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Globalization of White-Collar Crime: Far and Beyond National Jurisdictions

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Yuriy Lutsenko *

Victor Motyl **

Anatolii Tarasiuk ***

Vitalii Areshonkov ****

Yaroslav Diakin *****

Dmitriy Kamensky *****

Abstract

The goal of the paper is to research the modern phenomenon of global white-collar crime, its socially harmful forms and to discuss methods of fighting such criminality internationally. In the course of the research, several general and special scientific methods were used. Special focus was laid on comparing models of enforcing economic crimes in different jurisdictions. A general overview of today's interconnected economic systems is provided. A link between economic security and national (including information) security is explained. With reference to numerous publications on the issues of white-collar crime it is suggested that this topic is of significant practical meaning to national governments. Based on the example of several white-collar crimes, including tax evasion, money laundering and insider trading, a conclusion was made on the complexity of prosecuting economic offenses, when criminal activity goes beyond any national jurisdiction. Challenges of procedural nature, which relate to investigation and prosecution of such crimes, are discussed as well. As a general conclusion, it is argued that modern phenomenon of economic globalization significantly underlines

* Doctor of Law, Interdepartmental Research Center for Combating Organized Crime under the National Security and Defense Council of Ukraine, Ukraine. ORCID ID: <https://orcid.org/0000-0002-8731-2941>

** Candidate of Law, Senior Research Fellow, Research Laboratory for Combating Crime at the Educational-Research Institute No 1 of the National Academy of Internal Affairs, Ukraine. ORCID ID: <https://orcid.org/0000-0003-1790-6741>

*** Doctor of Law, Associate Professor, Deputy Director of the Territorial Department of the State Investigation Bureau, located in Lviv, Ukraine. ORCID ID: <https://orcid.org/0000-0001-9563-6922>

**** Doctor of Law, Senior Research Scientist, Leading Researcher of the Research Laboratory on the Problems of Combating Crime of the National Academy of Internal Affairs, Ukraine. ORCID ID: <https://orcid.org/0000-0003-1776-1220>

***** Candidate of Law, Leading Researcher, Scientific Laboratory on Crime Prevention of the National Academy of Internal Affairs, Ukraine. ORCID ID: <https://orcid.org/0000-0002-6943-0151>

***** Doctor of Law, Department of Legal Courses, Berdyansk State Pedagogical University, Ukraine. ORCID ID: <https://orcid.org/0000-0002-3610-2514>

the importance of the implementation of comparative, multi-jurisdictional research into the field of white-collar crime enforcement.

Keywords: white-collar crime; globalization of crime; national security; money laundering; comparative legal research; jurisdiction and prosecution.

Globalización de la delincuencia de cuello blanco: Más allá de las jurisdicciones nacionales

Resumen

El objetivo del trabajo fue investigar el fenómeno moderno de la delincuencia mundial de cuello blanco, sus formas socialmente nocivas y, además, debatir los métodos de lucha contra esta criminalidad a escala internacional. En el curso de la investigación se utilizaron y combinaron varios métodos científicos generales y especiales. Se prestó especial atención a la comparación de los modelos de represión de los delitos económicos en diferentes jurisdicciones. Se explica la relación entre la seguridad económica y la seguridad nacional (incluida la seguridad de la información). Con referencia a numerosas publicaciones sobre la delincuencia de cuello blanco, se sugiere que este tema tiene un significado práctico para los gobiernos nacionales. Basándose en el ejemplo de varios delitos de cuello blanco, como: la evasión fiscal, el blanqueo de capitales y el uso de información privilegiada, se llega a una conclusión sobre la complejidad de perseguir los delitos económicos, cuando la actividad delictiva va más allá de cualquier jurisdicción nacional. También se discuten los retos de naturaleza procesal relacionados con la investigación y el enjuiciamiento de tales delitos. Como conclusión general, se argumenta que el fenómeno moderno de la globalización económica subraya significativamente la importancia de la aplicación de la investigación comparativa.

