

NATIONAL RESEARCH UNIVERSITY
HIGHER SCHOOL OF ECONOMICS

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**FINANCIAL CRIMES
IN THE RUSSIAN CRIMINAL LAW:
MODERN CONCEPT & QUALIFICATION PROBLEMS**

SUMMARY

of the thesis for the purpose of obtaining academic degree

Doctor of Science in Law

Moscow – 2022

The thesis is written at the National Research University

HIGHER SCHOOL OF ECONOMICS

The text of the thesis is available on the website of National Research University

Higher School of Economics

<https://www.hse.ru/sci/diss/>

12.00.08 – Criminal law and criminology;

criminal and penal law

INTRODUCTION

Relevance of the subject of research

Modern financial relations as the sphere of financial crimes are characterized by increasingly complicated internal architecture, expansion of range of their participants, their deepening specialization, use of the most modern information technologies, emergence and fast distribution of essentially new types of financial assets (digital financial assets, digital currencies). It inevitably affects financial crimes as well, bringing them to new level. It is no exaggeration to say that we are witnessing the age of "white-collar" crime in which financial crimes, though may not prevail, but represent the main destructive force, causing the greatest damage to participants of the economic relations.¹

In these conditions the developed legal systems adopt special laws to counteract financial crime; specialized bodies for investigation of financial crimes are formed; special courts are created to hear the corresponding category of criminal cases.

It would be unfair to say that the growing danger of financial crime in our country is being ignored. The strategic planning documents note a high level of crime in the credit and financial sector, recognize certain threats to national security in this area, for example, the withdrawal of financial assets abroad, illegal financial transactions, legalization of criminal proceeds, illegal use of digital currencies, inappropriate and ineffective use of budget fund.²

However, financial security as a segment of the national security of the Russian Federation is not highlighted in the program documents and the development of a system of targeted measures to ensure it, including criminal law measures, has not been given due attention.

¹ ACFE. Report to the Nations. 2020. URL: <https://www.acfe.com/report-to-the-nations/2020/> (ref. date – 01.04.2021).

² The National Security Strategy of the Russian Federation, approved by the Decree of the President of the Russian Federation of 07/02/2021 № 400 // SZ RF. 2021, № 27, art. 5351

Unlike the western research in our tradition financial crimes are considered only in the context of public finance, and the sphere of defeat of financial crime is limited to the financial relations with the state participation. However, this conservative approach has gradually lost the relevance and ceased to correspond to the level of development of the financial relations.

Modern financial legislation, which forms the basis of regulatory prohibitions protected by the force of criminal law, goes beyond traditional public law areas (for example, budgetary, tax), representing one of the most complex branches of Russian legislation, consisting of a set of codified regulations and independent federal laws combining the regulation of public law and private law financial relations.

Going beyond the traditional public-law paradigm in the regulation of finance requires a corresponding revision of scientific views on the object and system of financial crimes. Today it is no longer possible to ignore the need to include in this system crimes against the financial market, which is a large and rapidly developing segment in the financial system.

Financial relations in the field of banking, as well as on the issue and circulation of money, securities and electronic means of payment, traditionally perceived as public-law (power relations), are ceasing to exist in their pure form as a result of the strengthening of dispositive (private-law) principles of legal regulation in relevant areas of financial activity.

Equally important both for public finance and for the financial market, they occupy an intermediate position, forming important infrastructural links between the corresponding segments of the financial system of the state.

The role and functional purpose of modern financial institutions, their inherent criminal legal risks require consideration when building a new model of the system of financial crimes.

The systematization of crimes in the sphere of economic activity is the subject of endless controversy. The search for criteria for the internal grouping of crimes

stipulated by Ch. 22 of the Criminal Code of the Russian Federation continues. Differences in the interpretation of the objects of these crimes give rise to their various classification. As a result, a different group affiliation is assigned to the same crimes. In the development of this general trend, attempts continue to systematize financial crimes whose results, coinciding in general, differ a lot in details, since the doctrine lacks a unified understanding of the object as a criterion for classifying financial crimes that are found not only in Ch. 22 of the Criminal Code of the Russian Federation, but also outside of it. Therefore, it is an urgent and timely scientific task of the required scale and novelty to obtain further scientific knowledge of the object of financial crimes in all its aspects and of the inextricable connection with the increasingly complex architecture of financial relations and to create on this foundation a system of financial crimes seems.

The creation of a new system of financial crimes, not limited to the traditional corpus delicti against public finance, makes it possible to expand the scale of the study and opens up new opportunities for identifying the features of the corpus delicti and other categories of the doctrine of crime in the context of the fundamentally new sample of financial crimes.

The law enforcement practice in cases of financial crimes has a variety of qualifying approaches to the interpretation of their main features. The participation of the doctrine of criminal law in the development of qualification decisions for law enforcement practice in cases of this category demonstrates an obvious imbalance with an emphasis on the study of traditional forms of financial crime (for example, counterfeiting of funds and securities, tax evasion and other mandatory payments) and poor attention to its new, much more dangerous forms (for example, crimes against the securities market or the collective investment market). In many respects, it is precisely this inattention, insufficient elaboration of methodological approaches to qualification that explains the "stalled" practice of applying a number of "topical" criminal-legal prohibitions against crimes in the financial market. Although this state of affairs in modern scientific works is often explained by the costs of excessive

rule-making, as well as a weak study of the legal technique of the corresponding criminal-legal prohibitions, these arguments can hardly be supported, bearing in mind the rather successful application of their analogues in Western practice (for example, about market manipulation or misuse of inside information).

Thus, a lot of accumulated unresolved problems of law enforcement, including those caused by the lack of a unified understanding of the object, concept and system of financial crimes, corresponding to the modern level of development of financial relations, has served as the main reasons for choosing the subject of the thesis and confirm its relevance.

The state of scientific elaboration of the research topic

The development of problems of qualification of economic crimes is in the center of constant scientific attention. The latest scientific research proves the existence of economic criminal law as an independent sub-branch of criminal law.³

Scientific works of such scientists as A.G. Bezverkhov, A.I. Boytsov, L.D. Gaukhman, S.M. Kochoi, G.A. Krieger, L.L. Kruglikov, K.V. Obrazhiyev, N.I. Pikurov, V.S. Ustinov, V.V. Hilyuta, P.S. Yanni are devoted to problems of criminal liability for economic crimes.

Within the framework of this general topic, the study of crimes in the field of economic activity was carried out by B.V. Volzhenkin, G.A. Esakov, A.E. Zhalinsky, I.A. Klepitsky, N.A. Lopashenko, T.V. Pinkevich, M.V. Talan and V.I. Tyunin, T. D. Ustinova, I. V. Shishko.

The issues of qualification of financial crimes included in the group of economic crimes were studied in the works of such scientists as O.G. Karpovich, I.I. Kucherov, V.F. Lapshin, V.D. Larichev, S.L. Nudel, O.Sh. Petrosyan, I.N. Soloviev, Yu.V. Truntsevsky.

³ Esakov G.A. Economic criminal law: General part / G.A. Esakov; Nat. issled. University Higher School of Economics. - M.: Publishing house. House of the Higher School of Economics, 2019; Klepitsky I.A. New economic criminal law: monograph. - M.: Prospect, 2021.

However, in most scientific studies, the problem of financial crime is considered only from the point of view of public finance, which does not correspond to the modern organization of financial relations and global trends in combating financial crime.

In particular, the latest monographs on criminal liability for financial crimes (S.L. Nudel, V.F. Lapshina) were completed more than five years ago and are based on the state of financial legislation of the corresponding period. In these works, financial relations are considered as public power relations, and research interest is focused on the criminal-legal characteristics of corpus delicti of crimes against public finance, criminal policy in the field of financial protection, legislative technique of criminal-legal prohibitions in the financial sphere.

At the same time, the sphere of the defeat of financial crimes is expanding with the development of the financial market and the supporting financial infrastructure. The rapid development of financial relations in recent years has significantly changed financial legislation as a blanket basis for criminal law prohibitions against financial crimes. Judicial practice is replete with examples of unresolved qualification problems. This determined the choice of the topic, the setting of the goal and the main objectives of the thesis.

Purpose and research problems

The purpose of this research is theoretical justification of the modern concept of financial crimes, including definition of their object and concept, modeling of their system, identification of features of corpus delicti and other categories of the doctrine about crime in the context of financial crimes, the solution of problems of their qualification, relevant for law-enforcement practice.

Achievement of this purpose requires the solution of the following problems of thesis research:

- definition of an object of financial crimes considering the modern organization of the financial relations;

- development of a scientific definition and signs of financial crime;
- modeling of a system of financial crimes, internal system group of financial crimes and the criminal bans corresponding to them, the exception of "false" financial crimes;
- identification of features of formulation of the corpus delicti of financial crimes, including the analysis of the criminogenic signs and competitive interrelations of the criminal norms arising when formulating multi-object corpus delicti of financial crimes;
- characteristic of corpus delicti of financial crime, including identification of features of his objective and subjective signs, identification of features of use of other categories of the doctrine about crime in the context of financial crimes;
- development of scientifically based recommendations about the solution of the problems of qualification of financial crimes, most relevant for law-enforcement practice.

