International Legal Measures of Protection of Critical Infrastructure Facilities in Banking Sphere

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Abstract

Based on the obtained results of the study, the most problematic issues and legal conflicts are identified, which are related to the ratio of norms of domestic and foreign legislation, taking into account the requirements of the Constitution of Ukraine and the provisions of the Law of Ukraine "On international agreements". Along with this, it is stated in this scientific article that there are a number of provisions and examples of positive practice on the specified topic abroad and in international legal acts today, which should be used by Ukraine both in improving legislation on the issues of banking activity and in increasing the level of criminal legal protection of relevant critical infrastructure facilities, especially those that are substantively related to prevention and counteraction of activity, with regard to the legalization (laundering) of criminally obtained funds, financing of terrorism and the financing of the proliferation of weapons of mass destruction, which is quite relevant for our state, given the military conflict that is taking place on its territory in the Donbass. Again, in the same context, the need for more active cooperation between Ukraine and the FATF (international body developing a policy to combat money laundering) has been proven.

Keywords:

critical infrastructure, banking institution, criminal offense, international and legal act, criminal legislation, prevention.

1. Introduction

The following conclusion that criminal and legal protection of facilities of critical infrastructure in the banking sphere should be carried out taking into account those provisions of international legal acts that have become part of the national legislation of Ukraine (part 1 of article 9 of the Constitution of Ukraine), is important in the context of the content of the specified scientific development and based on the essence of the current criminal legislation of Ukraine, with regard to its relation with the norms of international law. In this case, in accordance with the requirements of the part 2 of art. 19 of the Law of Ukraine "On international agreements", if the international agreement of Ukraine, which entered into force in the prescribed manner, establishes other rules, than those provided for in the relevant act of legislation of Ukraine, then the rules of an international agreement (Law of Ukraine, 2004, p. 258-261) are applied, which, it seems, should be taken into account in preventive activity both banks of state and municipal forms of ownership (part 2 of article 19 of the Constitution of Ukraine) and similar institutions of other forms of ownership.

Nevertheless, as G.V. Didkivska rightly noted in this regard, the need to reconcile the national interests of states,

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regional associations and international cooperation in the development and implementation of goals and objectives, means, forms and methods of joint prevention of criminal offenses entails the duration and complexity of these processes, diplomacy of formulations of international legal documents in the sphere of combating crime, declarative decisions, divergence of priorities in this activity and other problematic aspects (Didkivska, 2019, p. 7).

Namely in this sense, as it is shown by the results of this study, the directions of scientific developments on the specified problem are built, including various aspects and methods of encroachment on facilities of critical infrastructure of the banking sphere of activity (section VII of the Special Part of the Criminal Code of Ukraine (articles 200, 209, 209-1, etc.)).

In particular, according to the data of a global study on fraud in the banking sphere, which was conducted by the international scientific organization KPMG in 2016-2018 in the countries of the America, Europe, the Middle East, Africa and the Asia-Pacific region (Global study on banking fraud, 2019), the specified criminal offense is committed in two main forms, namely – by:

1) External fraud: the acquisition of personal data and the use of card number for the commitment of this socially dangerous act, as well as through the application of illegal schemes.

At the same time, 61% of respondents reported an increase in the total number of cases of external fraud, and 58% of respondents reported an increase in the amount of fraudulent transactions (Global study on banking fraud, 2019). The same trends, in particular, are characteristic also for the banking system of Ukraine (Kolb 2021). Among other obtained results of the global research on the issues of external fraud, those which testify that the average amount of each such illegal operation does not change annually (21% of respondents said about that) are also noteworthy, but there is a tendency to reduce such actions (38%) due to an increase fraud in a whole with financial resources (Global study on banking fraud, 2019).

2) Internal fraud (criminal offenses that are committed by staff of banking institutions) (Global study on banking fraud, 2019). According to the data of KPMG, the total cost, average cost and number of cases of such form of fraud in 2017-2018 in the world remained unchanged or decreased (Global study on banking fraud, 2019). The same trends occur in the banking system of Ukraine, especially its type, such as cyber fraud (Kolb, 2021). In general, as L. Ch. Kok noted in this regard, risk of cyber fraud is the biggest challenge for financial institutions in three regions of the world – America, EMA (Europe, Middle East and Africa) and the Asia-Pacific region (Global study on banking fraud, 2019).

