

## CRIMINAL PROSECUTION ACTIVITY AND INVESTIGATIONS ON ECONOMIC CRIMES ASSIGNED TO THE STATE FISCAL SERVICE

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### Abstract

The economic activity of the state, regardless of the social and political order of the state, is one of the main links of existence and functioning of the state. It is in the conduct of external economic relations that the main financial sources of the state are rotated. Article 126 of the Constitution, characterizing the economy of the Republic of Moldova as a market economy, considers the national economy, in the same regulatory context, it is stated that the state must ensure, among others: freedom of trade and entrepreneurship; protection of fair competition; creating a favorable framework for capitalizing on all factors of production; protection of national interests in economic, financial and foreign exchange activity, etc. For these reasons, it is absolutely necessary to create in this field the legal mechanism for regulating these relations, which does not affect external economic relations, does not affect the economic potential of the state, does not tarnish the image of the state in the world arena, etc. This article is the evidence of particularities, specific features in the field of economic crimes, assigned to the State Tax Service, given that in this criminal sector, the administration of evidence involves certain specific coordinates that are not found in the investigation of other crimes. The evolution of the criminal legislation that provides for criminal liability for economic crimes is inextricably linked and conditioned by the history of our state.

**Key words:** fiscal administration, State Fiscal Service, anti-fraud, criminal investigation, investigations, finding, crimes

The shadow economy is defined by specialists as tax evasion, tax fraud, cash payments, tax difference, illegal payments outside the official accounting records, etc., which de facto constitute totally economic crimes. Economic crimes refer to illegal acts committed by an individual or a group of individuals, an economic agent, in order to obtain a financial or professional advantage. In such crimes, the main motive of criminals is illegal economic and monetary gains, which primarily harm the state budget. Thus, the prevention and combating of economic crimes is an essential principle for any state, both in terms of maintaining social order and economic stability. The process of revenue formation in the national public budget, at present, is primarily focused on the accumulation of revenues from the real economy segment, not the unobserved one.

### MATERIAL AND METHOD

International practice presents a multitude of organizational models of institutions involved in the investigation of economic crimes. In the former Soviet and Central European states, the model of investigating economic crimes within the interior ministries has practically been preserved.

However, this model has not ensured a decline in the shadow economy in most states), due in large part to the phenomenon of corruption within the given institutions. The most effective models of institutional organization for preventing and combating economic crimes are those in Western states, which have created central public authorities, subordinated to the ministries of finance or the economy. The national economy of the Republic of Moldova is mainly influenced by the functioning of the various branches that make it up. Until the early 1990s, the country's national economy was characterized by the centralized-bureaucratic system of economic activity, by collective ownership, broken by those who produced, negative factors that determined the development of the national economy. That is why, with the democratization of society, it was necessary, as an immediate necessity, to make structural changes in the national economy. The socialist ownership of the means of production was abolished, the state enterprises being reorganized as commercial companies, operating according to the principles of the market economy. At the same time, the private initiative in the economy was given free rein, which determined the emergence of a private sector with an increasing share in the realization of the gross domestic product in the Moldovan economy, thus becoming a market economy. The necessary conclusion is that the

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national economy of the Republic of Moldova is an objective reality, in the process of transformation, and it is one of the fundamental values of society, which must enjoy legal and criminal protection.

## RESULTS AND DISCUSSIONS

A considerable damage to the development of our country through the establishment of the rule of law can be caused by economic crimes, which threaten the various spheres of activity of the state and its economic agents. As a result of committing economic crimes, the country's budget is not fully realized, a large part of the economic agents evade paying taxes, violates the rules for paying loans and using bank means, practices illegal business, smuggles, with the manufacture and circulation of counterfeit money and counterfeit securities, produce and sell goods of poor quality or non-standards, mislead customers, launder dirty money, etc. All these facts cause considerable damage to the population and the country. That is why the fight against economic crime is of particular importance. It was this moment that was taken into account by the legislator, when he included in the Criminal Code a special chapter: "Economic crimes".

In the literature it is justly mentioned that there is no single and certain notion of economic crimes and therefore it is not possible to speak of the existence of a single classification of these categories of crimes (A.B. Шестаков, 2000).

The most common terms used by practitioners and theorists to address this notion are: "economic crime", "economic crime", "economic crime", "economic crime", "economic fraud". Some authors contradict themselves, separating the notions of "economic fraud" from "economic crimes", then combining them using them as a single notion (П.Н. Панченко, 1990).

Likewise, in the national specialized literature, different notions, terms or definitions are used, often contradictory, given to crimes and other violations of the legislation in the field of economics.