Methodology of the research

The methodology of the dissertation research is made up of the general scientific methods of scientific knowledge, including analysis, synthesis, induction, deduction, logical and functional, which made it possible to form the conceptual apparatus of the dissertation research, including determining the object, concept and signs of financial crime. Special methods of scientific knowledge are widely used. The formal legal method was used to analyze modern financial legislation in order to identify the objects of financial crimes. Using the systemic-structural method, the structure of a financial crime has been investigated and a theoretical model of the system of financial crimes has been developed. Statistical analysis and interpretation of law were used to analyze law enforcement practice and develop rules for qualifying financial crimes. These methods, taken together, have made it possible to propose a new concept of financial crime.

Empirical base of the research

The empirical basis of the research:

- statistical data of Judicial department at the Supreme Court of the Russian Federation on criminal record for financial crimes during 2010-2020;
- certificates of courts based on the results of the study of judicial practice in the framework of the development of resolutions of the Plenum of the Supreme Court of the Russian Federation dated 07.07.2015 No. 32 "On judicial practice in cases of legalization (laundering) of money or other property acquired by criminal means, and on the acquisition or supply of property deliberately obtained by criminal means " and dated November 26, 2019 No. 48 "On the practice of the courts' application of legislation on liability for tax crimes";
- results of study of more than 1,500 judicial acts on cases of financial crimes during 2010-2020;
- the thesis author's own experience of work at the prosecutor's office, internal control, internal audit, and audit commissions of the financial organizations.

Scientific novelty of the research

The thesis offers the new vision of a concept and system of financial crimes based on the current state of the financial legislation combining regulation of the public and private-law financial relations. The work is devoted to a comprehensive study of theoretical and applied problems of the qualification of financial crimes, which made it possible to formulate a set of new proposals to improve the efficiency of criminal legal counteraction to financial crime.

The concept of financial crime offered by the author has scientific novelty. The concept includes:

- definition of the object of financial crimes;
- scientific definition and signs of financial crime;
- theoretical model of the system of financial crimes;

- features of formulation of the corpus delicti of financial crimes;
- features of objective and subjective signs of corpus delicti of financial crime;
- features of other categories of the doctrine of crime (unfinished crime, complicity in a crime and circumstances precluding criminality) in the context of financial crimes.

The following meets the criterion of scientific novelty: the solutions proposed by the author to the urgent problems of qualification of financial crimes, including issues that have not been subjected to detailed research so far, as well as issues requiring revision in view of the current state of financial relations.

Theoretical and practical importance of the research

In terms of the theoretical importance the results of the present thesis research enrich the theory of qualification of crimes in the sphere of economic activity in general and financial crimes in particular. They can form base for further research of problems of criminal liability for financial crimes, developments of legislative initiatives for the purpose of improvement of the criminal bans in the sphere of counteraction of financial crime and streamlining of law-enforcement practice for the corresponding category. Results of the research can be also used in the educational purposes for teaching criminal law, economic criminal law and theoretical bases of qualification of crimes in higher educational institutions.

The provisions submitted for defense of the thesis:

1. The blanket basis of modern criminal law prohibitions against financial crimes is formed by financial legislation that combines the regulation of public law and private law relations in the financial sphere, which reflects the general tendency of private interest and dispositive principles of legal regulation to penetrate traditional public branches of law with the formation of complex integrated systems. In accordance with the above, a new concept of financial crime is proposed, the scope of which is not limited to public finance.

2. The object of financial crimes (value-goal) is the financial security of citizens, organizations and the state, which is understood as their financial stability (stability). Financial relations ensuring financial security regarding the circulation of financial assets (cash, financial instruments, precious metals and precious stones) have an auxiliary (subordinate) significance and are included in the content of the object of financial crimes as a value-means.

3. Financial crimes are a decentralized group of crimes stipulated by the norms of Ch. 22 and 30 of the Criminal Code of the Russian Federation. From this point of view, without changing the current structure of the Special Part of the Criminal Code of the Russian Federation, a single species object cannot be distinguished from them. However, as representing a certain commonality of *corpus delicti*, they can be grouped according to the criterion of a common object of criminal encroachment (group object). Such an object is the financial security of citizens, organizations and the state (a first-level object). Since financial security can be considered both in general and in the context of its specific segments, group objects of the second and third levels can be distinguished, corresponding to specific segments of financial security. Financial security in the field of public finance (second-tier object) is subdivided into financial security in the field of budget revenues, budget expenditures and state loans (third-tier objects). Financial security in the financial market (second-tier object) is subdivided into financial security in the credit market, foreign exchange market, securities market, precious metals and precious stones market, collective investment market (third-level objects). Financial security in the field of financial infrastructure (second-level object) is subdivided into financial security in the sphere of money and financial instruments turnover and financial security in the sphere of functioning of financial institutions (third-level objects). The specified three-level system of objects of financial crimes reflects the current state of the criminal law protection of the financial security of citizens, organizations and the state.

4. A financial crime is understood as a deliberate socially dangerous act prohibited by the norms of the Criminal Code of the Russian Federation under threat of punishment, infringing on the financial security of citizens, organizations and the state, which is ensured by the observance of the established procedure for the circulation of financial assets (cash, financial instruments, precious metals and precious stones), regulated by the financial legislation of the Russian Federation.

5. The theoretical model of the financial crime system includes the following crimes, grouped according to the criterion of the object they hit (financial security segment):

Crimes against public finance:

1) crimes against budget revenues (Article 194, 198, 199, 199¹, 199², 199³, 199⁴ of the Criminal Code of the Russian Federation);

2) crimes against budget expenses (Article 285¹, 285² of the Criminal Code of the Russian Federation);

3) crimes against the state credit (Part 2 of Article 176 of the Criminal Code of the Russian Federation).

Crimes against financial market:

4) crimes against the credit market (Article 171⁵, Part 1 of Article 176 of the Criminal Code of the Russian Federation);

5) crimes against foreign exchange market (Article 193, 193¹, 200¹ of the Criminal Code of the Russian Federation);

6) crimes against securities market (Article 185, 185³, 185⁶ of the Criminal Code of the Russian Federation);

7) crimes against the market of precious metals and precious stones (Article 181, 191, 192 of the Criminal Code of the Russian Federation);

8) crimes against the market of collective investments (Article 172², 200³ of the Criminal Code of the Russian Federation);

Crimes against financial infrastructure:

9) crimes against money turnover and financial instruments (Part 1, 2, 3 of Article 170¹, Article 174, 174¹, 185¹, 185², 186, 187 of the Criminal Code of the Russian Federation);

10) crimes against functioning of financial institutions (Part 4, 5 of Article 170¹, Article 172, 172¹, 172³, 183 of the Criminal Code of the Russian Federation).

6. For the purposes of formulation of the corpus delicti of financial crimes the subject of which is money and other financial assets expressed in monetary units, the most suitable criminogenic features are dimensional features that characterize an object, act or its consequences. They make it possible to distinguish financial crimes from financial offenses, are the most effective means of objectively measuring their public danger and should be primarily used in the criminalization of financial crimes. At the same time, the quantitative values of the dimensional characteristics of financial crimes vary depending on the sphere of financial relations and cannot be unified or equally reduced to a single value with the dimensional characteristics of crimes against property.

The synthesis of the corpus delicti of a financial crime using in its construction the signs of corpus delicti of other crimes (for example, forgery of documents) generates competitive links of criminal law norms, the identification of which is necessary in order to exclude double imputation in the qualification of financial crimes.

7. The corpus delicti of financial crime can be the general, special or mixed. Financial crimes with the general corpus delicti relate to violation of the well-known prohibitions of certain actions in the sphere of financial relations (for example, Article 172², 174, 174¹, 186, 187, 193¹, 200¹ of the Criminal Code of the Russian Federation). Financial crimes with special corpus delicti relate to violation of special rules of conduct by the person having the status of the special participating subject of a certain sphere of the financial relations (for example, Article 176, 194, 198-199⁴, 285¹, 285² of the Criminal Code of the Russian Federation). Financial crimes

with a mixed corpus delicti combine the characteristics of general and special corpus delicti of financial crimes (for example, Article 170¹, 171⁵, 172, 181, 183, 191 of the Criminal Code of the Russian Federation). The correct definition of the type of corpus delicti of financial crime makes it possible to use optimal toolkit when qualifying the offense.

8. The subject of a financial crime includes, first of all, financial assets about which financial relations are formed (cash, financial instruments, precious metals and precious stones). It also includes other items necessary for the implementation of supporting functions within the framework of these relations (for example, means of payment, register of securities holders, financial statements). The specificity of the subject of financial crimes is its predominantly intangible form (for example, non-cash funds, uncertified securities, a depository accounting system, information constituting bank secrets), which requires a revision of the classical concept of the subject of a crime as an object of the material world.

