GLOBAL ECONOMIC CRIME, CORONAVIRUS (COVID-19) PANDEMIC AND NATIONAL BORDERS PROTECTION: COMBINATION OF NEW CHALLENGES

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The article comprehensively examines the issues related to the transformation of economic crime in the period of globalization and, in particular, the global impact of the COVID-19 pandemic. Arguments in favor of the author’s idea of ways to improve the mechanism of criminal law protection of the domestic economy in the face of new challenges. It is stated that in modern societies the emergence of new types of economic crimes, the growth of economic crime in general and its adaptation to various socio-economic changes.

Globalization of crime, together with economic globalization, which serves, so to speak, as a general background, requires experts in the field of comparative criminal law to strengthen international cooperation and develop ways to address a number of issues related to combating criminal behavior that has long gone beyond boundaries of national criminal justice systems.

The conclusion is reached that the year 2020 has brought new challenges to the modern connected world: the COVID-19 pandemic, which indirectly made nations unite in the face of a major healthcare threat; also, in a somewhat secondary mode, new forms of
white collar criminal behavior, which spreads across the state borders is caused, either directly or indirectly, by the pandemic, and also a wide range of issues, related to national border protection modes. This requires law enforcement agencies to build up joint efforts in combatting new forms of white collar crime both on national and international levels.

**Key words:** globalization, COVID-19 pandemic, economic crime, criminal law, comparative legal studies, border protection, national border.

1. **INTRODUCTION.**

**Problem Actualization.** Despite the evolution level of the particular economic system and regardless of its “nationality”, successful development of any national economy largely depends on the degree of interaction with other economic systems. Such conclusion seems all the more relevant when considering modern trends of globalization, especially economic one. Against such background, the priority function of public authority in Ukraine should be to establish a harmonious, productive relationship between the national economic system and similar systems of foreign countries, as well as with the regional economic systems, in particular with the European Union economy.

Being for a long period of time the world economy leader with the national GDP making almost a quarter of the world GDP since the end of World War II, today the United States of America is the recognized leader in many areas of global economic development. This leadership starts with the enormous stock markets and innovative technologies, and ending with free competition laws and effective bankruptcy procedures. America demonstrates significant achievements in the functioning of a liberal market economy model to the rest of the world.

Relevant American experience, always praised for the stability of the economic development vectors and, in particular, by the freedom of market relations as well as pragmatic limitations, set by the
state, is even more useful for Ukraine, which has recently chosen the “market” direction for its economic development. At the same time, learning from the relevant American experience leads us to a conclusion that free market relations are not immune from illegal practices. As such, the issue of counteracting economic crimes constantly remains on the radars of the US law enforcement agencies, as will be demonstrated throughout this article.

In the year of 2020 a new threat has emerged for the world in general and the globalized economy in particular to face: the COVID-19 pandemic and its destructive impact not just on the lives and health of people across jurisdictions, but on the economic relations at different levels both domestically and at foreign level. Thus, this article will explore some of the pressing issues at the intersection of economy, health and national borders protection, which is especially important for Ukraine nowadays.

Analyses of the recent research and publications. Issues related to criminal liability for economic crimes in Ukraine, including in a comparative context and also partially related to healthcare and border protection issues covered in this article, devoted, in particular, to the research of P. Andrushko, P. Berzin, A. Boyko, N. Gutorova, R. Volynets, V. Moysyk, V. Navrotsky, M. Panov, V. Popovych, A. Savchenko, E. Streltsov, O. Shapovalova, M. Khavronyuk, V. Khilyuta, G. Boldar, B. Grek, V. Datsyuk, O. Kashkarov, R. Movchan, L. Pavlyk, O. Radutnyi covered issues related to the criminal-legal assessment of certain types of acts in the economic sphere and the definition of their features. V. Franchuk and some other authors. The most consistent and systematic approach to solving problems related to the qualification of this category of crimes and the practice of applying provisions of the Criminal Code of Ukraine, which establish them, is embodied in the scientific works of O. Dudorov.

In the American criminal law doctrine, the issues of responsibility for economic crimes have been studied at different times by K. Brickey, S. Buel, S. Green, L. Dervan, W. Zagaris, J. Coffey, E. Luna, P. Morgan, J. O’Sullivan E. Podgor, R. Posner, J. Rakoff,
E. Sutherland, K. Strader, P. Henning and others. The fragmentary corresponding sphere of criminal law regulation have been reflected in the scholarship of W. Butler, W. Burnham, S. Kadish, P. Larkin, P. Robinson, F. Sayre, W. Stanz, and J. Fletcher.