Moldovan scientists A. Donciu and Gh. Rusu mention that the notion of fraud includes moments of deception, deception, act of bad will committed in order to make a profit by violating the rights of another person. In developing the essence of this notion, they concretize that economic fraud is a multiaspectual category that meets a multitude of violations of the legislation in the criminal, administrative, material, financial, etc. fields. (A. Donciu, Gh. Rusu, 2002).

Therefore, the most acceptable term for defining the crimes addressed would be "crimes in the field of economics", because it has a broader

and more cumulative meaning than the notions - "economic crimes", "economic crimes", etc.

According to Russian scholars, L. Bertovschi, V. Obraztsov and others, economic crimes can be classified based on different criteria. The forensic research methodology, they mention, has long and not without success classified the crimes in the fields, taking into account the branch specifics of the economic activity. Such a way allows to highlight and study more productively the crimes that are committed in the spheres of production, public food, trade, etc. crime groups. Subsequent classification is based on the internal division of some or other economic spheres, which allows, for example, to highlight crimes in the sphere of economy, such as banking, industrial production, agriculture or construction crimes.

Despite its importance, this way of classification is not unique. Of special significance for the practice and theory of research is the division of crimes related to economic activity committed by the application of violence and without its application, committed by special subjects of economic activity and, committed, by other categories of persons.

The same can be said about the division of crimes in the field into two groups, depending on the fact that some are committed in the state economy sector and others in the private one.

Thus, starting from what is reported, the authors just mention that criminal liability for crimes committed in the field of economy can occur not only in the case of crimes included in the chapter on economic crimes, but also in other articles in other chapters of the Criminal Code. For example, based on the articles, which establish the responsibility for stealing goods through abuse of service, production or sale of goods, which do not meet the requirements of security, etc.

The analysis of the classifications or structuring of the economic crimes brought above indicates that the Criminal Code of the Republic of Moldova also contains some gaps, which in order to ensure a better appropriation and use requires a restructuring and updating.

### POWERS ASSIGNED TO THE STATE TAX SERVICE REGARDING ECONOMIC CRIMES

The State Fiscal Service is a centralized system of fiscal bodies, including the activity of fiscal officials holding positions in these bodies, oriented towards the exercise of fiscal administration attributions, according to the fiscal legislation, it represents a state body whose activity is oriented towards ensuring the collection of taxes. and other mandatory payments to the budget, which are subsequently directed to the

development of the state, providing assistance and social protection of the population. The State Tax Service will continuously promote the spirit of voluntary compliance of taxpayers in declaring and paying tax obligations, improving fiscal citizenship by establishing a unitary framework of partnership relations with the business environment and citizens, based on mutual trust and support, providing optimal and competent solutions, materialized in a set of high quality automated services, provided in accordance with the latest achievements in the field of information technologies, while harmonizing the tax legislation of the Republic of Moldova to international standards of tax administration. The tax administration is constantly taking care to support you in fulfilling your tax obligations and wants to permanently improve the partnership relations with taxpayers, namely the "Tax official in the service of the taxpayer" which results in easy contact, quick and personalized treatment.

By Law no. 49 of March 23, 2018, amendments were made to the Code of Criminal Procedure (in force since October 1, 2008) by which the State Fiscal Service was invested with attributions of ascertaining the crimes provided in articles 241 – 242, 244, 2441, 250 - 253, 3351 of the Criminal Code.

In this regard, the Directorate for Control and Detection of Crimes was created, which undertakes a complex of actions prior to criminal prosecution, such as detaining the perpetrator, lifting the bodies of offenders, requesting information and documents necessary to establish the crime, summoning persons and others.

From January 1, 2021, the State Fiscal Service was assigned the competence to ascertain and prosecute crimes in the cases provided by the Code of Criminal Procedure, as well as to perform the special activity in accordance with Law no. 59/2012 regarding the special investigation activity. The corresponding amendments to art. 1321 para. (1) of the Fiscal Code were published on October 9, in the "Official Gazette" (Law no. 188 of September 11, 2020). The current wording of the indicated article provided that the STS can only ascertain the offenses in the cases provided by the Code of Criminal Procedure.

Law no. 188/2020 was completed with art. 1324 (basic functions of the STS) with points 71) and 72), which offers the fiscal authority and its employees the competence to carry out the criminal investigation regarding the offenses provided in art. 241–242 ("Illegal Entrepreneurship", "Illegal Financial Activity" and "Pseudo Entrepreneurship"), 244 ("Tax evasion of businesses, institutions and organizations"), 2441

("Tax evasion of individuals 250–253 ("Transport, storage or marketing of goods subject to excise duty, without marking them with control stamps or excise stamps", "Transport, storage or marketing of goods subject to excise duty, without marking them with control stamps or stamps "Excise, alienation in cases not permitted by law, concealment of pledged, frozen, leased, seized or confiscated property", "Intentional insolvency" and "fictitious insolvency") and 3351 ("False accounting documents") of the Code criminal law and the "special investigative activity related to the crimes given in its competence according to the Code of Criminal Procedure".