9. The objective side of financial crimes is characterized by an act expressed in violation of not only criminal and legal, but also regulatory (financial and legal) prohibitions. In special corpus delicti of financial crimes, the violated regulatory requirements (special rules of behavior) are characterized by reality, adequacy, informational openness, compulsory knowledge and feasibility. Consequences in special corpus delicti of financial crimes are associated with the act through causation which has a socio-legal, probabilistic and indirect nature.

10. The subject of financial crimes is usually characterized by signs that indicate that he belongs to a certain area of financial relations (for example, an authorized person of a financial institution, registrar, depository, taxpayer). As a general rule, a person becomes a special subject of financial crimes as a result of his proper regulatory inclusion in the relevant sphere of financial legal relations. An exception to this rule is stipulated for corpus delicti of financial crimes (for example, Articles 198, 199, 199¹, 199² of the Criminal Code of the Russian Federation), the subject of which may be the actual ("shadow") head of an economic entity.

11. The subjective side of financial crimes is characterized by an exclusively deliberate form of guilt. In the materially defined financial crimes with a sign of damage, guilt has the form of indirect intent (for example, Articles 176, 185, 185¹ of the Criminal Code of the Russian Federation), except for cases where the damage is a paired consequence with the extraction of excess income or avoidance of losses (Article 185³ of the Criminal Code of the Russian Federation). Direct intent characterizes materially defined financial crimes with a sign of generating income, excess income or avoiding losses, as well as financial crimes with a formal corpus delicti which are the in overwhelming majority. A mandatory element of intent as part of corpus delicti of financial crime is the awareness of regulatory (financial) wrongfulness, in the absence of which the deed is recognized as a factual error.

12. The stages of an unfinished crime cannot be distinguished in corpus delicti of financial crimes, which are characterized by a dimensional criminogenic sign of the act (before its accumulation, the act is not recognized as criminal), as well as in the materially defined financial crimes with a sign of damage, which are characterized by indirect intent. Allocation of the stages of preparation and attempt is possible in corpus delicti of financial crimes not limited to dimensional characteristics, committed in several actions (including those involving counter actions of other persons) and not performed in full due to circumstances beyond the control of the guilty person (for example, Articles 183, 186 , 187 of the Criminal Code of the Russian Federation), as well as in the materially defined financial crimes associated with the extraction of income, excess income or avoidance of losses committed with a specific intent.

13. Complicity in the form of co-execution is not common in financial crimes with a special subject, including those committed with the use of the sole authority of the head of the organization. However, the mechanism for committing some financial crimes (for example, against budget revenues) allows for expanded co-execution in them, with the participation of persons who carry out part of the objective side of the crime (for example, accountants).

14. Causing harm to financial security in the field of public finance is usually committed under actual circumstances with signs of extreme necessity (Article 39 of the Criminal Code of the Russian Federation) or reasonable risk (Article 41 of the Criminal Code of the Russian Federation), which is explained by the need to select competing goals for the use of funds in conditions of their shortage (conflict of socially useful purposes). The application of these circumstances in practice is not widespread due to the difficulties in confirming compliance with the conditions of the legality of the harm caused. In financial crimes committed by an actual ("shadow") leader, an order or instruction as a circumstance precluding the criminality of an act (part 1 of article 42 of the Criminal Code of the Russian Federation) has not legal, but factual force and obligation for the actual subordinates of such a leader.

15. Effective protection of financial safety of citizens, organizations and the state is impossible without stable and uniform application of the criminal prohibitions against financial crimes. To this end, we have formulated rules for resolving the most complex and ambiguous issues of their qualification, including disclosing the content of the controversial features of corpus delicti of financial crimes, proposing criteria for distinguishing between financial crimes and other related crimes, primarily against property, against the interests of service in commercial and other organizations, against the interests of state power, public service and service in local government bodies. More than 80 new rules for qualifying financial crimes are presented in the form of two draft resolutions of the Plenum of the Supreme Court of the Russian Federation.

Approbation and implementation of results of research

At the invitation of the Supreme Court of the Russian Federation, the author, as an external expert, took part in the development of resolutions of the Plenum of the Supreme Court of the Russian Federation dated 07.07.2015 No. 32 "On judicial practice in cases of legalization (laundering) of money or other property acquired by criminal means, and acquisition or sale of property knowingly obtained by criminal

means" and dated November 26, 2019 No. 48 "On the practice of the courts' application of legislation on liability for tax crimes ", which made it possible to ensure the implementation of the author's research results into the relevant guidelines of the highest court. In 2012 and 2014, the author participated in the preparation by the Supreme Court of the Russian Federation of reviews of judicial practice in cases of crimes related to bankruptcy (Articles 195, 196, 197 of the Criminal Code of the Russian Federation). The author has been highly praised by the leadership of the Supreme Court of the Russian Federation for his active participation in the drafting of these practical documents.

In 2016-2017, the author was a member of the working group of the Center for Strategic Research Foundation, which, together with the Federation Council of the Federal Assembly of the Russian Federation, was engaged in the development of the criminal policy of the Russian Federation.

The main provisions of the thesis research were published in more than 70 papers with a total volume of more than 80 printed sheets, including 30 publications in editions recommended by the National Research University Higher School of Economics, 2 comments to the Criminal Code of the Russian Federation, 3 textbooks and encyclopedias on criminal law, 1 monograph.

The research materials were used by the dissertation candidate in public speeches, including within the framework of the following scientific and practical conferences and other scientific events:

- 1) Moscow Legal Forum (Kutafin Readings) (Moscow, April 2014). Report "Qualification of joint participation in the legalization (laundering) of criminal proceeds of persons involved and not involved in the predicate offense".
- 2) IV Russian-German round table "Crimes in the economic sphere: Russian and European experience" (Moscow, November 2014). Report "Delineation of Credit Crimes".

- 3) XV International Practical Conference and VII International Scientific and Practical Conference "Kutafin Readings" "Judicial Reform in Russia: Past, Present, Future" (Moscow, December 2014). Report "On the issue of fictitious bankruptcy (article 197 of the Criminal Code of the Russian Federation)".
- 4) XII International Scientific and Practical Conference "Criminal Law: Development Strategy in the XXI Century" (Moscow, January 2015). Report "On the question of the" sphere of lending "within the meaning of Article 159¹ of the Criminal Code of the Russian Federation".
- 5) XIII International Scientific and Practical Conference "Criminal Law: Development Strategy in the XXI Century" (Moscow, January 2016). Report "Implementation of international standards of criminal law against money laundering in the clarifications of the Supreme Court of the Russian Federation".
- 6) VIII Russian-German round table "Crimes in the economic sphere: Russian and European experience" (Moscow, November 2017). Report "Delimitation of crimes in the customs sphere".
- 7) XV International Scientific and Practical Conference "Criminal Law: Development Strategy in the XXI Century" (Moscow, January 2018). Report "On the question of the subject of "entrepreneurial" crimes.
- 8) IX Russian-German round table "Crimes in the economic sphere: Russian and European experience" (Moscow, November 2018). Report "On the issue of signs of "entrepreneurial" crimes.
- 9) XVI International Scientific and Practical Conference "Criminal Law: Development Strategy in the XXI Century" (Moscow, January 2019). Report "Cryptocurrency as a subject and means of crime".
- 10) International Scientific and Practical Conference XVI Annual Scientific Readings in memory of Professor S.N. Bratus on the topic "Sustainable Economic

Growth and Law” (Moscow, October 2021). Report "On the question of the system of financial crimes in Russian criminal law".

The results of the study have been introduced by the author into the educational process of the Faculty of Law of the National Research University "Higher School of Economics" in the teaching of the academic disciplines "Criminal Law. General part" and "Criminal law. Special part" in the bachelor's degree program, the author's course "Economic crimes: topical problems of law enforcement practice" in the master's degree program, as well as in the development of textbooks "Russian criminal law. General part", "Russian criminal law. Special part" and several editions of " Commentaries to the Criminal Code of the Russian Federation".

Structure and scope of work

The thesis of 650 pages consists of an introduction, two sections and five chapters, including seventeen paragraphs, as well as a conclusion, two annexes, and a bibliography.

MAIN CONTENTS

The introduction substantiates the relevance of the topic of the thesis research, defines its purpose, objectives, methodology, techniques, theoretical and empirical base, scientific novelty, theoretical and practical significance, formulates the main provisions for public defense, reports on the approbation and implementation of research results into practice.

The first section "Financial crimes. The general part" consists of two chapters and seven paragraphs and is devoted to justification of the new concept of financial crime, including consideration of an object, concept and system of financial crimes, corpus delicti and other categories of the doctrine about crime in the context of financial crimes.