Palabras clave: delincuencia de cuello blanco; globalización del crimen; seguridad nacional; blanqueo de dinero; investigación jurídica comparada; jurisdicción y enjuiciamiento.

Introduction

White-collar crime is hardly a new phenomenon. A lot has been written on the subject internationally, many economic crime cases have been adjudicated by courts and governments are always on the look for new

methods of fighting such criminality, which costs billions of dollars to local economies. This is even more so for the XXI century with its digital innovations, online banking, block chain technology and cryptocurrency wires, to name a few. Currently, we all also witness a globally growing phenomenon of “white collar overcriminalization” – a new trend by the national government to be “tough” on economic crime, to punish offenders with respectable social status with all the severances of criminal laws and all the law enforcement resources available.

Yet another important observation: economic crime seriously undermines economic security of any given state and thus its national security. The ongoing war aggression against Ukraine reveals how important it is to maintain economic stability in any country, to crack down any types of white-collar crime in the face of a bigger national security threat. Economic activity is yet another important area of maintaining strong cooperation between military actors and civil society (Lutsenko *et al.*, 2021). This also includes a pressing issue of information security or cyber security. Since a lot of business transactions are conducted online nowadays, and now with the wide use of cryptocurrency transactions and doing online trading on stock exchanges, reliable protection of digital relations in any given state has to remain a top priority (Dziundziuk *et al.*, 2021).

By focusing on the “economic” block of the nation criminal law provisions, special attention should be paid to the study of globalization trends in the modern world and, accordingly, in interstate economic relations. Today, we all witness global operations of research and development, preserving environmental assets, communication, erasure of language barriers, labor and capital migration, joint discovery of outer space, implementation of international scientific projects in almost all areas, trans-border business transactions etc.

Apart from obviously positive trends, globalization also leads, at least in some cases, to the emergence of new types of economic crimes, the expansion of economic crime in general and its adaptation to various socio-economic changes. Thus, a relatively new phenomenon of white-collar crime globalization was born a couple of decades ago and has since expanded.

H. Stessens puts it down this way – modern societies are increasingly dealing with types of economic crime that were largely unknown back in the XIX century, when most European criminal justice systems had been formed. Nowadays, prosecutors and courts face economic crime challenges that did not exist before. A significant role in such illegal trends belongs to corporations, since the lion’s share of business activity in the modern market world is conducted by large international corporations (Stessens, 1994).

These and some other issues related to new ‘globalized’ patterns of economic crime will further examined in detail.

1. Methodology

The methodology behind this research includes general and specific scientific methods. The former includes methods of analysis and synthesis, while the latter includes system-functional, formal-logical, comparative and several other methods.

In particular:

1. comparative method has been used within the framework of a consistent critical comparison of the provisions of the criminal law of Ukraine, United States of America (USA) and several other countries, which relate to the grounds of liability for economic crimes and measures of criminal law influence on the persons, who have committed them;
2. historical method has been used in the context of a fragmentary retrospective analysis of the content of criminal law norms within the field of research;
3. systemic (or method of system-structural analysis) – by determining the place of group of provisions on economic crimes in the system of state-sanctioned measures of legal regulation of economic relations, as well as by establishing the order of correlation of the group of norms established in General and Special Parts of the national Criminal Codes;
4. formal-logical (dogmatic) – provided scientific interpretation of the legislation of Ukraine and the USA on liability for economic crimes, as well as substantiation of directions for improvement of the studied provisions;
5. sociological – used for the analysis of problematic issues related to the criminalization and decriminalization of economic offenses, as well as when summarizing case law materials; statistical – allowed to analyze and summarize information on the quantitative indicators of the application of measures of criminal law influence on persons, who committed economic crimes;
6. method of modeling – was used to formulate and propose new legislative novelties of the Criminal Code in the area of liability for economic crimes, as well as proposals aimed at improving the relevant practice.