At the same time, from January 1, 2021, art. 133 of the Criminal Code will provide that, in performing its functions, the STS carries out criminal prosecution in accordance with the rules established by the CPC, and in the case of special investigative activities related to crimes committed in its competence - according to Law no. 59/2012, therefore, the General Directorate for Anti-Fraud Fiscal Administration was created as a structural subdivision of the State Fiscal Service, being assigned the functions of criminal investigation and special investigation activity for economic crimes provided in art.241–242, 244, 2441, 250–253 and 3351 of the Criminal Code. Thus, any natural or legal person, through a complaint, denunciation or self-denunciation, can notify the criminal investigation body of the State Fiscal Service about crimes.

Respectively, from art. 251 of the CF ("Proposals for liquidation of the causes and conditions of committing the fiscal violation") par. (2), the rule is excluded according to which, in the process of examining the cases of fiscal violation in which there are signs of the composition of the crime, SFS notifies the criminal investigation body by a written address within 5 working days from the date of issuing the decision. regarding the appeal or from the date of expiration of the term for contesting the decision on the case of fiscal violation provided in art.268 paragraph (1) or in art.2741 paragraph (8), if it has not been challenged and follows to be notified to the General Directorate for Anti-Fraud Tax Administration.

### **CRIMINOLOGICAL ASPECTS OF ECONOMIC CRIMES**

The degree of damage of these criminal actions is also determined by the fact that the guilty thus obtain opportunities to lead a parasitic way of life at the expense of society. According to the Republican Conference on Practical-Scientific Conference Organized crime and the shadow

economy in the Republic of Moldova on February 26, 1999, organized by the Ministry of Internal Affairs of the Republic of Moldova, the shadow economy exceeds 50%, or even 55-65 percent, of the country's economy and may endanger state.

Economic crimes as an essential activity of organized crime groups, as well as of some persons, represent the most revealing sign of their power, as well as a mandatory stage through which it is possible to transfer to the legal economy the funds resulting from crimes.

Economic crime is a fundamental element of the overall financial strategy of criminal groups aimed at ensuring the best investments and justifications for the financial product resulting from dirty business. This confirms the strong interpenetration between the criminal economy and the legal economy. The European literature argues that illegal markets are being destroyed, on the one hand, by legal markets and, on the other, by parallel markets. The difference between illegal and parallel markets depends on the nature of the goods in circulation.

At the beginning of the third millennium, the economy of the European Union and of the most industrialized states appears fundamentally modified, the world financial system becoming more and more complex, in the work "Ethics and financial markets" H. Ploix remarks that new technologies that allow the development Financial techniques, such as derivatives, have radically transformed the sphere financial in at least three directions: they broke up space and time; they make it possible to increase the return on capital and the movement of money without any connection with the reality of trade; they empower machines to think and shape people's actions. All these elements create a hole between reality, concretely and the man of finance.

The economic and financial system of the European Union is contaminated by dirty money resulting from large-scale business by criminal groups. National and European Union anti - money laundering measures are in place, for the simple reason that this phenomenon has been legitimized as integrated into the system.

Professionals working in this field have the ability to exploit all the facilities offered by the current financial system, they choose the most welcoming financial paradises to set up here screen companies that serve to conceal the assets whose management ensures it. They are very active in the offshore financial universe, which is "not only a legitimate segment of the global financial system, but itself a system with complementary competencies that can be manipulated by criminal organizations."

Economic crimes are considered a job like any other, exercised by a large number of service providers financial, facilities in financial paradises, ready to respond to customer requests.

## CONCLUSIONS

The granting of the attributions of ascertainment, carrying out the criminal investigation and the special activity of investigations on economic crimes, by the State Fiscal Service, will ensure the increase of the state's reaction capacity to illegal actions that prevent the development of a stable business climate. It also aims to eliminate unfair competition factors for economic operators that comply with the legal framework, reduce the underground economy and strengthen the premises for improving the business climate.

The implementation of this initiative is to ensure continuity in the actions of examination and investigation of economic crimes, as well as the finalization of the initiated actions - from voluntary compliance to the completion of the criminal investigation, by the same body.

As a result of the changes made, the cooperation of prosecutors with the State Fiscal Service will be increased, and the criminal prosecution of economic crimes will be carried out mainly with the involvement of criminal prosecution officers within the SFS. In addition, the measures implemented would contribute to increasing revenues to the national public budget.

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