The first chapter "Financial security: object, system, rule-making" includes three paragraphs. The **first paragraph** "*Financial security as an object of financial crimes*" contains an overview of the existing classifications of financial crimes and approaches to interpreting their object. The work reveals the traditionally established understanding of the object of financial crimes as financial relations with state participation, dating back to the more recently dominant public-law paradigm in the regulation of financial relations. However, the rapid modernization of financial relations leads to an increasing predominance of private law structures in their regulation. Modern financial legislation goes beyond the traditional budgetary and tax areas, forming one of the most complex branches of Russian legislation, consisting of a set of codified acts and independent federal laws that combine the regulation of public and private law financial relations. A new look at the system of financial legislation expands the content of financial relations usually used to characterize the object of financial crimes, not limiting them exclusively to the sphere of public finance. However, financial relations in themselves are not the object of financial crimes, since they do not have the property of value-goals. From the point of view of legal axiology, financial security claims the role of value-goal, which should be recognized as the object of financial crimes. Financial relationships

are included in its content as a value-means that ensures financial security. Financial security is understood as the state of protection of the financial interests of citizens, organizations and the state that ensures financial stability. A three-level system of objects of financial crimes is proposed. Financial security as an object of the first level includes financial security in the field of public finance, the financial market and financial infrastructure (objects of the second level), which are subdivided into objects of the third level, corresponding to specific types of financial relations.

The **second paragraph** "The concept and system of financial crimes" gives the concept of a financial crime which is understood as a deliberate socially dangerous act prohibited by the norms of the Criminal Code of the Russian Federation under threat of punishment, encroaching on financial security which is ensured by the observance of the established procedure for the circulation of financial assets (cash, financial instruments, precious metals and precious stones), regulated by the financial legislation of the Russian Federation.

Taking into account a new look at the architecture of financial relations, a theoretical model of the system of financial crimes is proposed:

Crimes against public finance:

11) crimes against budget revenues (Article 194, 198, 199, 199¹, 199², 199³, 199⁴ of the Criminal Code of the Russian Federation);

12) crimes against budget expenses (Article 285¹, 285² of the Criminal Code of the Russian Federation);

13) crimes against the state credit (Part 2 of Article 176 of the Criminal Code of the Russian Federation).

Crimes against financial market:

14) crimes against credit market (Article 171⁵, Part 1 of Article 176 of the Criminal Code of the Russian Federation);

15) crimes against the foreign exchange market (Article 193, 193¹, 200¹ Criminal Code of the Russian Federation);

16) crimes against securities market (Article 185, 185³, 185⁶ Criminal Code of the Russian Federation);

17) crimes against the market of precious metals and precious stones (Article 181, 191, 192 of the Criminal Code of the Russian Federation);

18) crimes against the market of collective investments (Article 172², 200³ of the Criminal Code of the Russian Federation);

Crimes against financial infrastructure:

19) crimes against money turnover and financial instruments (Part 1-3 of Article 170¹, 174, 174¹, 185¹, 185², 186, 187 of the Criminal Code of the Russian Federation);

20) crimes against functioning of financial institutions (Parts 4 and 5 of Article 170¹, Article 172, 172¹, 172³, 183 of the Criminal Code of the Russian Federation).

Considered are "false" financial crimes, for which financial security and the order of financial relations that ensure it are not singled out as an object or are not the main direct object of encroachment, including crimes that are not exclusively related to the circulation of financial assets (cash, financial instruments, precious metals, precious stones). The author explains why the following cannot be recognized as financial crimes: malicious evasion from paying off accounts payable (Article 177 of the Criminal Code of the Russian Federation), criminal bankruptcies (Articles 195, 196 and 197 of the Criminal Code of the Russian Federation), types of illegal entrepreneurship (Articles 171 and 171¹ of the Criminal Code of the Russian Federation), crimes in the field of procurement for state and municipal needs (Articles 200⁴, 200⁵, 200⁶ of the Criminal Code of the Russian Federation), crimes against the established procedure for marking goods (Articles 325, 327¹ of the Criminal Code of the Russian Federation), general and special frauds.

In the **third paragraph** *"Formulation of the corpus delicti of financial crimes"* the perspective of financial crimes is considered in aspect of rulemaking. The current state of the criminalization of deviant behavior in the financial sector is analyzed. The existing system of norms of the Criminal Code of the Russian Federation on financial crimes is recognized as sufficiently developed and corresponding to world analogues, although there is a practical lack of demand for certain criminal law norms on financial crimes (for example, Articles 185, 185¹, 185², 185³, 185⁶ of the Criminal Code of the Russian Federation). As a result of the study of the criminogenic signs of financial crimes used by the legislator, the author comes to the conclusion that the most suitable for formulating corpus delicti of financial crimes are dimensional signs that make it possible to easily distinguish them from other financial offenses, which are the simplest and most effective means of objectively measuring their social danger. The author comes to the conclusion that the quantitative values of the dimensional characteristics of financial crimes vary depending on the sphere of financial relations and cannot be unified or reduced to a single value with the dimensional characteristics of crimes against property

From the point of view of legislative technique, the following methods of criminalizing socially dangerous acts in the financial sphere can be distinguished:

- creation of fundamentally new, unparalleled norms of the Criminal Code of the Russian Federation on financial crimes, the only object of which is financial security in a certain area of financial relations (for example, Articles 171⁵, 181, 185, 185¹, 185², 185³, 185⁶, 187, 191, 192, 200¹, 200³ of the Criminal Code of the Russian Federation);
- creation of norms on multi-object financial crimes, in which, in addition to financial security in a specific area of financial relations as the main direct object, other social values are also provided as additional objects of protection (for example, Articles 176, 183, 186, 194, 199, 199¹, 199², 199⁴ of the Criminal Code of the Russian Federation).

The synthesis of the corpus delicti of a financial crime using in its construction the signs of corpus delicti of other crimes (for example, forgery of documents) generates competitive links of criminal law norms, the identification of which is necessary to exclude double imputation in the qualification of financial crimes.

There is a mutual competition (as general norm and special norm) between the norms on abuse of power (Art. 201 of the Criminal Code of the Russian Federation) and on financial crimes, the subjects of which are the heads of commercial and other organizations (for example, Art. 199, 199¹, 199², 199⁴ of the Criminal Code of the Russian Federation). When qualifying, only special rules on financial crimes are applied (part 3 of article 17 of the Criminal Code of the Russian Federation). There is a mutual competition (as a whole and in part) between the norms on financial crimes and on acts that are ways of committing them (for example, violence as a method in crimes stipulated by part 3 of Art. 170¹, item "b" of Part 3 of Art. 194 of the Criminal Code of the Russian Federation; the use of knowingly forged document as a method for crimes under Articles 176, 185¹, 193, 193¹, 198, 199 of the Criminal Code of the Russian Federation). Financial crimes absorb actions-methods, the sanctions of which are more loyal than the sanctions for such financial crimes (the whole norm about financial crime has priority).

Chapter 2 "Corpus delicti and other categories of the doctrine about crime in the context of financial crimes" includes four paragraphs which consider features of corpus delicti, stages, complicity, circumstances excluding crime of act in the context of financial crimes. In the **first paragraph** "*General characteristic of corpus delicti of financial crime*" the author describes financial crimes with the general, the special and mixed corpus delicti. Financial crimes with the general corpus delicti assume violation of the well-known bans on certain actions in the financial sphere (for example, Article 171⁵, 172², 174, 174¹, 186, 187, 193¹, 200¹ of the Criminal Code of the Russian Federation). Financial crimes with special corpus delicti assume the violations of the special rules of conduct stipulated by standards of the financial legislation, perpetrated by the person with the status of the special participating

subject of a certain sphere of the financial relations (for example, Article 176, 194, 198-199⁴, 285¹, 285² of the Criminal Code of the Russian Federation). Also, the author allocates the financial crimes with the mixed *corpus delicti* combining characteristics of the general and special *corpus delicti* of financial crimes (for example, Article 170¹, 172, 181, 183, 191 of the Criminal Code of the Russian Federation). Correct definition of the type of *corpus delicti* of financial crime makes it possible to use optimum tools in the qualification of offense.

The **second paragraph** "*Features of objective signs of corpus delicti of financial crime*" describes characteristics of the subject of a financial crime, which includes financial assets about which financial relations are formed (for example, cash, financial instruments, precious metals and precious stones) and other items related to the implementation of various supporting functions within the framework of these relations (for example, means of payment, register of owners of securities, financial statements). The specifics of the subject of financial crimes are manifested in its predominantly intangible form (for example, non-cash funds, uncertified securities, a depository accounting system, information constituting bank secrets), which requires a revision of the classical understanding of the subject of crime as an object of the material world. Attention is drawn to the specifics of the objective side of financial crimes, which includes an act expressed in violation of not only criminal and legal, but also regulatory (financial and legal) prohibitions. In special *corpus delicti* of financial crimes, the violated regulatory requirements (special rules of behavior) are characterized by reality, adequacy, informational openness, compulsory knowledge and feasibility. Consequences in special *corpus delicti* of financial crimes are associated with the act through causation which has a socio-legal, probabilistic and indirect nature.