The goal for this publication lies in the comprehensive and comparative analyses of a set of issues related to the global economic crime, coronavirus (COVID-19) pandemic and national borders protection with a specific focus on the relevant Ukrainian law and practice.

2. RESEARCH RESULTS.

For the record: to this date there is no clear, all-inclusive definition of white collar crime (WCC), and such description is not likely to appear anytime soon due to a variety of reasons. These include: (1) traditionally broad nature of nonviolent and predominantly for-profit offenses; (2) changes in both related legislation and its interpretation, more so during the last three decades; (3) shifts in research focuses from looking into white collar criminals themselves to the specific nature of crimes committed by the latter; and (4) absence of any attempts to categorize distinct groups of offenses by either legislators or courts1.

The term “white collar crime” is notorious for its ambiguity. At least some agreement among scholars exists on what types of criminal behavior this phrase should include. Among various types of criminal activity, one can name antitrust violations, computer and internet fraud, credit card fraud, phone and telemarketing fraud, bankruptcy fraud, healthcare fraud, environmental violations, insurance fraud, mail fraud, government fraud, tax evasion, financial fraud, securities fraud, insider trading, bribery, kickbacks, counter-

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feiting, public corruption, money laundering, embezzlement, economic espionage and trade secret theft\textsuperscript{2}.

The commonly used phrase “white-collar crime” was reportedly introduced in 1939 during a speech given by sociologist Edwin Sutherland to the American Sociological Society. Sutherland defined this term as an offense committed by a person of respectability and high social status in the course of his occupation. Later in his other paper, Sutherland stated that different forms of illegal white-collar conduct “consist principally of violations of delegated or implied trust, and many of them can be reduced to two categories: misrepresentation of asset values and duplicity in the manipulation of power”\textsuperscript{3}.

Reference sources propose similar definitions of white-collar crime, defining it as “a non-violent crime usually involving cheating or dishonesty in commercial matters;” as “a non-violent, financial crime, committed by a white-collar worker, typically involving the abuse of his or her professional status or expertise;” and also defining the term as: nonviolent crime for financial gain committed by means of deception by persons whose occupational status is entrepreneurial, professional or semi-professional and utilizing their special occupational skills and opportunities; also, nonviolent crime for financial gain utilizing deception and committed by anyone having special technical and professional knowledge of business and government, irrespective of the person’s occupation\textsuperscript{4}.

The word “fraud” widely used in the white-collar crime context. This term underlines the “intelligent”, nonviolent, and primarily for-profit nature of such offenses that are intended to deceive (an individual, a corporation, or public at large) in order to earn some-

\textsuperscript{2} White Collar Crime: an Overview. Legal Information Institute. URL: https://www.law.cornell.edu/wex/white-collar_crime.

\textsuperscript{3} Sutherland E. White Collar Criminality. American Sociological Review. 1940. № 1. P. 1, 3.

thing of value, power, or both. The key message is that fraud is typically the cornerstone of every white-collar offense, no matter how simple and meager or intricate and grandiose.

Some scholars have brought up the challenges of coming up with a universal definition of WCC in their research. Indeed, there is a large number of distinct views on both the specific legal nature and boundaries of white-collar criminality, and scholars traditionally observe the term from different perspectives and in various enforcement contexts. One approach even suggests that it is the government, not the businessperson, which becomes the “bad guy” for the purposes of economic enforcement--thus, white-collar crime can be associated with the government’s failure to effectively regulate competition.

In comparison, the term “international white collar crime” becomes even more confusing, since there are no “white collar crimes” terms defined by any body of international law. The term can, therefore, be interpreted best in the context of this paper by referring to non-violent, financially motivated crimes, which have a transnational element. Such multi-jurisdictional element can arise from the conduct of the perpetrators, the locations of the victims and witnesses, the nature of the crime, or the scope of governmental or corporate investigation.

Under such broad definition, surely any WCC can take on an international dimension. For example, U.S. federal law, as mentioned above, covers the range of conduct and burgeoning number of offenses that fall into the WCC category, including: fraud, bribery and corruption, money laundering, tax evasion, cybercrimes, price fixing, identity theft, and illegal exports. Ukrainian Criminal Code

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(Chapter VII of the Code’s Special Part) encompasses similar type of illegal behavior in the sphere of economic relations.

