

SCTCMG 2021
International Scientific Conference «Social and Cultural Transformations in the Context of
Modern Globalism»

ECONOMIC SECURITY VIOLATION IN THE FINANCIAL
MARKET OF RUSSIA AND CRIMINAL LAW

Valery Filippovich Tsepelev (a)*, Konstantin Valerievich Tsepelev (b),
Elena Anatolyevna Drozdova (c), Elena Pavlovna Radchenko (d),
Andrey Viktorovich Borisov (e)
*Corresponding author

- (a) Moscow State Law University named after O.E. Kutafin, 9, Sadovaya-Kudrinskaya st., Moscow, 125993, Russia, v_tsepelev@rambler.ru,
(b) Public Prosecution University of the Russian Federation, 2-1, Azovskaya st., Moscow, 117638, Russia, c_tsepelev@rambler.ru,
(c) Russian University of Transport, 9, Obraztsova st., Moscow, 127994, Russia, Gorbunov@ya.ru,
(d) Research Institute of the Federal Penitentiary Service, 15a-1, Narvskaya st., Moscow, 125130, Russia, helenr2003@mail.ru,
(e) Russian University of Transport, 9, Obraztsova st., Moscow, 127994, Russia, av-borisov@mail.ru

Abstract

In the Russian Federation, financial security is a new economic and legal category. Financial security is one of the elements of economic security and effective national security is directly related to the financial system. Crimes in the financial market decrease the level of economic growth of the country, being barriers to trade and increasing the burden on the national budget; difficulties arise for foreign economic activities. It seems relevant to develop criminal law countermeasures aimed at improving the national economic security. The article describes an algorithm for the qualification of unlawful acts, which can contribute to the effective investigation of the financial crimes. The article also examines signs of crimes committed in the financial markets. The results obtained indicate the importance of reforms to improve the criminal legislation, update the conceptual apparatus and laws on the digital space in the financial market, including cryptocurrencies and electronic money. The examples of financial crimes, which are more characterized by deliberate falsity of information provided are provided.

2357-1330 © 2021 Published by European Publisher.

Keywords: Finance, financial markets, crime prevention, illegal acts, economic security, sales contract



1. Introduction

A description of crimes in the financial markets of the Russian Federation will be incomplete without studying the limits and possibilities of criminal law measures and analyzing criminal law characteristics of these crimes. A detailed analysis of each corpus delicti is beyond the scope of this article. It would be more correct to characterize financial crimes as a specific isolated group of criminal encroachments, highlighting the inherent features of certain elements of the corpus delicti (Frunza, 2015).

Financial security is one of the elements of economic security and effective national security is directly related to the financial system (budgets and other institutions), the ability of this system to provide the government with financial resources to perform internal and external functions. Financial security is conditions for the development of the object of relations, as well as the process of creating and maintaining this object; the ability of the financial sector to meet relevant needs, continuously developing and operating with minimal violations (Gallagher et al., 2014).

All of the above indicates the need to analyze various measures to combat crimes in the markets and the need to study and generalize research results of other scientists to make decisions on existing problems.

2. Problem Statement

Traditionally, in the doctrine of criminal law, the corpus delicti is defined as a set of elements that characterize the objective and subjective signs of a crime. These elements include the object, the objective side, the subject, and the subjective side (Sarco, 2016).

Generic and specific objects are reflected in the titles of sections and chapters of the Special Part of the Criminal Code of the Russian Federation. As for the financial crimes, the generic object is economic relations (Section VIII), the specific object is property relations (Chapter 21) and legal economic relations (Chapter 22).

The difficulties are associated with the definition of the direct object of the crimes under consideration, listed in Chapter 22. Despite the fact that they are located in one chapter, these crimes are diverse, which is due to the diversity of economic relations.

Financial crimes are united by a variety of public relations, which is a set of services provided by financial institutions, including insurance services, services provided in the securities market, investment, leasing. This area outlines the range of subjects, which are represented by certain assets, including financial instruments.

Financial activities are an integral part of the economic life, due to the presence of commodity-money relations, aimed at the creation, distribution, redistribution and use of funds (Velichko et al., 2015). From a substantive point of view, a financial activity is a movement of both equity and debt capital (Karabanova, 2018).

The crimes affect various activities in the financial markets. Some of them are related to property relations (Articles 159, 1591, 1595, 160 of the Criminal Code of the Russian Federation establish liability for fraud, including in the field of lending and insurance, as well as for misappropriation or embezzlement); violations of the established procedure for conducting certain activities (Articles 1701,

171, 1722 of the Criminal Code of the Russian Federation prohibit falsification of the unified state register of legal entities, the register of securities holders or the depository accounting system, illegal entrepreneurship, as well as illegal forms of attracting money and (or) other property); they impede the exercise of rights of participants in economic activities (Articles 1851, 1852, 1854 of the Criminal Code of the Russian Federation establish liability for malicious evasion from disclosure or provision of information, violation of accounting procedures, obstruction or illegal restriction of the rights of owners of securities).