The **third paragraph** "*Features of subjective signs of corpus delicti of financial crime*" reveals the specifics of the subject of a financial crime, which is usually characterized by signs indicating that it belongs to a certain area of financial relations (for example, an authorized person of a financial organization, registrar, depository,

taxpayer). As a general rule, a person becomes a special subject of financial crimes as a result of his proper regulatory inclusion in the relevant sphere of financial legal relations. An exception to this general rule is provided for certain corpus delicti of financial crimes (for example, Articles 198, 199, 199¹, 199² of the Criminal Code of the Russian Federation), the subject of which may be the actual (“shadow”) head of an economic entity. The subjective side of financial crimes is characterized by an exclusively deliberate form of guilt. In the materially defined financial crimes with a sign of damage, guilt has the form of indirect intent (for example, Articles 176, 185, 185¹ of the Criminal Code of the Russian Federation), except for cases where the damage is a paired consequence with the extraction of excess income or avoidance of losses (Article 185³ of the Criminal Code of the Russian Federation). Direct intent characterizes materially defined financial crimes with a sign of generating income, excess income or avoiding losses, as well as financial crimes with a formal corpus delicti which are in overwhelming majority. A mandatory element of intent in corpus delicti of a financial crime is the awareness of regulatory (financial) wrongfulness, in the absence of which the deed is recognized as a factual error.

The **fourth paragraph** *"Features of other categories of the doctrine of the corpus delicti in the context of financial crimes"* examines the features of the stages, complicity and circumstances that exclude the criminality of the act in the context of the corpus delicti of financial crimes. The author proves that the stages of an unfinished crime cannot be distinguished in corpus delicti of financial crimes, which are characterized by dimensional criminogenic signs of the act (until its accumulation, the act is not recognized as criminal), as well as in the materially defined financial crimes with a sign of damage, which presuppose guilt in the form of indirect intent. The separation of the stages of preparation and attempt is possible in relation to a limited range of financial crimes, which are usually committed in several actions (including those involving counter actions of other persons), not performed in full due to circumstances beyond the control of the guilty person (for

example, Articles 183, 186, 187 of the Criminal Code of the Russian Federation), as well as in relation to the materially defined financial crimes associated with the extraction of income (excess income) or avoidance of losses and committed with a specific intent. Complicity in the form of co-execution is not common in financial crimes with a special subject, including those committed with the use of the sole authority of the head of the organization. However, the mechanism for committing some financial crimes allows for extended co-execution in them, with the participation of persons who carry out part of the objective side of the crime (for example, accountants). The question of circumstances of extreme necessity (Article 39 of the Criminal Code of the Russian Federation) or justified risk (Article 41 of the Criminal Code of the Russian Federation) usually arises in connection with the commission of financial crimes against public finance, which is explained by the need to choose competing goals for the use of funds in conditions of their shortage (a conflict of public useful purposes). However, the application of these circumstances in practice is not widespread due to the difficulties in confirming compliance with the conditions for the legality of the harm caused. It should also be borne in mind that in financial crimes committed by an actual ("shadow") leader, an order or instruction as a circumstance precluding the criminality of an act (part 1 of article 42 of the Criminal Code of the Russian Federation) has not legal, but factual force and obligation for actual subordinates such a leader.

The second section "Financial crimes. Special part" consists of three chapters and ten paragraphs and is devoted to topical problems of qualification of financial crimes.

The third chapter "Crimes against public finances" consists of three paragraphs, which deal with the most complex and controversially resolved in practice issues of qualification of crimes in the field of income, budget expenditures and public credit.

The first paragraph "*Crimes against budget revenues*" proposes new qualification rules and approaches to the application of Art. 194, 198, 199, 199¹, 199², 199³, 199⁴ of the Criminal Code of the Russian Federation.

The amount of the deviation within the meaning of Art. 194 of the Criminal Code of the Russian Federation may consist of the amount of unpaid customs payments, special, anti-dumping and (or) countervailing duties, including those related to different consignments. If the evasion of payment of these payments and duties is part of a single intent, there is no aggregate of crimes, and the deed, if there are grounds, is qualified under the relevant part of Art. 194 of the Criminal Code of the Russian Federation.

The amount of evasion from payment of import customs duties, as well as special, anti-dumping and (or) countervailing duties introduced by the decision of the Eurasian Economic Commission is determined on the basis of the norms in force for the distribution of import customs duties between the member states of the Eurasian Economic Union, established by the Treaty on the Eurasian Economic Union as of the date of non-payment.

Preliminary special, anti-dumping and (or) countervailing duties are included in the amount of the act provided for in Art. 194 of the Criminal Code of the Russian Federation, if the authorized body makes a final decision on the introduction of the appropriate fee.

Reflection in tax reporting of an underestimated tax obligation due to deliberate abuse of the right to use the opportunities provided for by law to minimize taxes, corresponds to that provided for in Art. 198, 199, 199³, 199⁴ of the Criminal Code of the Russian Federation on the basis of the inclusion of deliberately false information in the tax return or the calculation of insurance premiums. Failure to pay taxes and other mandatory payments due to the receipt of an unjustified tax benefit on the basis of such tax reporting in a crime-generating amount constitutes corpus delicti of tax crime. It is not considered to be an evasion of payment of taxes, fees, insurance premium to include in the tax declaration (calculation) or other mandatory documents inaccurate information due to imprudence in choosing a counterparty, including transactions with legal entities or individual entrepreneurs that do not

conduct real economic activity and not fulfilling tax obligations in connection with transactions executed on their behalf.

Concealment of property from the collection of arrears can be carried out by making payments that do not have an advantage over paying off arrears, including by using cash or bank accounts that are not known to the tax authority (except for spending funds with a designated purpose for the relevant aims); receipt of funds from bank accounts on the basis of deliberately forged documents (for example, forged decisions of the labor dispute commission); alienation of property on deliberately non-market conditions, including in favor of affiliated persons; transfer of property as a contribution to the authorized (share) capital or share contribution to the property of newly formed legal entities; transfer of property to pay off imaginary or real accounts payable. Disposal of the rights of claim by changing the persons in the obligation or transferring the performance of the obligation to a third party does not constitute the concealment of property from the collection of arrears.

If payments within the framework of concealing property from collection of arrears correspond to an especially large amount, and the arrears correspond to a large amount for the purposes of applying Art. 199² of the Criminal Code of the Russian Federation, the deed is qualified as concealment of property from the collection of arrears on a large scale, that is, according to part 1 of the specified article of the Criminal Code of the Russian Federation.

The amount of tax evasion, fees, insurance premiums for the purposes of applying Art. 198 and 199 must be summed up within the actual period of such evasion, committed with a single intent. In any of the continuous three-year periods included in it, the act can be deemed large or especially large. The same rules regulate the issue of determining the size of the act in Art. 199¹ of the Criminal Code of the Russian Federation.

The period during which the concealment of funds or property may be committed, at the expense of which the collection of arrears on taxes, fees, insurance premiums

should be made, begins from the moment a person receives a request from a tax authority to pay tax, fees or insurance premiums (Article 69 Tax Code of the Russian Federation). After the initiation of insolvency (bankruptcy) proceedings by the arbitration court, criminal liability under Art. 199² of the Criminal Code of the Russian Federation may occur in connection with the concealment of funds or property, due to which the collection of arrears on current payments to the budgets of the budgetary system of the Russian Federation should be made. Violations of the order of collection of arrears included in the register of creditors' claims cannot be qualified under Art. 199² of the Criminal Code of the Russian Federation.

The subject of tax crimes committed by a natural person may be the relevant natural person or his legal representative, if the natural person cannot fulfill the tax obligation personally (for example, due to age, incapacity or limited legal capacity).

The subject of tax evasion or other obligatory payments to be paid by an organization (Articles 199, 199⁴ of the Criminal Code of the Russian Federation) may be a legal or authorized representative of the organization, whose actions were expressed in the performance and (or) accounting for tax purposes of transactions or other operations for the purpose of obtaining an unjustified tax benefit, as well as in the preparation and (or) confirmation, and (or) submission of tax reports containing deliberately false information about the amount of tax liability, or the failure of which was expressed in non-submission of tax reports, which resulted in the organization's non-payment of taxes, fees, insurance contributions (for example, head, chief accountant or other authorized representative of the organization). The subject of such a crime can also be recognized as a person who actually performed the duties of the head of organization that is a payer of taxes, fees, insurance premiums.

The subject of concealment of funds or property from the collection of arrears (Article 199² of the Criminal Code of the Russian Federation) is an individual entrepreneur or a legal or authorized representative of an organization who are obliged to provide funds or property to pay off arrears in connection with the

implementation of their compulsory collection (including taxpayers, payers cathedrals, insurance premiums and other persons specified in Articles 45 and 72 of the Tax Code of the Russian Federation).