The methodology employed during study of global white-collar crime is directly connected with the relevant empirical law enforcement data. The study relies on processing white-collar crime verdicts in Ukraine, USA and several European jurisdictions. Also, open data and legal documents, issued

by Interpol, Financial Action Task Force (FATF), national prosecutorial agencies and police departments, as well as financial crime task forces have been carefully studied and then incorporated into this paper.

Since white-collar crime globalization is a rather new phenomenon, new academic bibliography, recent court decisions and law enforcement materials have been widely used in this research project.

2. Recent research and findings

One's immersion into the research field of combatting economic crime reveals steady interest to such issues from both criminal law professors and practitioners. In particular, A. Savchenko has conducted effective comparison of provisions on economic crimes under criminal law of Ukraine and the USA in the monograph "Criminal legislation of Ukraine and federal criminal legislation of the United States of America: a comprehensive comparative legal study". At the same time, in view of a wider scope of issues covered in his research, both the system and specific groups of crimes in the economic sphere have been discussed only partially by the author (Savchenko, 2007).

Another Ukrainian scholar and an established authority on the issues of white-collar crime, O. Dudorov, has written extensively on the subject for the previous ten plus years. His highly cited publications address economic criminality in detail, they are both theoretically sound and have a significant effect on law enforcement practice. Apart from his widely recognized treatise on economic crime in Ukraine (Dudorov, 2003), O. Dudorov has also written a series of joint articles with R. Movchan on a wide range of white-collar crime issues (Dudorov and Movchan, 2020).

As for American academics, who have widely covered the topic of white-collar crime, E. Podgor, professor of law at Stetson University College of Law, is one of the leaders on both quality and quantity. During the past two decades, she has covered a wide range of white-collar crime issues, starting with fraudulent bankruptcy and tax evasion and ending with extremely complicated schemes of insider trading and the alarming trend of white-collar overcriminalization in America (Podgor, 2015; Podgor, 2021).

In addition, authors of this research paper have also extensively covered current legislative models of fighting economic criminality both in Ukraine and in other countries in previously published articles, conference materials and academic treatises (Minchenko *et al.*, 2021; Pidgorodynskiy *et al.*, 2021; Movchan *et al.*, 2021).

The wide spectrum of the discussed topic, as well as particular issues related to white-collar crime, which have previously been addressed in

academic literature, reveal the fact that the issue of economic crime and especially its global patterns remain among the priority areas for legal research and writing. After all, governments and societies rotate around the basic concepts of economic activity (or material welfare). Thus, protecting any given economy from illegal practices is a big deal; it should remain in the focus of the national government. For Ukraine, protection of its market economy by means of criminal law is an even more challenging goal, since national security and state sovereignty are currently at stake there.

3. Results of the study

The essence of globalization as a process, which characterizes modern stage of human development is the formation of a common global economic, political and cultural space, which functions on the basis of universally recognized legal values and principles and is manifested by common organizational forms.

We will start with explaining some key terms, used within the text of this paper.

Economic globalization is interpreted as the process of structural changes and the gradual formation of an organically integrated world economy as a necessary element of the formation and development of the integrity of world community. Creation of a national market economy means, among other things, its transformation into an integral part of the world market economy, and therefore creates dependence on modern trends in its development, dependence on institutions, mechanisms and tools with which it operates the world market. Against this background, there is an urgent need to determine main forms of cooperation of any state with international financial, credit and trade organizations, regional associations of countries, participation in joint economic projects and programs with other countries, etc.

An interesting position is expressed by the authors of one Ukrainian work on the issues of modern economic theories, who comment on the cumulative position of representatives of globalization theory regarding the development of global economic processes in such manner. Relations between subjects of economic activity are greatly influenced not only by the processes of development of formalized market relations, but also by many informal, non-economic factors, socio-cultural environment, moral and ethical climate in society, etc. Such factors are even more important under the conditions of a transitional economy, which is reflected in the modern processes of the formation of the Ukrainian economy. Here, market appears not as a self-sufficient factor capable of solving social problems, but only as one of the mechanisms of society functioning, which permeates the entire

set of social relations and directly depends on the socio-political sphere, historical and cultural heritage.