While positively accepting the idea of the priority of economic substance over legal form in addressing issues of criminal law protection of economic relations, we would like to note that the term “people’s economy” attracts some skepticism. On one hand, this term is used to denote the set of industries and areas of production, consumption and exchange (in the broader sense this is a historically conditioned set of industries of a specific country, interrelated between each other by division of labor). On the other hand, the mentioned concept became spread at the time of construction and operation of the Soviet model of command (planned) economy, which has proven to be unsustainable over time. Many experts and ordinary Ukrainians associate people’s economy with the previous (socialist) system of economy construction. People’s economy that presumes belonging of the entire economy of the state of its people, has long been a fiction. Actually business, if we refer to this term, belongs to some individuals or their associations.

Taking into account the fact that our government has chosen the path of building a developed model of market economy with guaranteeing freedom of entrepreneurship (as it follows, in particular, from the aforementioned Art. 42 of the Constitution of Ukraine), it makes sense to replace “people’s economy” with “national economy”, and even better – with “market economy”, as more will be discussed below.

We have repeatedly written about the ambiguity of the title of Chapter VII of the Special Part of the Criminal Code “Crimes Against Economic Activity”. Legislator can be criticized that this title does not reflect generic object of relevant offenses as the foundation for the Special Part of the Criminal Code, does not clearly show what exactly relations are put under protection by criminal law norms, that are incorporated in the mentioned chapter of the Criminal Code. The feeling of failure of the mentioned title increases, given the fact that there may be committed offenses that are not specifically busi-
ness-type (such as bribery of an official of a private law entity, forgery, fraud, misappropriation or embezzlement) in the area of business activity. Following this logic, economic crimes in the broad sense of the term may include, for example, the murder on greed motives, that was aimed at preventing a group of shareholders from gaining an advantage while discussing the issue of dividend distribution at the general meeting.

Distinction between entrepreneurial and credit financial activities should be noted, that, in our opinion, is the result of proper understanding of economic legal nature of two groups of public relations.

Too broad approach, within which crimes against property are (especially without any warning) related to the economic offenses is unacceptable on criminal law point of view: it does not allow to clearly distinguish the scope of relations, which, being regulated by the state, covers production, distribution, exchange and consumption of goods and services among unspecified number of participants in the process of systematic and productive activities and requires proper criminal law protection. In this regard, M. Panov notes that social relations arising in the area of economic business activities include a wide range of relations that are closely connected between each other, stay in unbreakable unity and create a coherent whole. However, they differ from other groups of relations, including such economic relations as property, to which conducting business is not inherent (or conducting business activity). Therefore association of crimes against property and business crimes in one group sounds objectionable7.

Taking all the above into account, neither the title of “crimes against business activity” nor the title of “crimes against economy” are able to claim absence of ambiguity so much desired for criminal

law. In order to search for the optimum title of Chapter VII of the Special Part of the Criminal Code we shall try to define the role and place of the relevant criminal law prohibitions in the coordinate system of the market economy, which while being officially declared, still remains in transition mode.

Now, turning to the “COVID-19” section of the article at hand (and economic threat vested in it), I would like to refer the following materials and analyses. The year 2020 has revealed yet another dimension of the globalized fabric of the modern world, the ones related to healthcare. As nations cooperate and compete in efforts to create vaccine, enhance national public healthcare regimes, regulate border control and passenger traffic etc., fraudulent behavior becomes more aggressive and white collar criminals operate on a bigger scale than ever before.

In the United States, even before the 2020, prosecutions of white collar crime were in steady decline for several consequent years, falling to lowest in 20 years. The prosecution of securities fraud, antitrust violations and other such crimes has hit a record low as the pandemic slows the courts. But even before the coronavirus outbreak, the numbers were falling under the Trump administration: the average annual number of white collar defendants was down 26% to 30% for Trump’s first three years in office from the average under President Barack Obama. The trend also showed up in fines on corporations, which fell 76%.

As one U.S. federal criminal case demonstrates, the challenging impact of the pandemic manifests itself even in the core elements of the national jurisprudence, like the right to a jury trial.