Expenses for remuneration of personnel, economically justified settlements with counterparties, the acquisition of property necessary to ensure the activities of an economic entity do not as such indicate the manifestation of personal interest as a motive for non-performance of duties of a tax agent (Article 199¹ of the Criminal Code of the Russian Federation). In each such case, the personal benefit of the guilty person must be confirmed by the objective data established in the case.

Evasion of taxes or other obligatory payments (Articles 198 and 199 of the Criminal Code of the Russian Federation) differs from fraud (Article 159 of the Criminal Code of the Russian Federation) in that it does not imply the withdrawal of funds from the budget under the guise of a refund of overpaid taxes or other obligatory payments.

The manufacture of a forged official document for committing crimes against budget revenues requires independent qualifications under Art. 327 of the Criminal Code of the Russian Federation, and the use of a deliberately forged document is absorbed by the corpus delicti of these crimes.

In the **second paragraph** *"Crimes against budget expenditures"*, the author developed new rules for qualifying crimes under Art. 285¹ and 285² of the Criminal Code of the Russian Federation.

The subject of crimes against budget expenditures is budget funds until they are written off from the single budget account in pursuance of budgetary obligations, after which they lose the specified status and become circulating assets belonging to their recipient.

The subject of the crime under Art. 285¹ of the Criminal Code of the Russian Federation may be employees of the recipient of budgetary funds, performing organizational and administrative or administrative functions, or endowed with the right of a second signature on financial documents (for example, chief accountant).

Persons receiving funds from the budgets of the budgetary system of the Russian Federation as subsidies, budgetary investments or payments under state (municipal) contracts are not subjects of this crime.

The subject of the crime under Art. 285² of the Criminal Code of the Russian Federation may be employees of the state off-budget fund (the Pension Fund of the Russian Federation, the Social Insurance Fund, the Federal Compulsory Medical Insurance Fund, the Territorial Compulsory Medical Insurance Fund), performing organizational and administrative or administrative functions, or endowed with the right of a second signature on financial documents (for example, chief accountant), as well as authorized representatives of business entities in which corporate control is directly or indirectly exercised by the Russian Federation, a constituent entity of the Russian Federation or a municipal entity, managing pension savings under a trust management agreement with the Pension Fund of the Russian Federation. Recipients of funds from state extra-budgetary funds in the form of compensation for the provision of services to insured persons are not subjects of this crime.

The amount of the act within the meaning of Art. 285¹ and 285² of the Criminal Code of the Russian Federation can be made up of the size of various non-earmarked expenses, including those committed within different financial years. If the misappropriation of budget funds is united by a single intent, there is no aggregate of crimes, and the deed is qualified under Art. 285¹ or 285² of the Criminal Code of the Russian Federation.

Inappropriate spending of budget funds, committed with a selfish purpose and causing damage to the owner, qualifies, if there are grounds, as fraud, misappropriation or waste, and does not require additional qualifications under Art. 285¹ or 285² of the Criminal Code of the Russian Federation.

Inappropriate spending of budget funds, committed out of selfish or other personal interest and entailing a significant violation of the rights and legitimate interests of citizens or organizations or the interests of society or the state protected by law, if

there are grounds, is qualified under Art. 285 of the Criminal Code of the Russian Federation and does not require additional qualifications under Art. 285¹ or 285² of the Criminal Code of the Russian Federation.

Inappropriate spending of budget funds, committed in excess of the powers granted to a person, entailing a significant violation of the rights and legitimate interests of citizens or organizations or the interests of society or the state protected by law, in the absence of signs of mercenary or other personal interest, if there are grounds, is qualified under Art. 286 of the Criminal Code of the Russian Federation and does not require additional qualifications under Art. 285¹ or 285² of the Criminal Code of the Russian Federation

In the **third paragraph** "*Crimes against public credit*" the author proposes new qualification rules and approaches to the application of Part 2 of Art. 176 of the Criminal Code of the Russian Federation.

Within the meaning of part 2 of Art. 176 of the Criminal Code of the Russian Federation, a state targeted loan is understood as a budget loan stipulated in Art. 932 of the Budget Code of the Russian Federation, large damage is expressed in the non-repayment of the budget loan and (or) interest on it and is caused to the state in the person of the relevant public law entity.

Inappropriate spending of a budget loan provided to a legal entity does not entail liability under Art. 285¹ of the Criminal Code of the Russian Federation, since the funds provided to the borrower are debited from the single budget account and lose the status of budget funds, but can be qualified under Part 2 of Art. 176 of the Criminal Code of the Russian Federation in the event of major damage to the state.

Inappropriate spending of a budgetary loan granted to another budget of the budgetary system may, if there are grounds, be qualified under Art. 285¹ of the Criminal Code of the Russian Federation, and if this entailed causing major damage to the state - under Part 2 of Art. 176 of the Criminal Code of the Russian Federation.

The **fourth chapter** "*Crimes against the financial market*" includes five paragraphs, which cover the most complex and practically relevant issues of qualification of crimes committed in various segments of the financial market, including the credit market, the foreign exchange market, the securities market, the market of precious metals and precious stones, the market collective investment.

The **first paragraph** "*Crimes against the credit market*" addresses the problems of applying part 1 of Art. 176 of the Criminal Code of the Russian Federation, as well as signs of corpus delicti under Art. 171⁵ of the Criminal Code of the Russian Federation, whose ambiguous interpretation may create problems in judicial practice. The research conducted has allowed the author to formulate new rules for qualifying these crimes.

The subject of the crime under Art. 171⁵ of the Criminal Code of the Russian Federation may be an individual entrepreneur or the head of an organization who did not have the right to carry out activities to provide consumer loans (loans), or the head of an organization that has lost such a right (except for credit organizations, whose leaders, in the event of illegal granting of loans, are held liable under Article 172 of the Criminal Code of the Russian Federation).

In Art. 176 of the Criminal Code of the Russian Federation, a loan is understood as a bank loan, preferential terms of lending are understood as the application by a credit institution of a reduced rate of a bank loan.

Within the meaning of Art. 176 of the Criminal Code of the Russian Federation, information about the financial condition means information about the property, liabilities and financial results of the borrower, which is necessary to assess its solvency, and information about the economic situation means other significant information characterizing the economic activity of the borrower.

Damage from illegal obtaining of a loan under Art. 176 of the Criminal Code of the Russian Federation includes the amount of the principal debt unpaid by the

borrower, interest on it and is determined as of the date of the final settlement of the loan provided for in the loan agreement.

Damage from illegal receipt of preferential lending terms includes income that was not received by a credit institution as a result of applying a reduced lending rate, which is not reimbursed through the application of government support measures.

If fraud in the form of providing a credit institution with deliberately false information about the economic situation or financial condition of an individual entrepreneur or organization is committed by one borrower, and the failure to repay the loan and (or) interest on it is committed by another borrower (for example, as a result of a debt transfer), there is no *corpus delicti* under Art. 176 of the Criminal Code of the Russian Federation (except for cases when such borrowers are controlled and used by the same person to obtain a loan illegally).

If fraud in the form of providing a credit institution with deliberately false information about the economic situation or financial condition of an individual entrepreneur or organization is committed in relation to one creditor, and non-repayment of a loan and (or) interest on it - in relation to another creditor (for example, as a result of assignment of debt), there is no *corpus delicti* under Art. 176 of the Criminal Code of the Russian Federation.

Based on the above, damage within the meaning of Art. 176 of the Criminal Code of the Russian Federation can also not be inflicted on persons who have received the right to claim against the borrower as a result of the fulfillment of obligations for him under a loan agreement (for example, a guarantor or surety).

The subject of the crime under Art. 176 of the Criminal Code of the Russian Federation, in addition to an individual entrepreneur or the head of an organization who are borrowers under a loan agreement, a person may also be recognized who controls and uses a dummy individual entrepreneur or the head of an organization to illegally obtain a loan.

On the subjective side, illegal obtaining a loan is characterized by the fact that the person realizes the social danger of his actions to mislead the creditor, foresees the possibility of socially dangerous consequences in the form of causing major damage to the creditor, does not seek, but deliberately admits these consequences or treats them indifferently. If the person at the time of receiving the loan does not intend to fulfill the obligations under the loan agreement, his actions, if there are grounds, can be qualified under Art. 159¹ of the Criminal Code of the Russian Federation.

The use of deliberately forged documents to obtain a loan illegally is covered by Art. 176 of the Criminal Code of the Russian Federation, and the production of forged official documents requires additional qualifications under the relevant part of Art. 327 of the Criminal Code of the Russian Federation.

In the second paragraph "*Crimes against the foreign exchange market*" the author proposes new rules for qualifying crimes under Art. 193, 193¹, 200¹ of the Criminal Code of the Russian Federation.

The addition of the amounts of foreign trade transactions and other foreign exchange transactions for the purposes of applying Art. 193 and 193¹ of the Criminal Code of the Russian Federation is allowed if they were covered by a single intent and formed a continued crime.