A variety of social relations in the financial markets determines a variety of criminal law objects. The latter include cash, securities, other property objects, information, financial documents.

In accordance with Article 128 of the Civil Code of the Russian Federation, funds are one of the objects of civil rights (money on bank accounts, letters of credit, check books, transfers and money documents). Monetary funds can be denominated in the currency of the Russian Federation or foreign currency (see Federal Law No. 173-FZ of 10.12.2003 "On Currency Regulation and Currency Control").

Article 142 of the Civil Code of the Russian Federation defines securities as documents that meet the requirements established by law and certify obligations and other rights exercised or transferred only upon presentation of such documents (documentary securities).

According to Article 128 of the Civil Code of the Russian Federation, property includes immovable and movable objects (including cash and documentary securities), other property objects, including property rights (including non-cash funds, non-documentary securities, digital rights).

Article 2 of Federal Law No. 149-FZ "On Information, Information Technologies and Information Protection" of July 27, 2006 defines information as messages, data regardless of the form of presentation.

Financial documents are documents drawn up in the financial and economic activities: documents and accounting registers, reports.

Cryptocurrency as an object of financial crimes can be characterized as a digital asset, a kind of digital currency created and controlled by the cryptographic protection methods (Sidorenko, 2018). Scientists have discussed the issue of criminal prosecution for crimes involving cryptocurrencies and other virtual assets (Babina & Tarasenko, 2018). Until now, there is no legal regulation of the turnover of cryptocurrencies.

This or that asset may be the direct subject of a crime if it is classified as an object of civil rights mentioned in Article 128 of the Civil Code of the Russian Federation. Cryptocurrencies are not referred to these objects, which does not prevent some specialists from referring it to things, property rights or other property objects (Sidorenko, 2018).

For the legalization of money or other property objects acquired by criminal means, the Plenum of the Supreme Court of the Russian Federation ruled that based on Article 1 of the Council of Europe Convention "On Laundering, Identification, Seizure and confiscation of criminal income and the terrorism funding" of May 16, 2005 and taking into account the FATF Recommendation 15, the subject of crimes provided for by Articles 174 and 1741 of the Criminal Code of the Russian Federation may be monetary funds converted from virtual assets (cryptocurrency) acquired by criminal means (Dodd, 2005).

The above formulation of the subject of crime is quite reasonable, since the Plenum of the Supreme Court of the Russian Federation proceeded from the existing legal regulation, the provisions of

civil legislation on objects of civil rights, defining the subject of crime as things, other objects of the outside world, intellectual values, the impact on which harms the social relations protected by the criminal law. The Court has taken into account the fact that the current legislation allows the cryptocurrency to be classified as monetary surrogates, whose circulation in the Russian Federation is prohibited by Article 27 of the Federal Law No. 86-FZ "On Central Bank of the Russian Federation (Bank of Russia)" of 10.07.2002.

The second subject of these crimes is information. In the dispositions of a number of articles on financial crimes (Articles 1591, 1701, 1721, 185-1853, 1856, 195 of the Criminal Code of the Russian Federation), the terms "data" and "information" are used along with the term "information". Being synonymous, they can create difficulties in law enforcement activities.

The criminal law doctrine distinguishes between mandatory and optional signs of information. Among the mandatory signs are truthfulness of information and ability to be an object of regulatory legal relations in economic activities. The form and value of information that are important for a number of economic crimes are optional signs (Zhilkin, 2019).

From the objective point of view, financial crimes are committed mainly by action, excluding crimes involving the refusal to commit certain actions (for example, Article 177 of the Criminal Code of the Russian Federation, which provides for liability for malicious evasion from paying off accounts payable, as well as Articles 1851, 1854 of the Criminal Code of the Russian Federation) by inaction. This sign of the objective side corresponds to the results of analysis of the criminal law, according to which up to 70 % of crimes can be committed by actions (Karabanova, 2018).

One of the constitutive features of the financial crimes is the infliction of serious damage or extraction of large income. Their value is provided for in Chapter 22 of the Criminal Code of the Russian Federation.

Depending on the design features of the objective side of the financial crimes, they can be subdivided into material ones and formal ones, in which the consequences are not among the obligatory signs. The crimes with the material structure are an abuse in the issue of securities (Article 185 of the Criminal Code of the Russian Federation), market manipulation (Article 1853 of the Criminal Code of the Russian Federation). Examples of crimes with the formal objective side include attraction of funds and (or) other property (Article 1722 of the Criminal Code of the Russian Federation), malicious evasion of paying off accounts payable (Article 177 of the Criminal Code of the Russian Federation).

The dispositions of some articles on financial crimes indicate the way crimes are committed. The unlawful use of insider information (Article 1856 of the Criminal Code of the Russian Federation) can be committed by giving recommendations to the third parties, obliging or otherwise prompting them to purchase or sell financial instruments, foreign currency and (or) goods, as well as unlawfully transferring them to another person.