Based on this, the specified researcher suggested his theoretically sound model of improving the criminal law protection of facilities of critical infrastructure and preventing criminal offenses in the banking sector, namely:

a) financial institutions should comprehensively change their approach to digital transformations that taking place in the world;

b) these actors need to understand this transformation and assess the new risks of fraud that are result from rapid change in this regard;

c) banks should develop principles of fraud risk management that will be able to effectively and productively minimize these risks, ensuring stable results (Global study on banking fraud, 2019).

At the same time, according to L. Ch. Kok, systems of new-generation fraud risk management must be able to operate in a constantly digital transformation, identify new, hitherto unknown risks of fraud actions, take advantage of technology and ensuring compliance with the law (Global study on banking fraud, 2019).

There is no doubt that the developed and presented in the scientific literature, scientifically substantiated suggestions of L. Ch. Kok regarding the criminal law protection of facilities and prevention of fraud with financial resources by banking institutions, it would be logical to use in similar activity in our state, taking into account the features and characteristics of such, for example, a criminal offense, which reflected in the art. 222 "Fraud with financial resources" of the Criminal Code of Ukraine (Azarov, 2018, p. 516-518).

Thus, it should be recognized that there is a complex applied problem that needs to be solved at the doctrinal level, taking into account the peculiarities of the legal system of Ukraine and, in particular, criminal legislation, as well as the current state of its realization in judicial practice.

Problem description (statement). As it is evidenced by the practice and results of special scientific researches, the comparative law (and, consequently, the application of comparative legal and other methods of search) makes it possible to:

a) assess the state of development of the national legal system with global trends in the functioning of law (Khavronyuk, 2005, p. 264);

b) based on the affinity, select the best samples from legal experience to improve both national legal systems and international legislation (Legislative activity, 2004, p. 568);

c) integrate the relevant provisions of the legislation newly, which lead to the emergence of new meanings that will be implemented in human activity (Hashmatullah, 2003, pp. 57-62);

d) identify common features and peculiarities, mutual influence, trends and patterns of legislation development of different countries in the conditions of integration processes

that are taking place now in Europe and the world (Kryin, 2003, pp. 52-58).

The specified theoretical approaches were used in this article in clarifying the content of international legal acts and foreign practice (Kolb & Kolb, 2021, pp. 130-134) on issues that are related to criminal legal protection of critical infrastructure facilities in the banking sphere. In addition, the methodological basis for solving the specified task of research was made by modern scientific developments on this issue.

The importance of considering this issue in this scientific development is also due to the fact that the results of this research answer the question of whether the protection of these facilities in the current Criminal Code (hereinafter - the CC) of Ukraine is effective today.

As it is established in the course of this study, international legal acts regulating the sphere of banking activity and "partially" the process of criminal legal protection of critical infrastructure facilities, can be classified into several conditional groups (taking into account their systemic nature, relationship, interaction and cross-conditionality), namely:

1. International Legal Sources of a General Nature (Universal Declaration of Human Rights (Universal Declaration, 2008, pp. 12-17); International Covenant on Civil and Political Rights (International Covenant, 2008, pp. 37-45); Optional Protocol to the International Covenant on Civil and Political Rights; others).

So, the art. 2 of The Universal Declaration of Human Rights in the context of the issue that is discussed in this scientific article, states that everyone should have all rights and freedoms, which are proclaimed by this Declaration, regardless of race, color, gender, language, religion, political or other beliefs, national or social origin, property or other status, and the art. 6 states that every human, wherever he is, has the right to recognition of his or her legal capacity (Universal Declaration, 2008).

Other norms of this Declaration (article 12 (on the impossibility of unreasonable interference with personal and family life); art. 17 (on the free possession of property both solely and together with other persons); art. 29 (on only those legal restrictions that are established by law in order to ensure the proper recognition and respect for the rights and freedoms of other persons); etc.) have the general legal, including means of criminal law, protection.

The provisions of other international legal acts relating to the content of the subject of this scientific development have been formulated in the same context.

2. International legal acts of cross-industrial importance and regulation of public relations (UN Declaration against corruption and bribery in international commercial transactions (UN Declaration, 1999); UN Declaration on crime and public security (UN Declaration, 1996); Declaration on the rights of disabled persons (UN Declaration, 1998), etc.).