The amount of unfulfilled obligations for the repatriation of foreign currency or the currency of the Russian Federation, which did not amount to a large amount within one year from the date of the first deadline for the fulfillment of the corresponding obligation, is not taken into account when determining the amount of unfulfilled obligations for the repatriation of foreign currency or the currency of the Russian Federation during a new one-year period.

The amount of currency transactions using deliberately forged documents, which did not amount to a large amount within one year from the date of the first such transaction, is not taken into account when determining the amount of currency transactions using deliberately forged documents during a new year period.

If the amount of the act necessary for the application of Art. 193 or 193¹ of the Criminal Code of the Russian Federation was formed within one year, but the crime continues beyond this period, there is no need to divide it into independent crimes limited to a one-year period. In this case, the amount of the act will correspond to a large or especially large amount and be expressed as the amount of uncredited, non-refunded or transferred funds of foreign currency or the currency of the Russian Federation for the actual period of the continued crime.

If the amount of the act necessary for the application of Art. 193 or 193¹ of the Criminal Code of the Russian Federation was formed before the expiration of one year, the crime can be recognized as completed before the end of the one-year period.

The evasion of obligations to repatriate foreign currency or the currency of the Russian Federation stipulated by art. 193 of the Criminal Code of the Russian Federation is recognized as completed after the expiration of the term for the fulfillment of counter obligations by a non-resident under a foreign trade contract and the subsequent occurrence of circumstances which obviously indicate that the resident does not intend to ensure the fulfillment of the obligation to repatriate foreign exchange funds (for example, provision of forged customs declarations to a foreign exchange control agent, receipt of foreign exchange earnings bypassing an authorized bank).

Currency transactions to transfer funds to non-resident accounts using forged documents in order to give a legitimate look to the possession, use and disposal of criminally acquired funds are qualified under Art. 174 or 174¹ of the Criminal Code of the Russian Federation, and additional qualification under Art. 193¹ of the Criminal Code of the Russian Federation in such cases is not required.

The use of knowingly forged documents is covered by Art. 193 and 193¹ of the Criminal Code of the Russian Federation, and the production of forged official documents (for example, a customs declaration) is additionally qualified under the relevant part of Art. 327 of the Criminal Code of the Russian Federation.

In the third paragraph "*Crimes against the securities market*" the author developed new rules for qualifying crimes under Art. 185, 185³, 185⁶ of the Criminal Code of the Russian Federation.

Market manipulation envisaged by art. 185³ of the Criminal Code of the Russian Federation involves misleading conscientious participants in organized trades who, under the influence of such a delusion and to the detriment of themselves, make transactions with financial instruments, foreign currency and (or) goods.

If the bona fide party to such a transaction is represented by a person who commits illegal actions to manipulate the market (for example, a broker), his deed is qualified under the relevant part of Art. 159 or 160 of the Criminal Code of the Russian Federation, depending on the powers granted.

Misuse of insider information within the meaning of Art. 185⁶ of the Criminal Code of the Russian Federation does not imply deception of the other party to the transaction. Committing a transaction with the unlawful use of insider information by deception, if this entailed damage to the bona fide party to the transaction, if there are grounds, is qualified under the relevant part of Art. 159 of the Criminal Code of the Russian Federation.

Damage from crimes against securities market, depending on the nature of the affected financial relations, can be expressed in the form of real damage and (or) missed profits.

Income from the misuse of insider information within the meaning of Art. 185⁶ of the Criminal Code of the Russian Federation should be understood as excessive income, the content of which is covered by paragraph 2 of notes to Art. 185³ of the Criminal Code of the Russian Federation.

On the subjective side, abuse in the issue of securities is characterized by the fact that a person realizes the public danger of his actions to mislead investors, foresees the possibility of socially dangerous consequences in the form of causing major damage to investors, does not seek, but deliberately admits these consequences or

treats them indifferently. If a person at the time of the placement of securities does not intend to fulfill obligations related to the issue of securities, his actions, if there are grounds, constitute *corpus delicti* of the crime under Art. 159 of the Criminal Code of the Russian Federation.

The fourth paragraph "*Crimes against the market of precious metals and precious stones*" proposes new rules for qualifying crimes under Art. 181, 191, 192 of the Criminal Code of the Russian Federation.

In Art. 181 of the Criminal Code of the Russian Federation, the subject of unauthorized manufacture, use or sale is a tool for branding jewelry or other items made of precious metals; the subject of counterfeiting is an imprint of the state assay mark on jewelry or other items made of precious metals.

Within the meaning of Art. 191 of the Criminal Code of the Russian Federation, a transaction with precious metals or precious stones is recognized as completed from the moment the parties begin to fulfill the terms of such a transaction on a large scale.

Illegal actions of storage, transportation or transfer stipulated by Art. 191 of the Criminal Code of the Russian Federation are committed in relation to illegally obtained or illegally acquired precious metals or precious stones and are not associated with violation of the rules for their storage, transportation or shipment by persons specified in the Decree of the Government of the Russian Federation of October 1, 2015 No. 1052 "On maintaining a special account of legal entities and individual entrepreneurs engaged in operations with precious metals and precious stones."

Evasion of the mandatory delivery of precious metals for refining stipulated by Art. 192 of the Criminal Code of the Russian Federation is committed with direct intent. In itself, failure to comply with the obligation to deliver precious metals for refining in the absence of the statutory deadline for its performance does not indicate that a person has committed a crime under Art. 192 of the Criminal Code of the Russian

Federation. The absence of an intention to fulfill this obligation must be confirmed by the totality of evidence collected in the case (for example, the manufacture of jewelry or other items from precious metals that have not been refined).

Evading the mandatory sale of precious metals and precious stones to the state in Art. 192 of the Criminal Code of the Russian Federation is understood as a person's failure to fulfill the obligation, on a priority basis, to offer them for acquisition by state authorities (Gokhran of Russia, executive authorities of the constituent entities of the Russian Federation) in the cases stipulated by the Federal Law of March 26, 1998 No. 41-FZ "On precious metals and precious stones. ".

Illegal circulation of stolen precious metals or precious stones, if there are grounds, forms a set of crimes provided for by the norms of the Criminal Code of the Russian Federation on crimes against property and Art. 191 of the Criminal Code of the Russian Federation.

Illegal circulation of precious metals or precious stones and their illegal movement across the customs border of the Eurasian Economic Union or the State border of the Russian Federation, if there are grounds for that, forms a set of crimes under Art. 191 and 226¹ of the Criminal Code of the Russian Federation.

Illegal transactions with precious metals or precious stones that are not jewelry, household products or their scrap, if they contain signs of crimes under Art. 171, 174, 174¹ or 175 and 191 of the Criminal Code of the Russian Federation, do not form the aggregates of the corresponding crimes and are qualified only under Art. 191 of the Criminal Code of the Russian Federation.

The **fifth paragraph** "*Crimes against the collective investment market*" proposes new qualification rules and approaches to the application of Art. 172² and 200³ of the Criminal Code of the Russian Federation.

The comparability of the amount of attracted and placed funds or other property which precludes liability under Art. 172² of the Criminal Code of the Russian Federation takes place if at any time the legislation governing the activities of the

person raising funds or other property is observed, and their placement is carried out in an amount at which a reasonably expected profitability allows commitments to depositors to be fulfilled.

Violation of the procedure for attracting funds from citizens in the construction of apartment buildings or other real estate objects stipulated by art. 200³ of the Criminal Code of the Russian Federation is expressed in the attraction of funds from citizens in violation of the requirements of the Federal Law of December 30, 2004 No. 214-FZ "On participation in shared construction of apartment buildings and other real estate and on Amendments to Certain Legislative Acts of the Russian Federation ”.

Acts under Art. 172² and 200³ of the Criminal Code of the Russian Federation, do not imply deception. Raising funds by deception in the implementation of investment and other projects, if there are grounds, is qualified as fraud under the relevant part of Art. 159 of the Criminal Code of the Russian Federation.

The fifth chapter "Crimes against financial infrastructure" includes two paragraphs, in which the author formulates the rules for qualifying crimes that are not directly aimed at public finance or the finance of the financial market, but that affect the supporting functions in the sphere of the circulation of financial assets.

The first paragraph *"Crimes against the circulation of money and financial instruments"* proposes new rules for the application of Parts 1, 2, 3 of Art. 170¹, Art. 174, 174¹, 185¹, 185², 186, 187 of the Criminal Code of the Russian Federation.

Submission of deliberately false information to the organization that records the rights to securities, as well as their entry into the register of owners of securities or into the depository accounting system through unauthorized access to them in order to acquire the right to securities is qualified under the relevant part of Art. 159 of the Criminal Code of the Russian Federation and does not require additional qualifications under Art. 170¹ of the Criminal Code of the Russian Federation.

