not a decisive factor to apply a confiscation measure raises several questions as regards the general objectives of criminal justice systems and the balance between effectiveness and human rights¹.

Notably, ECtHR in its decision held that confiscation of assets which may be either the instruments or the proceeds of crime does not necessarily come within the scope of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (Handyside v. the United Kingdom, § 63; Agosi v. the United Kingdom, § 51), even though confiscation, by its very nature, deprives a person of ownership. In situations where confiscation measures were

¹ Simonato Michele Confiscation and fundamental rights across criminal and non-criminal domains. URL: https://www.researchgate.net/publication/319912897_Confiscation_and_fundamental_rights_across_criminal_and_non-criminal_domains

COLLECTIVE MONOGRAPH

The institutionalisation of public relations in the fight against corruption: the experience of countries of Eastern and Western legal traditions (universal theoretical framework for relevant anti-corruption law of Ukraine)

TalTech Law School (Tallinn, Estonia)
Zaporizhzhia National University
Center for Ukrainian and European Scientific Cooperation

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RELATIONS IN THE FIGHT AGAINST CORRUPTION:
THE EXPERIENCE OF COUNTRIES OF EASTERN
AND WESTERN LEGAL TRADITIONS
(UNIVERSAL THEORETICAL FRAMEWORK FOR
RELEVANT ANTI-CORRUPTION LAW OF UKRAINE)**

Volume 1

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