In particular, issues that have a certain relation to the criminal legal protection of facilities of banking activity include the following its norms in the UN Declaration against corruption and bribery in international commercial transactions:

a) the paragraph 1, according to which States parties of this Declaration are obliged to take effective and concrete measures to combat all forms of these socially dangerous actions, including in the sphere of both state, and private regulation;

b) paragraph 4, which deals with the possibility of non-admission of the possibility of deducting bribes from taxable amounts for States parties that have not yet done so;

c) paragraph 6, according to which states parties should develop or encourage the development, as appropriate, of codes of conduct in the sphere of business, standards and optimal practices that prohibit bribery and related illegal actions in international commercial transactions (UN Declaration, 1999); etc.

3. International legal acts of sectoral (specifically legal) direction (Directive of the European Parliament and of the Council of the UN "On the protection of individuals in the processing of personal data and the free movement of such data" (Directive of the European Parliament, 1995); EU Council Directive "On the prevention of the use of the financial system of money laundering" (Directive of the EU Council, 1991); European Convention on laundering, search, seizure and confiscation of the proceeds from crime (European Convention, 2000); etc.).

Thus, the art. 5 of the last of the Conventions predicts that each signatory state shall take such legislative and other measures, which may be necessary for ensuring that stakeholders whose interests are affected by acts in accordance with the provisions of the articles 2 and 3, had effective measures to preserve their rights (Kostenko, 2003).

In turn, the Directive of the European Parliament and of the EU Council on the processing of personal data in this regard states that systems of processing such information must respect their fundamental rights and freedoms, especially the right to privacy, and promote economic and social progress, trade increasing and human well-being (European Convention, 2000), which, no doubt, should be taken into account when improving the legal mechanism of criminal law protection of the facilities of banking sphere of Ukraine.

In general, as it is established in this study, the priority is the effective ensuring natural (Kostenko, 2003) and other human and civil rights in any sphere of public activity in all qualification groups of international legal acts on specified problem (Kelman *et al.*, 2018), including the banking industry.

Thus, given the current state of criminal law protection of facilities of the critical infrastructure of banking activity in Ukraine, as well as based on the content of existing in this direction, the subject of research in this scientific article, as well as its purpose and objectives and relevant methods of the scientific search were determined.

Research status. Analysis of the scientific literature indicates that this topic is not new, it is constantly researched, first of by all specialists in administrative and financial law, as well as other branches of jurisprudence (commercial, civil, corporate law, etc.), however, specialists of criminal law research it insufficient. In particular, L. I. Arkusha, O. M. Bandurka, O.V. Batiuk, I.G. Bogatyryov, A.M. Boyko, V.I. Borysov, M.O. Burovysh, T.S. Vasylieva, V.V. Vasylevych, K.P. Globa, V.V. Golina, B.M. Golovkin, O.M. Dzhuzha, V.O. Dopilka, V.M. Dryomin, O.O. Dudorov, V.P. Yemelyanov, A.G. Zinchenko, V.S. Kantsir, D.V. Kamenskyi, O.G. Kolb, I.M. Kopotun, O.O. Krestyannykova, O.M. Lytvynov, O.M. Lytvak, I.B. Medytskyi, A.V. Savchenko, L.M. Skora, A.V. Smyrnova, E.P. Streltsov, V.O. Tulyakov, P.L. Fris, V.V. Shablystyi, V.I. Shakun, O.O. Yukhno and others are working in this direction quite actively.

The works of specified and other scientists have formed the methodological basis of this scientific article.

At the same time, taking into account the results of reforms that have been carried out in the banking sphere of Ukraine, the changes and additions to the current Criminal Code, as well as the current state of prevention and combating criminal offenses in this area of public activity, it should be noted that the chosen theme of this article is relevant and has theoretical and practical significance.

Accordingly, the purpose of this scientific article is the development, on the basis of the results of the study, of reasonable suggestions, aimed at improving the criminal law mechanism for the protection of facilities of critical infrastructure of the banking sphere of Ukraine, in accordance with the positive international practice on this theme.

In turn, its main task is to carry out comparative legal analysis of domestic and foreign legislation, as well as international legal acts concerning the researched problem, and the formulation on this basis of the author's approaches to certain issues of the specified scientific search.