For the purpose of applying Art. 174 and 174¹ of the Criminal Code of the Russian Federation, monetary funds or other property may be recognized as the subject of

financial transactions and other transactions made in order to give ownership, use and disposal a legitimate form, if prior to such financial operations and other transactions, the criminal acquisition of funds or other property is completed (person who committed a crime, as a result of which money or other property was acquired, was given the opportunity to dispose of such money or other property as his own).

Digital currency is not included in the subject of the crime under Art. 174 and 174¹ of the Criminal Code of the Russian Federation.

Violation of the procedure for recording rights to securities, which entailed their illegal transfer to another person, committed with a mercenary motive, depending on the circumstances, constitutes a crime under Art. 159 or 160 of the Criminal Code of the Russian Federation and does not require additional qualifications under Art. 185² of the Criminal Code of the Russian Federation.

Damage within the meaning of Art. 185¹ of the Criminal Code of the Russian Federation can be caused to the owners of securities traded on the secondary securities market, and depending on the nature of the information that distorts the true value of the securities, it can represent real damage or missed profit.

Damage within the meaning of Art. 185² of the Criminal Code of the Russian Federation can be caused by an unlawful transfer of rights to securities and, depending on the type of securities, can represent real damage or missed profit.

The following rules were formulated by the author for the purpose of applying the legislation on liability for the production, storage, transportation or sale of counterfeit money or securities (Article 186 of the Criminal Code of the Russian Federation), as well as illegal circulation of means of payment (Article 187 of the Criminal Code of the Russian Federation).

Sale of counterfeit money or securities consists in using them as a means of payment, including when paying for goods, works or services, exchanging, donating, borrowing, buying and selling, that is, it involves the alienation of counterfeit money or securities under the guise of genuine ones with the possibility their further

participation in the economic turnover. The acquisition of knowingly counterfeit money or securities for the purpose of their subsequent sale as genuine should be qualified under Art. 30 and 186 of the Criminal Code of the Russian Federation.

Paperless securities as digital entries in the register of securities holders or in the depository accounting system cannot be the subject of counterfeiting within the meaning of Art. 186 of the Criminal Code of the Russian Federation.

Money checks do not have the properties of a security and cannot be the subject of counterfeiting within the meaning of Art. 186 of the Criminal Code of the Russian Federation. However, as cash expenditure documents in operations for the issuance of cash, they are included in the subject of crime under Art. 187 of the Criminal Code of the Russian Federation.

Subjects of crime under Art. 187 of the Criminal Code of the Russian Federation, include:

payment cards - payment cards issued by credit institutions;

transfer orders - settlement (payment) documents drawn up within the framework of non-cash settlements, obliging a credit institution to make a money transfer;

payment documents - other documents drawn up by a credit institution in order to carry out operations for receiving, issuing or transferring funds;

electronic means of payment - payment cards, "electronic wallets" of electronic payment systems, ATMs, payment terminals.

The following do not provide access to non-cash funds in bank accounts and therefore do not belong to the subject of a crime under Art. 187 of the Criminal Code of the Russian Federation:

payment cards of issuers that are not credit institutions;

documents that do not give the owner property rights, do not certify a demand, order or obligation to transfer funds that record the fact of payment or its accrual (for example, sales receipts, cashier's checks);

equipment used for unauthorized access to information constituting bank secrets (for example, "skimmers").

The sale of counterfeit means of payment within the meaning of Art. 187 of the Criminal Code of the Russian Federation does not imply the alienation of means of payment to persons who are aware of their counterfeiting, or the alienation of means of payment known to be unsuitable for use by persons who are mistaken in their authenticity.

The manufacture by a person of a counterfeit means of payment used by the same person in the commission of a crime whose corpus delicti includes a counterfeit means of payment as a mandatory feature (for example, stipulated by Article 193¹ of the Criminal Code of the Russian Federation), is covered by the corpus delicti of such a crime and does not require additional qualifications under Art. 187 of the Criminal Code of the Russian Federation.

The **second paragraph** *"Crimes against the functioning of financial institutions"* proposes new qualification rules and approaches to the application of Parts 4 and 5 of Art. 170¹, Art. 172, 172¹, 172³, 183 of the Criminal Code of the Russian Federation.

Entering deliberately incomplete or inaccurate information in the register of securities holders or in the depository accounting system, as well as confirmation on behalf of the organization that records the rights to securities, the reliability of information entered in the register of securities owners or in the depository accounting system that is incomplete or unreliable, in order to conceal from the client the organization that records the rights to securities, the signs of bankruptcy of the credit organization provided for by the legislation of the Russian Federation signs of bankruptcy of a credit institution or other financial institution or grounds for

revocation (cancellation) of a license and (or) appointment of a temporary administration in an organization, including those committed by a group of persons by prior conspiracy or by an organized group, is covered, respectively, by Parts 4 or 5 of Art. 170¹ of the Criminal Code of the Russian Federation and does not require additional qualifications under Part 5 of Art. 33 and the corresponding part of Art. 172¹ of the Criminal Code of the Russian Federation.

Falsification of financial accounting and reporting documents of a financial organization within the meaning of Art. 172¹ of the Criminal Code of the Russian Federation presupposes a misleading significant overstatement of the value of the property of a financial organization and (or) an underestimation of the amount of its obligations, provided that the presentation of reliable information would entail the detection of signs of bankruptcy of a financial organization, the revocation (cancellation) of its license and (or) the appointment of a temporary administration.

The following are understood as illegal banking activities in Art. 172 of the Criminal Code of the Russian Federation:

carrying out banking operations by a duly registered credit institution without a license, when such a license is required;

carrying out banking operations that do not require a license without registration under the guise of a bank payment agent;

carrying out banking operations without registration and without a license, when such a license is required, under the guise of a credit institution.

Within the meaning of Art. 183 of the Criminal Code of the Russian Federation, information constituting banking secrecy includes information about accounts, deposits, transactions of customers and correspondents, as well as information about customers and correspondents of a credit institution. Other information, access to which is limited by a credit institution, is not a bank secret, but can be recognized as information constituting a commercial secret.

Large damage from the illegal disclosure of information constituting a bank secret stipulated by part 3 of Art. 183 of the Criminal Code of the Russian Federation is expressed in the theft of funds from the bank account of a client of a credit institution.

Collecting and illegal use of information constituting a bank secret, as a preparation and method of stealing someone else's property, is covered by the corresponding provision of the Criminal Code of the Russian Federation on theft of another's property (Art. 158, 159, 159⁶ or 160 of the Criminal Code of the Russian Federation) and do not require additional qualifications under Art. 183 of the Criminal Code of the Russian Federation.

Collecting information constituting a banking secret, including that committed for a mercenary purpose or entailing the infliction of large damage or the onset of grave consequences, absorbs independent corpus delicti that act as methods of such collection, if a softer sanction is provided for their commission compared to the sanction of the corresponding part of Art. 183 of the Criminal Code of the Russian Federation (for example, crime under part 1 of Art. 119 of the Criminal Code of the Russian Federation).

Collecting information constituting a bank secret by unlawful access to legally protected computer information, which entailed copying it, committed for a mercenary purpose or caused major damage, is covered by part 3 of Art. 183 of the Criminal Code of the Russian Federation and does not require additional qualifications under Art. 272 of the Criminal Code of the Russian Federation.

Collecting information constituting banking secrecy by creating, using or distributing malicious computer programs forms a set of crimes under Art. 183 and 273 of the Criminal Code of the Russian Federation.

The **conclusion** contains the main scientific results of the dissertation research and recommendations for their practical application, determines the prospects for further criminal law research of financial crime.

List of publications of the author which reflect the main scientific results of the thesis research

Monographs

1. A.N. Lyaskalo. Financial crimes in the Russian criminal law. Qualification problems: monograph – M.: Avenue, 2022. 440 p. – 28,0 printed sheets.

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2. Russian criminal law. General part: the textbook / under the editorship of G.A. Esakov – M.: Avenue, 2019. 400 p. A personal share of the author – 0.9 printed sheets.

3. Russian criminal law. Special part: the textbook / under the editorship of G.A. Esakov – M.: Avenue, 2021. 608 p. Author's contribution – 4.0 printed sheets.

4. The comment on the Criminal Code of the Russian Federation (itemized) / under the editorship of G.A. Esakov – the 10th edition., redesigned and complimented. – M.: Avenue, 2021. 848 p. Author's contribution – 2.2 printed sheets.

5. The comment on the Criminal Code of the Russian Federation (itemized) / under the editorship of G.A. Esakov – the 9th prod., redesigned and complimented – M.: Avenue, 2021. 752 p. Author's contribution – 2.2 printed sheets.

6. Scientific and practical comment on Chapter 22 "Crimes in the Sphere of Economic Activity" of the Criminal Code of the Russian Federation. In 2 volumes. Vol. 1 / Main editors: I.I. Kuchеров, O.A. Zaytsev, S.L. Nudel. Institute of Legislation and Comparative Law under the Government of the Russian Federation: CONTRACT law firm, 2020. 400 p. Author's contribution – 0.3 printed sheets.

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