Legal globalization, in turn, means creation of a system of norms and regulations as well as the interstate, international legal system, which organizes, ensures, coordinates global interaction in various spheres of society through the interaction of international and national law. Legal globalization involves such elements as corporate law, transnational subjects of the world economy, supranational economic and financial norms and rules of state activity, interstate unions, generally recognized legal standards and values. As one might see from the proposed definition, economic relations in the interstate context remain among the key components of the conditional ‘foundation’ of this phenomenon.

Finally, to this date there is no clear, all-inclusive definition of *white-collar crime*, and such description is not likely to appear anytime soon due to a variety of reasons. These include: (1) traditionally broad nature of nonviolent and predominantly for-profit offenses; (2) changes in both legislation and its interpretation, more so during the last three decades; (3) shifts in research focus from looking into white collar criminals themselves to the specific nature of crimes committed by the latter; and (4) absence of any attempts to categorize different groups of offenses by either legislators or courts (Kamensky, 2016).

The term ‘white-collar crime’ is notoriously ambiguous. At least some agreement among scholars exists on what types of criminal behavior this phrase should include. Among various types of criminal activity, one can name antitrust violations, computer and internet fraud, credit card fraud, phone and telemarketing fraud, bankruptcy fraud, healthcare fraud, environmental violations, insurance fraud, mail fraud, government fraud, tax evasion, financial fraud, securities fraud, insider trading, bribery, kickbacks, counterfeiting, public corruption, money laundering, embezzlement, economic espionage and trade secret theft (White Collar Crime, 2021). As one might see, the list of such criminal activity forms is both expansive and impressive.

As for corruption-related offenses, bribery remains among the major threats to many countries, including Ukraine. While penetrating deep into all spheres of public life, corruption damages the most important social values of both the state as a whole and its individual citizens (Vozniuk *et al.*, 2021). In particular, it effects market economy relations, including transportation, construction, retail sector, stock market functioning and investing in both negative and direct manner.

In comparison, the term ‘*international white-collar crime*’ becomes even more confusing, since no such term is defined by international law. Thus, the term can be best interpreted by referring to non-violent, financially motivated

crimes, which have a transnational element. Such multi-jurisdictional element can arise from the conduct of the perpetrators, the locations of the victims and witnesses, the nature of the crime, or the scope of governmental or corporate investigation. Under such broad definition, any white-collar crime can actually be put into the international context (Kamensky, 2021).

Moving forward, we observe that today there are numerous ‘points of conflict’ between domestic criminal law and globalization trends. Shifts in the ‘criminal picture’ of the world, caused by globalization, need to be studied within the framework of criminal law doctrine, and should also be taken into account in law-making activities, in particular, when solving issues of criminalization and decriminalization, penalization, improvement of criminal law tools and when solving other problems of criminal law.

English author D. Nelken makes a good point, while referring to the systemic, immanent manifestations of crime, which are increasingly under the influence of globalization. The effect of globalization manifests itself primarily in the fact that the concepts of “their” (foreign) and “our” (domestic) regarding crime are gradually becoming similar and interconnected (Nelken, 2000). There is a typical pattern related to the situation of the evolution of economic crime in the era of globalization: the globalization of the world economy and the ever-increasing efficiency of capital markets allow individuals and legal entities to move huge sums of money both on domestic financial markets and from one country to another. As one can see, the economy and crime can create together an extremely strong, dangerous combination for society within the framework of globalization.

After setting a theoretical foundation for our research, we will proceed with a set of practical issues, which reflect on the globalized nature of modern white-collar criminal activities. Today, money laundering is a major problem for the international community at large. It is a crime of relatively recent vintage, having its growth in the years following digitalization, introduction of cryptocurrency and further expansion of information technologies. Money laundering, as put down by one American commentator, is a crime of many variations, many approaches, and a host of different laws, since countries do not always have consistent approaches.