Methods The methodological basis of the research is the dialectical method of scientific cognition of socio-legal phenomena in their contradictions, development and changes, which made it possible to objectively assess the current state of criminal law protection in the sphere of banking system, including Ukraine. In turn, the method of analysis and synthesis made it possible to establish the level of scientific development of problems that are related to this research theme; dogmatic method is to formulate the author's position on certain discussion issues; comparative legal method is to determine the most promising areas and positive foreign experience, regarding the criminal law mechanism of the protection of facilities of critical infrastructure of the banking sphere; method of social naturalism is to clarify the socio-legal nature of regulations, including international legal and national, which are aimed at protection of these facilities by criminal law methods and means; formal-logical method is to determine the ratio of domestic and international law, which regulate the activity of criminal law protection of facilities of critical infrastructure of the banking sphere; historical-comparative method is to establish the level and patterns of committing criminal offenses in the field of banking activity both abroad and in Ukraine; methods of induction and ascent from the abstract to the concrete is to allow formulating the author's suggestions on the specified problem.

Presentation of the main provisions. The results of comparative legal analysis of the content of criminal legislation of Ukraine (essentially – the Criminal Code) and international legal acts, foreign practice and scientific literature, concerning the protection of facilities of critical infrastructure of banking activity, have shown that the effectiveness of this activity is affected by a number of significant circumstances, which are separate elements of the content of the subject of this scientific article, namely:

Section 1. Conclusions of foreign scientists regarding the content of the researched problem.

In this regard, the suggestions of some foreign experts are interesting, who believe that today it is necessary to increase the level of interaction both within the banking system and abroad (How do cybercriminals, 2018). In doing so, for example, a detailed long-term analysis of the information that is provided by front companies can help to reveal their essence, in particular: contact data and registration addresses are the same in some companies. This is because it is very difficult to actually create so many completely new corporate or individual identities (How do cybercriminals, 2018).

Given the above, according to western specialists, efforts in the banking sphere that are aimed at involving financial institutions in the exchange of data on companies, making payments and purchases, are important today, and this, in the end, helps to identify among them fictitious and prevent the commission of such criminal offenses in this sphere of public relations (principle: you need to create a network, or to defeat the network) (How do cybercriminals, 2018).

Of course, especially in the part of development and realization of criminal law measures regarding the protection of facilities in the banking system of Ukraine, the specified changes in the legislation of legal activity would increase the effectiveness of this type of social prevention in Ukraine, in particular regarding the prevention of

committing those socially dangerous acts that are recognized as such in the art. 220-2 of the CC "Falsification of financial documents and reports of a financial organization, concealment of insolvency of a financial institution or grounds for revocation (annulment) of the license of a financial institution".

Section 2. Foreign practice of criminal law counteraction to criminal offenses in the banking sphere.

As it is established in special scientific researches, such positive foreign practice as the prevention of fraud with financial resources by the so-called "mules", which are used by criminal offenders and their illegal associations to cashing out funds that are obtained by criminal means, can play an important role for the improvement of the legal basis of criminal law protection of facilities in the sphere of banking activity of our state (How do cybercriminals, 2018).

The essence of this problem and its illegal mechanism of realization in practice is as follows: criminal associations establish contact with low-paid workers abroad and offer them access to a bank account, which they opened while working abroad, thus using the established scheme for "laundering" of funds that are obtained illegally (How do cybercriminals, 2018). At the same time, those systems for detecting this type of fraud, which are used in banks, are morally, physically, psychologically and technologically obsolete, and, therefore, should be replaced by more efficient and effective ones, including in view of solving the tasks of improving the legal mechanism of protection of facilities by means of the criminal legislation of Ukraine in the specified field of public relations.

According to the results of this research, many positive elements in the mechanism of criminal legal protection of the specified banking facilities can be found in the public state practice of some countries of the world (Kolb, 2021). At the same time, as it is rightly noted by L.V. Kryvonos in this regard, each country of the West implements its own state precautionary measures in this direction (Kryvonos, 2014).

Thus, in the United States, the Treasury Department has developed special guidelines regarding the prevention of money laundering, in which it is suggested to carefully investigate the "suspicion" of all available facts regarding operations in the amount from 10 thousand US dollars. In this regard, special caution in these recommendations is suggested to manifest regarding transactions and banking relationships, if there are doubts about identification of customers, transactions involving third countries, etc. (Kryvonos, 2014).