One of the forms of market manipulation (Article 1853 of the Criminal Code of the Russian Federation) can be expressed in the dissemination of deliberately false information through the media, including electronic, information and telecommunication networks (including the Internet).

From the point of view of subjective signs, these crimes are committed by professional participants in economic activities, which is due to the specifics of the financial markets (borrowers,

management and employees of organizations issuing securities, persons entrusted with the obligation to provide information about securities, brokers, persons responsible for recording the rights of securities holders, participants in organized trading, etc.).

Motives and purposes are mandatory signs of the subjective side. The purpose of the crime can be defined as an ideal model of the desired result, which the offender seeks to achieve when committing the crime.

The crimes provided for in Articles 159, 1591, 1595 and 160 of the Criminal Code of the Russian Federation are committed with a mercenary purpose, which follows from the content of paragraph 1 of Article 158 of the Criminal Code of the Russian Federation.

The disposition of part 1 of Article 1701 of the Criminal Code of the Russian Federation indicates the purpose of introduction of inaccurate information about the founders (participants) of a legal entity, the size and nominal value of their shares in the authorized capital of a companies, registered owners of registered securities, the number, value and category of registered securities, encumbrance of a security or a share, a person who manages a security or shares, heads of executive bodies of companies or other persons who are entitled to act on behalf of a company without a power of attorney, or other purposes aimed at acquiring the right to someone else's property in the unified state register of legal entities, the register of securities holders or the depository accounting system.

The crime provided for in part 4 of the named article of the criminal law is committed in order to conceal from the client of an organization that records rights to securities, signs of bankruptcy of a credit or other financial organization, as provided by the legislation of the Russian Federation, or grounds for revocation (cancellation) of a license and (or) appointment in organization of temporary administration.

Falsification of financial accounting and reporting documents of a financial organization is committed with a similar purpose.

Legalization (laundering) of funds or other property acquired by other persons by criminal means (Article 174 of the Criminal Code of the Russian Federation), as well as those acquired by a person as a result of a crime committed by him (Article 1741 of the Criminal Code of the Russian Federation) are aimed at giving a legitimate form to the possession, use and disposal of these funds or other property.

The mandatory purpose of the crime under Article 186 of the Criminal Code of the Russian Federation is the sale of counterfeit money or securities.

Certain financial crimes are characterized by the use of deliberately false information provided. This excludes the presence of an indirect intent, since the knowingness of the act testifies exclusively to the direct intent of the guilty person.

3. Research Questions

The subject of the article is the theoretical, legal, organizational support of criminal law opposition in the financial markets.

The theoretical and legal support involves the analysis of rules on the financial crimes, including the use of the Internet and cryptocurrencies.

The organizational support involves the classification of financial crimes.

4. Purpose of the Study

The purpose is to describe legal relations in the financial market and effective criminal law protection measures.

5. Research Methods

The main research methods are as follows: the method of analysis of legal acts, the method of content analysis used for comparing concepts from different branches of law, and the expert assessment method.

6. Findings

The results obtained indicate the importance of reforms to improve the criminal legislation, update the conceptual apparatus and laws on the digital space in the financial market, including cryptocurrencies and electronic money.

7. Conclusion

The criminal-law characteristics of crimes committed in the financial markets indicate the complex structure of these violations, help to understand their nature and contribute to the improvement of law enforcement, especially in terms of qualifying crimes.

References

- Babina, K. I., & Tarasenko, G. V. (2018). Problems of legal regulation of cryptocurrency in Russian legislation. *Law and Economics*, 1, 26–29.
- Dodd, N. (2005). Laundering «money»: on the need for conceptual clarity within the sociology of money. *European Journal of Sociology*, 46(3), 387–411.
- Frunza, M. (2015). *Uncovering Modern Crime in Financial Markets: Analytics and Case Studies* (1st ed.). https://www.researchgate.net/publication/298823240_Solving_Modern_Crime_In_Financial_Markets_Analytics_and_Case_Studies_First_Edition
- Gallagher, H., McMahon, W., & Morrow, R. (2014). *Cybersecurity: Protecting the sustainability of Canada's financial system. The system*. Bank of Canada Financial System Review.
- Karabanova, E. N. (2018). *Crimes in the sphere of economic activity: problems of qualification*. University of Prosecutor's Office Ros. Federation.
- Sarco, V. (2016). Risk monitoring of banks participation in the process of money laundering. *Economie si Sociologie: Revista Teoretico-Stiintifica*, 4, 93–99.
- Sidorenko, E. L. (2018). Cryptocurrency as a subject of theft: qualification problems. *Magistrate judge*, 6, 18–24.
- Velichko, M. V., Efimov, V. A., & Zaznobin, V. M. (2015). *Economics of innovative development: Management foundations of economic theory*. Direct-Media.
- Zhilkin, M. G. (2019). *Crimes in the field of entrepreneurial activity: problems of classification and differentiation of responsibility*. Jurisprudence.