On August 26, 2020 Gary R. Brown, U.S. District Judge for the Eastern District of New York, issued a Memorandum & Order in United States v. Cohn allowing for a waiver of a jury trial despite

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strong government objection⁹. In the unusual move, under the extraordinary circumstances, he allowed for a securities fraud related case to proceed to a bench trial with the defendant’s consent, but without the government’s approval. As Judge Brown wrote in the preamble of the Memorandum & Order, we are living in an effectively unprecedented time. At this writing, the world continues to experience the effects of COVID-19, which has caused a historic pandemic of a kind not seen in more than century”, further adding that “despite significant effort, research and investment by the Court, this district has not held a jury trial since March of this year, and in person proceedings have been limited. The court document sends a strong signal to the legal community, which reveals that the new major factor, global pandemic, from now on directly effects the flow of national system of justice, criminal justice in particular.

The “PwC’s Global Economic Crime Survey 2020: UK findings”, an expert overview prepared by PricewaterhouseCoopers, one of the “Big Four” global consulting firms, refers to the evolving “landscape” of fraud, which increasingly causes disruption to businesses. Economic crime has reached its highest level in the past 24 months with 56% of UK businesses surveyed stating that they have been impacted by fraud, corruption or other economic crime. This 2020 figure is the highest in the history of the Global Economic Crime Survey, and is well above the global finding of 47%¹⁰.

Also, the UK-based COVID-19 fraud watch group, a cross-sector and cross-industry coalition of transparent members (including the Cabinet Office and City of London Police) who meet to share information on emerging fraud threats and trends affecting business, warn that fraudulent behavior is growing in 2020 due to the global impact, caused by the pandemic.

In March 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was enacted by the U.S. Congress. It was designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of up to $349 billion in forgivable loans to small businesses for job retention and certain other expenses, through the Paycheck Protection Program (PPP). In April 2020, Congress authorized over $300 billion in additional PPP funding.

White collar offenders immediately took on the PPP as a lucrative vehicle to exercise fraudulent schemes. In one case, two Florida residents and their co-conspirators were involved in a scheme to defraud a bank located in San Antonio, Texas. They used approximately 700 synthetic identities, in addition to stolen ones, in order to create bank accounts and shell companies. According to criminal case materials, fraudulent payments were made from accounts registered to synthetic identities to accounts registered to defendants. From about April through July of 2020, members of the conspiracy utilized the already-established synthetic identities and associated shell companies to fraudulently apply for assistance under the PPP. According to the complaint, the defendants fraudulently sought and received over $3 million dollars in PPP relief. This money was paid to companies registered to synthetic identities.

Now to Ukrainian realities and economic forecasts. Domestic academics have analyzed possible transformations of the economy and public relations as a result of the impact of the COVID-19 pandemic for Europe and Ukraine. Using the methods of intellectual analysis of large data, the regularity of the cyclical occurrence of


12 Two Men Who Allegedly Used Synthetic Identities, Existing Shell Companies, and Prior Fraud Experience to Exploit COVID-19 Relief Programs Charged in Miami Federal Court. URL: https://www.justice.gov/usao-sdfl/pr/two-men-who-allegedly-used-synthetic-identities-existing-shell-companies-and-prior-0.

A study of the negative effects of the COVID-19 pandemic on the world economy and international business. An attempt was made to predict the transformation of the world, Europe and Ukraine after the end of the COVID-19 pandemic. Emphasis is placed on the fact that the pandemic will significantly weaken the old sectors of the economy, which are based on low-skilled labor and old technologies. Thus, over the past six months, travel agencies, logistics and transport, restaurant and hotel business, leisure and hospitality industry, as well as a large number of industrial sectors (except agriculture) have suffered significant losses.

Six UN-identified post-coronavirus development megatrends were analyzed. This is the field of big data analysis and hyper-communications; well-being, health and quality of life of people; low-carbon economy and green energy; waste-free production; economics of biological growth; economics of psychological comfort.13

Finally, let us have a closer look at the border protection issues in both the U.S. and Ukraine, related to the coronavirus crisis.

Today U.S. Customs and Border Protection (CBP) is working closely with the Department of Homeland Security (DHS) and other federal, state, and local agencies to support the whole-of-government effort to slow the spread of COVID-19 and keep everyone safe.14

This is just one of many federal agencies, that, on the one hand, deal with the virus crisis, while, on the other hand, maintain economic processes and free flow of commerce.