Based on this, large US banks have significantly increased the cost of technologies of analysis of data on money transfers regarding the fixation of suspicious activity (Kolb, 2021). Moreover, the criminal legislation of 33 US states recognizes "money laundering" as a criminal offense, and the corresponding measures of counteraction to the specified socially dangerous act are also reflected in many states of this country, including long terms of imprisonment for their commission (usually, from 10 to 20 years) and large fines, which are three times the value of the property that was the subject of a criminal banking transaction (Kryvonos, 2014).

It seems that the specified experience of the United States could be implemented for the improvement of the content of the art. 209 of the Criminal Code of Ukraine "Legalization (laundering) of proceeds that are obtained by illegal means", which, in particular, does not provide for such a sanction for the commission of this criminal offense as a fine, and the punishment for it in the form of imprisonment provides for a term of three to six years (under part one) and of eight to fifteen years (under part three), that is, it is "softer" than the laws of individual states of the US.

Legislative practice in the Italian Republic is no less applied and useful for Ukraine, it includes the following criminal law measures on issues that are related to preventing and combating legalization (laundering) of proceeds that are obtained by illegal means, namely:

a) the state is obliged to monitor the detection and cessation of attempts to legalize the illegally obtained money (this system of monitoring provides, for example, that the transfer of any amount abroad is accompanied by a simultaneous declaration of income) (Kryvonos, 2014);

b) banks and other intermediaries are required to keep detailed records of residents' foreign exchange transactions to prevent attempts of criminal laundering of the money (Kryvonos, 2014);

c) the Criminal Code of this state provides for punishment for the commission of this criminal offense in the form of imprisonment from 7 to 12 years and a fine, and for officials – up to 15 years (Kryvonos, 2014).

Thus, the legislative approach that is used in Italy, shows that a harsh response to illegal encroachments in the banking sphere, significantly increases the level of criminal legal protection of facilities of critical infrastructure in the specified area of public activity.

As it is shown by the results of this scientific development, some other means of criminal law nature on issues, in particular, prevention and counteraction to legalization (laundering) of proceeds that are obtained by illegal means, are enshrined in the Criminal Code of Spain, namely – the specified criminal offenses are included in the section on bribery and similar socially dangerous acts, for which criminal punishment in the form of imprisonment of more than three years is prescribed. At the same time, the Code of this country refers to "laundering of money" that

were obtained from criminal groups of various forms, terrorism and drug dealing (Kryvonos, 2014).

In turn, the legalization of money, that are obtained by illegal means, includes a more extensive list of socially dangerous acts in this regard in the UK, namely: drug dealing, terrorism, theft, fraud, robbery, extortion, blackmail, etc. In doing so, the joint work group consisting of leading experts of the financial sector of economy has been created for the coordination of activity that is related to the effectiveness of criminal law protection and prevention of this type of criminal offenses (Kryvonos, 2014.

It seems that, given the current state of criminal offenses in the banking sphere of Ukraine (Kolb, 2021), as well as the level of interaction of banking institutions with other subjects of criminological prevention, this approach should be applied in our country, in particular, establishment of an interdepartmental Commission on preventing the legalization (laundering) of money, that are obtained by illegal means at the National Bank of Ukraine, which includes the heads of this institution and all law enforcement agencies, the list of which is defined by law (Law of Ukraine, 2002), taking into account that such a measure is absent in the relevant Strategy that has been approved by the Cabinet of Ministers of Ukraine in December 2015 (Order of the Cabinet of Ministers, 2015).

In addition, such a legislative approach is enshrined in the UK, according to which the criminal offense on these issues is the inaction of banking institutions, as a result of which it became possible to legalize the illegally obtained funds, as well as the actions of individuals who help someone to "launder" money by hiding, storing or investing and in cases where these persons know or suspect that the money is income from serious (grave and especially grave) criminal offenses (Kryvonos, 2014). At the same time, the Criminal Code of the United Kingdom provides for a penalty of 14 years in prison and a fine for committing these socially dangerous acts; for disclosing information to a criminal or a third party – up to 5 years in prison; and for failure to report on money laundering transactions that have become known to a person – up to 5 years in prison (Kryvonos, 2014).

The practice of other European countries is instructive on the mentioned issues that have become the subject of research in this scientific article. Thus, the Criminal legislation of the Republic of Ireland obliges all financial institutions of the state, including banking institutions, to require new customers who carry out large transactions, documentary proof of origin of money (Kryvonos, 2014).