Combating money laundering, therefore, requires consideration of issues of national, transnational, and international jurisdiction as well as joint law enforcement initiatives. Today the overarching concern relates to how to combat this criminal conduct in a global society. Money laundering laws provide a case study to demonstrate the jurisdictional challenges faced by nations working to eradicate this particularly dangerous form of economic criminality (Podgor, 2006).

Stock market fraud, including market manipulation and insider trading, is yet another, though hardly the only one, example of global economic crime

today. Indeed, since shares of large multinational corporations (Coca-Cola, Tesla, Apple, Ford, Intel – to name just a few) are traded worldwide, crimes related to such assets can also be committed virtually anywhere.

Development of any national stock market is always connected to a number of factors, including the state of legislative protection against market offenses and enforcement of relevant criminal statutes. Stock market offenses (practices of manipulative and insider nature, placement of “junk” securities, fictitious issues, etc.) create grounds for mistrust on the part of investors, increase investment risks and, as a result, worsen the investment climate, complicate the formation of a modern market economy in Ukraine, encroach on the interests of securities owners and other stock market participants, contribute to money laundering etc.

American experience of regulation and criminal protection of the stock market is becoming relevant and largely instructive for many world jurisdictions (Ukraine among them), especially in the context of identifying key routes for the development of both national economies and foreign economic relations. This is not surprising, since United States remain the key industrial center of the world (together with China, the United States provide more than 1/3 of the world’s industrial output), the world center of scientific and technological progress and at the same time the world financial center (American dollar provides more than 40% of all financial transactions value in the world).

Therefore, it is not surprising that the largest stock market in the world in terms of capitalization is located in this country. Hence, American model of enforcing lawfulness and integrity in its stock market can serve as both an example and a source of valuable experience for the countries with emerging markets. Additionally, American legal and economic scholars have elaborated an impressive body of scholarship on the issues of stock market functioning as well as market fraud (Fox *et al.*, 2018).

Finally, from the merely procedural viewpoint, white collar crime poses a multi-jurisdictional challenge in terms on its proper investigation and prosecution. L. Dervan explains that while numerous countries offer advantages to those, who disclose investigatory findings and cooperate with governmental inquiries, the globalization of white-collar crime and the international nature of modern investigations also present significant challenges to successful resolution and settlement of such matters, and even more so, if we are talking about large corporate wrongdoers. The commentator adds a valuable observation: as the globalization of white-collar crime continues to bring internal investigations into various international jurisdictions, the necessity of striving for such truly global settlement will only continue to become of greater importance (Dervan, 2011).

Conclusions

The modern phenomenon of economic globalization significantly underlines the importance of the implementation of comparative research into the academic field of criminal law, even more so in the field of white-collar crime. Such connection between a legal discipline and a specific phenomenon is grounded on pragmatic considerations: on the map of the modern world, important changes are taking place in the economic, social, political, cultural and other relations between nations, which naturally encourages the search for new forms of response to such trends by means of criminal law; international relations, which are becoming increasingly stronger, require an appropriate level of awareness of foreign law and its correct correlation with the national law.

At the same time, gradual disappearance of economic restrictions between various countries, creation of interstate zones of free trade and free competition leads to the emergence of new transnational threats: study of criminal law and criminal procedure of another country becomes a guarantee of effective criminal prosecution of persons, who have conducted coordinated criminal activity on the territory of several states.

Globalization of crime requires specialists from different countries to strengthen international cooperation and exchange of both ideas and resources in the context of solving practical issues of countering criminal manifestations at the international level.

Finally, among other known types of criminality, today white-collar crime is more than anything else affected by the developing phenomenon of economic globalization. As we explained in this research paper, money laundering, tax evasion, financial fraud, antitrust violations, corporate corruption and stock market manipulations have long since evolved beyond the national borders and currently create a direct threat to the interconnected world economic environment, global financial system and global markets. Thus, further research and responses to such 'external' forms of economic crime activity are required.

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