14 CBP COVID-19 Updates and Announcements. URL: https://www.cbp.gov/newsroom/coronavirus.
On December 3, 2020, President Donald Trump signed a Memorandum on Extension of Governors’ Use of the National Guard to Respond to COVID-19 and to Facilitate Economic Recovery. This document provides, among other things, that it continues to be the policy of the United States to foster close cooperation and mutual assistance among the Federal Government and the States and territories in the battle against the threat posed by the spread of COVID-19. To date, activated National Guard forces around the country have provided critical support to Governors as the Governors work to address the needs of those populations within their respective States and territories especially vulnerable to the effects of COVID-19, including those in nursing homes, assisted living facilities, and other long-term care or congregate settings. Additionally, the States and territories will need assistance in fighting hot spots as they emerge.15

In comparison, in Ukraine the tasks of the border guards have remained the same as before Covid-19. For the Ukrainian State Border Guard Service (SBGS) that means the protection of the state border, border control of persons, vehicles and cargo at checkpoints, entry/exit control points in the area of the Joint Forces operation, combating cross-border crime, illegal migration, smuggling, drug trafficking and trafficking in human beings. Together with other state bodies we also take measures to counteract the spread of Covid-19 in Ukraine. These include border control at existing checkpoints, temperature screening of persons, communication and operational cooperation with colleagues at the national and international level on the return of our citizens, registration of humanitarian flights, etc.

It should also be noted that given the scale and consequences of Covid-19, it has become a test not only for Ukrainian society and border guards, but also a serious challenge for the whole world.

The SBGS met this challenge and carried out the assigned tasks as instructed\textsuperscript{16}.

3. CONCLUSIONS AND FURTHER RESEARCH PERSPECTIVES

The newest phenomenon of economic globalization has a direct effect on the developments of law in world jurisdictions and affects the patterns of white collar criminality in particular. As important changes in economic, social, political, cultural and other relationships take place between various countries, definition of new forms of legal regulation of such trends, including regulation by means of criminal law, is required more than ever before. Globalization of crime with economic globalization serving as a general background, requires experts in the field of comparative criminal law studies to strengthen international cooperation and elaborate on ways to solve a number of issues, related to combating criminal behavior beyond the scope of national criminal law systems.

The year 2020 has brought new challenges to the modern connected world: the COVID-19 pandemic, which indirectly made nations unite in the face of a major healthcare threat; also, in a somewhat secondary mode, new forms of white collar criminal behavior, which spreads across the state borders is caused, either directly or indirectly, by the pandemic. This requires law enforcement agencies to build up joint efforts in combatting new forms of WCC both on national and international levels.

LITERATURE


Дмитро Каменський. Глобальна економічна злочинність, пандемія коронавірусу (COVID-19 та:) та захист національних кордонів: комбінація нових загроз
У статті комплексно досліджено питання, пов’язані з трансформацією економічної злочинності в період світової глобалізації та, зокрема, глобального впливу пандемії COVID-19. Запропоновані аргументи на користь авторської ідеї про напрями вдосконалення механізму кримінально-правової охорони вітчизняної економіки в умовах нових викликів. Констатовано, що в сучасних суспільствах фіксується появу нових видів економічних злочинів, зростання економічної злочинності загалом та її адаптація до різноманітних соціально-економічних змін.
Глобалізація злочинності разом із економічною глобалізацією, що слугує, так би мовити, загальним фоном, вимагає від експертів у галузі порівняльних кримінально-правових досліджень посилення міжнародного співробітництва та розроблення шляхів вирішення низки питань, пов’язаних з протидією злочинній поведінці, що вже давно виходить за межі національних кримінально-правових систем.
Зроблено висновок про те, що 2020 рік поставив перед сучасним інтегрованим світом нові виклики: пандемія COVID-19, яка опосередковано змусила нації об’єднатися перед великою загрозою для охорони здоров’я; також, у деяко другорядному режимі, нові форми злочинної поведінки “білих комірців”, яка поширюється через державні кордони, прямо чи опосередковано, вимагає від експертів у галузі порівняльних кримінально-правових досліджень посилення міжнародного співробітництва та розроблення шляхів вирішення низки питань, пов’язаних з протидією злочинній поведінці, що вже давно виходить за межі національних кримінально-правових систем.
Пандемія COVID-19, яка зумовлює зміни в економічному обсязі та соціальних умовах, стикає правоохоронні органи з новими формами злочинності з більшою досконалістю. Це вимагає спільних зусиль правоохоронних органів для боротьби з новими формами криміналізації, як на національному, так і на міжнародному рівнях.

Ключові слова: глобалізація, пандемія COVID-19, економічна злочинність, кримінальне право, порівняльно-правові дослідження, охорона кордонів, національний кордон.