In turn, the strategy of the banks of Cyprus is based on the principle of "know your customer" and aims to identify individuals who have multiple trust accounts, which are incompatible with the form of their business, or accounts to which deposits are received from a significant number of different private recipients, as well as those customers who are trying to open an account for a large amount, even on unfavorable terms.

According to this strategy of banks, employees of these institutions should know the origin of funds, the history of all accounts that are opened with the bank, the frequency of customer applications to the bank (Kryvonos, 2014), which once again confirms the conclusion on the need to improve the criminal law means for the protection of banking institutions in Ukraine and the increase in this regard of individual criminological prevention in this area of public relations (Topchiy, 2016, p. 454-458).

Instead, the legislation of the Hellenic Republic provides for the identification of customers in the case of concluding contracts, opening accounts, renting safes, lending on collateral. At the same time, such actions are not carried out when conducting insurance transactions for insignificant amounts and terms that are related to pension insurance (Kryvonos, 2014).

The Criminal Code of the Republic of Austria provides for liability for laundering of all assets that are derived from the commission of serious crimes, that provide for imprisonment for more than three years, although it is allowed to maintain anonymous bank accounts in this country (the only one in the EU) (Kryvonos, 2014).

The practice that has developed in the Kingdom of Belgium affects quite effectively the level of criminal law protection of facilities of critical infrastructure of the banking sphere, which is important in the context of improving the criminal legislation of Ukraine, namely:

a) the special law on money laundering of 11 January 1993 includes the following socially dangerous acts into the list of criminal offenses, related to laundering or legalization of money that are obtained by illegal means: terrorism; organized crime; drug and arms trading; use of illegal labor; human trafficking; prostitution; illegal use of hormones for animals; trafficking in human organs; serious and organized fraud regarding taxes, which violates financial interests of the EU; corruption; atypical investments and false bankruptcy;
b) banking and other financial institutions are required to inspect all transactions worth more than 10 thousand euros;
c) a special structure "Financial Intelligence Processing Unit " (CTIF) was established under the auspices of the Ministry of Finance and Justice, which, with the involvement of relevant experts, analyzes the declarations of banks, exchanges and other financial institutions on suspicious transactions, uses information obtained from police, customs and other government agencies (Kryvonos, 2014).

In particular, a similar approach is enshrined in the Law of the Republic of Lithuania "On prevention of money laundering", according to the requirements of which, the banks and other credit institutions, insurance companies,

customs, post offices, notaries, pawnshops, special services of this country provide the tax police with information about persons, who are suspected of money laundering and with all transactions worth more than 50 thousand litas (16,9 thousand US dollars), as well as with currency accounting worth more than 10 thousand litas (3,4 thousand US dollars).

Moreover, according to another Law of this state "On the prevention of legalization of funds that are obtained by criminal means" of 1997, the signs have been identified, by means of which criminal funds and the list of the financial operations which are subject to special control are revealed, as well as a certain minimum amount (10 thousand litas (17,7 thousand US dollars)) is defined, which requires mandatory customer identification (Kryvonos, 2014).

There is no doubt that a similar practice should be introduced at the legislative level in Ukraine, which will significantly increase the level of criminal protection and prevention of criminal offenses in the sphere of banking activity.

The activity of the financial and banking system in the Republic of Poland is interesting in this regard, in which, first of all, transactions with large amounts of cash are controlled (especially if such amounts have not been transferred to the account before), the receipt of significant cash transfers from countries that are known as drug manufacturers or suspected of involvement in terrorism, etc. In addition, banking institutions pay more attention in this country to customers who have significant amounts in accounts with several banks and transfer them to third countries (Kryvonos, 2014).

France, in which money (valuables, etc.) that are obtained as a result of criminal means, are considered illegal, and all transactions with them are money laundering, which is a criminal offense, also went by the way of expanding the list of criminal offenses that constitute the content of illegal activity that is related to the legalization (laundering) of funds that are obtained by criminal means. In addition, this country is currently considering the spread of concepts of "dirty" money and "funds from international criminal organizations" (Kryvonos, 2014).

As it is shown by the results of this research, Federal Republic of Germany also has its peculiarities of criminal legal protection of facilities of critical infrastructure of the banking sphere of activity, in particular, on issues of legalization (laundering) of funds that are obtained by criminal means, given that there is no concept of economic crime at the regulatory level in this country. Based on this and using the specified legal gap, various state structures in Germany are engaged in counteracting this criminal offense, namely: Federal Criminal Service, land prosecutor's offices, financial offices and customs (Perepadia, 2013).

In turn, the Law "On combating laundering of illegal money and financing of terrorism" is the main regulatory act concerning criminal law protection and is aimed at preventing specified socially dangerous phenomenon in the financial and banking sphere of public relations in Canada, according to which the subjects of financial monitoring are: foreign banks, credit unions and insurance companies operating in the territory of Canada; individuals and legal entities that act as intermediaries in securities transactions and other entities (Borysenkova, 2011).

As the results of this research have shown, there are many positive aspects of the specified problem in the criminal legislation of other foreign countries.

In particular, the list of criminal offenses directly has been expanded in the Republic of Moldova, that are related to illegal schemes, which are aimed at legalization (laundering) of funds that are obtained by criminal means, namely: production or sale of counterfeit credit cards or other payment instruments (article 237 of the Criminal Code); obtaining credit, loans or insurance indemnity / assistance by deception (article 238 of the Criminal Code); violation of lending rules, lending policies or rules of insurance indemnity/assistance (article 239 of the Criminal Code); loss-making or fraudulent management of a bank, investment company (article 239-1 of the Criminal Code); other socially dangerous acts on these issues (articles 239-2; 245-12 of the Criminal Code of Moldova, etc.) (Zhuk, 2020).

At the same time, the criminalization of money laundering is prosecuted in the Republic of Albania only in cases when there was a so-called administrative prejudice before this legal fact (Zhuk, 2020, p. 216).

The legal practice of criminal legal counteraction to specified socially dangerous phenomenon in Switzerland seems to be extremely effective. In particular, the Criminal Code of this country separately provides for criminal liability for criminal acts that are related to bankruptcy proceedings and debt collection, namely:

a) fraudulent competition and fraud that is related to the arrest of the debtor's property;
b) mismanagement; causing damage to the creditor by reducing property;
c) bribery in the enforcement of the decision, etc. (Zhuk, 2020, p. 217).

The interesting point in this regard is the legislative approach that is enshrined in the Criminal Code of Sweden, which highlights a special chapter 11 "Crimes against creditors", in which all criminal offenses that are related to encroachments on the facilities of banking sphere are concentrated (Zhuk, 2020, p. 217), what can be used in Ukraine by separating the Special Part of the Criminal Code of Ukraine of socially dangerous acts, which are related to the provision of banking services, from section VII "Criminal offenses in the sphere of economic activity" and supplementing this Code with a new section VII-1 "Criminal offenses in the banking sphere".

Section 3. Criminal legal means of ensuring control that are applied in European and international law.

International and, in particular, European experience regarding regulating, controlling and supervising the work of financial institutions is also important in the context of solving tasks regarding the improvement of the criminal law mechanism for the protection and prevention of criminal offenses in the sphere of banking activity of Ukraine (Kolb, 2021).

In particular, the EU decided to create a Banking Union to overcome the effects of the global financial crisis and establish new rules for regulating the activities of banks within Europe back in 2012, the main component of which is the Single Supervisory Mechanism (SSM) and the European Deposit Guarantee Scheme.

Based on this, the main purpose of the new rules of regulation of banks in the EU is:

a) reducing the probability of crises;
b) application of a single mechanism for rescuing problematic financial institutions;
c) ensuring the functioning of the system of client deposit guarantee;
d) establishing the mechanism of state support for troubled banks.

That is, we are talking about the implementation as a criminal law and preventive function by the EU Banking Union, therefore, it demonstrates the logic of the question statement about that Ukraine is obliged to use this positive experience at the regulatory level.

An additional argument for this conclusion is the key directions of financial reform in the countries of the EU, which include such as:

1) establishing prudential standards of corporate governance;
2) determination of requirements for financial reporting and adequacy of capital;
3) improving the methodology of calculating indicators that assess the state of both the banking and corporate sectors, aggregate microprudential indicators;
4) development of basic and normative indicators;
5) using stress testing.

In particular, the specified approach in the form of deposit insurance has allowed in practice to reduce panic and the outflow of depositors from banking institutions. In addition, increasing the level of insurance compensation for deposits became as the main measure of criminal law protection, as well as prevention and counteraction to the specified negative phenomena in this area of public relations, what can be used quite effectively in regulatory and practical activity in solving problems of legal imperfection of the protection of facilities of the banking sphere of Ukraine.

So, the size of the guaranteed payment to depositors was increased to 250 thousand dollars in the USA. The franchise mechanism was also abolished, according to which 90% of deposits can be reimbursed.

An interesting fact is that even a full guarantee of repayment on deposits of all banks was introduced for the period of crisis in some countries of the world (Germany, Austria, France, Malaysia, Hong Kong, Singapore, etc.), which also had a positive impact on the effectiveness of criminal law protection and prevention of criminal offenses in the banking sphere of activity.

So, as it is rightly noted in this regard by D.G. Khoruzhyi, timely diagnostics and operative improvement of the criminal legal mechanism of protection of facilities of the banking sphere, prevention of development of banking crises, implementation of urgent measures of early prevention of the spread of destructive crisis processes, creation of protection of capital buffers and liquidity management is a priority in developed foreign countries (Khoruzhyi, 2018, p. 113), which can be attributed to the integral system elements that must be defined in the Criminal Code of Ukraine in the form of signs, including qualifying, of relevant criminal offense.

As it is shown by the results of special scientific research on the problem that is identified in this scientific article (Kryvonos, 2018), significant role in improving the criminal law mechanism for the protection of facilities of banking sphere, including those that are related to the prevention of legalization (laundering) money that is obtained by criminal means, is played by an international organization such as the FATF, which includes 29 countries of the world. In particular, the activity of the FATF (intergovernmental body that develops policies to combat legalization of money that is obtained by criminal means) is aimed at solving the following tasks:

a) disseminating information on anti-money laundering measures on all continents and in all regions of the world;
b) monitoring the realization of forty recommendations in FATF member countries;
c) review of trends in the sphere of money laundering and relevant countermeasures ("typological research" to identify new schemes of money laundering), etc. (Kryvonos, 2018).

Conclusions

Thus, summarizing the results of this research, it should be noted that foreign experience in criminal law protection of facilities of critical infrastructure of the banking sphere is actively studied by scientists of various directions, whose works were used in the specified scientific development as a methodological basis in the formation of the author's

conclusions, suggestions and some scientifically sound provisions and recommendations on the merits of the researched problem.

In general, if we summarize the results that are obtained during this research, we can state that there is a number of provisions and good practices today abroad and in international legal acts, which should be used by Ukraine both in improving the legislation on issues of banking activity and criminal law mechanism for the protection of facilities of critical infrastructure of this sphere and prevention of criminal offenses in this sphere of public relations.

In particular, given the absence in the Law of Ukraine "On the National Bank of Ukraine" of provision on belonging to the legislation, which regulates its activity, international treaties, consent to be bound for which is provided by the Verkhovna Rada of Ukraine, the art. 2 "Legal basis of the activity of the National Bank of Ukraine" of the specified Law should be supplemented by this legal source and the specified norm should be set out in a new version.

Such approach is based on the decision of the Constitutional Court of Ukraine of July 9, 1998 № 12-pr/98 (the case on the interpretation of the term "legislation"), according to which the legislation of Ukraine includes international agreements, consent to be bound for which is provided by the Verkhovna Rada of Ukraine.

Development of criminal law and procedural standards at the international level with further implementation in national legislation is necessary for the comprehensive counteraction to threats of critical infrastructure. This will make it possible to effectively investigate crimes on the global scales, to obtain, store, investigate and provide electronic evidence, taking into account the cross-border nature of crimes. The success of law enforcement cooperation in the pre-trial investigation of cybercrimes is due to the speed of preservation of digital evidence and the resolution of jurisdictional issues in the information space. The practical realization of such suggestions will necessitate the development of appropriate forensic recommendations, methods to ensure pre-trial investigation of new types of crimes (Batiuk, 2021, p.11).

Along with this, given the results of special scientific researches (Kolb & Dzhuzha, 2021, p. 61-62), it is logical in this regard to draw another conclusion on the merits of the specified problem, namely: priority is given to provisions both in international legal acts and in the activity of relevant foreign government, financial and banking institutions, according to which the latter are obliged to take all measures that are provided by law regarding effective legal protection of all, without exception, facilities of their activity, including with the use of opportunities of criminal law nature and the relevant law enforcement agencies of the state.

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