

Iryna Komarnytska
Lviv Polytechnic National University,
doctor of law,
Associate Professor of Civil Law and Procedure
Educational and Scientific Institute of Law, Psychology and Innovative Education
ORCID: 0000-0003-4314-877X

PREVENTION OF OFFENSES BY MEANS OF ADMINISTRATIVE LAW IN THE FINANCIAL AND ECONOMIC SPHERE

<http://doi.org/10.23939/law2022.35.135>

© *Комарницька І.*, 2022

The purpose of this article is to obtain results in the application of scientific analysis of theoretical-methodological and administrative-legal principles of prevention of offenses in the financial and economic sphere by means of administrative law. The scientific basis of the study of prevention of offenses in the financial and economic sphere by means of administrative law is presented. It reflects the trends of scientific research to determine patterns, ways of forming and constructing theories and statements, the system of modern knowledge about the peculiarities of the financial and economic sphere, the specifics of delicts in the financial and economic sphere, features of prevention of financial and economic offenses, etc., and covers several groups of scientific intelligence. The author’s approach to defining the concept of prevention of administrative offenses in the financial and economic sphere as a multilevel system of social, special, individual measures aimed at identifying the causes, conditions of administrative offenses, encroaching on the regulation of mobilization (formation), distribution (redistribution), use of centralized and decentralized funds, formation, consideration, approval, amendments, budget execution, payment of taxes and other mandatory payments, customs tariff regulation and movement of goods across the customs border, the functioning of banking structures, the banking system in general, organizational- economic, industrial relations, property relations, the functioning of the entire economic mechanism of the state, economic security, stability of economic and legal regulation of social relations, financial and economic rights and legitimate interests of individuals and legal entities.

Key words: financial sphere, economic sphere, financial and economic sphere, economic security, financial security, administrative offense, prevention of offenses, means of administrative law.

Formulation of the problem. The implementation of the basic principles of financial and economic security of the state is possible due to the purposeful and constant impact on the main aspects of the functioning of the economic infrastructure, taking into account all the threats and possible consequences. The financial and economic sphere is a complex economic and legal phenomenon that embodies various spheres of society, and is a specific branch of human activity to develop the interests of members of the social community on the formation, mobilization and allocation of financial resources, exchange, distribution and redistribution of gross domestic product.

The system of offenses in the financial and economic sphere in Ukraine poses a significant threat to the financial and economic security of the state, which is part of the national security of Ukraine as a whole.

They are a holistic clearly structured set of delicts relating to the creation, distribution and redistribution of funds of financial resources and financial assets of the state, the implementation of public legal services of financial and economic nature, guaranteeing the state's functions in ensuring social functioning, distribution and exchange products to meet the material needs of society, the implementation of control and management rights of public administration in the field of financial and economic relations, formation, consideration, approval, amendments, budget execution, payment of taxes and other mandatory payments, customs and tariff regulation and movement of goods across the customs border, the functioning of banking structures, the banking system in general, organizational and economic, industrial relations, property relations, the functioning of the entire economic mechanism of the state, economic security, stability of economic and legal regulation common relations, economic rights and legitimate interests of individuals and legal entities.

Hypothesis formulation and goal setting. The diversity of delicts in the financial and economic sphere requires a wide range of means of counteraction, increasing involvement in the prevention of such offenses by representatives of business entities, public organizations and citizens. It forces to rethink the system of administrative and legal means of counteracting such delicts.

Despite the ongoing process of updating the current legislation on combating such offenses, the issue of prevention of these delicts has remained out of the attention of the legislator and the scientific community as a whole.

Research methods. The methodological basis of the work became the key to argumentation and concretization of the subject of research, allowed to carry out a proper justification of the main provisions of the dissertation.

The methodological basis of the study formed general and special legal methods, including: methods of analysis, synthesis, dialectical, historical and legal, system-structural, logical-semantic, functional, formal-logical, classification method, statistical, sociological, comparative law methods, general logical methods of deduction, induction, modeling.

Analysis of recent research and publications. In modern conditions of improving the financial and economic system, an extremely important task of modern legal science is the formation of a system of measures of social, special, individual nature, aimed at preventing delinquent activity in the financial and economic sphere.

A significant contribution to the development of the problem of combating offences in the financial and economic sphere was made by scientists whose research concerned certain subsystems of the financial and economic sphere. Among them are V. Andrienko, A. Aparov, O. Hetmanets, O. Kolisnyk, Y. Sokolov, Y. Postolenko, V. Ishchenko, I. Temoveeva, Yu. Ivanov and other authors.

Various delinquent manifestations in the financial and economic sphere were the subject of scientific research by D. Kobelko, K. Prokhorov, Yu. Yarmolenko, A. Boyko, T. Skakun, Ya. Mochkosh, A. Klochko, S. Lepsky, V. Nezhevelo, O. Kukshinov, O. Tikhonov, I. Masliy, G.M.Tropin, S. Vashchenko and others.

Among researchers of problems of prevention of administrative offenses in modern conditions of social and legal transformations it is necessary to note such domestic authors, as S. Sokha, K. Igoshev, V. Ustinov, O. Makarenko, I. Stakhura, E. Dubovy, V. Felik, I. Lychenko, U. Rusanyuk and others.

N. Shmigelska, N. Kantor, V. Vasylieva, O. Reznik, Yu. Poptanych and others devoted their works to the problems of prevention of administrative offenses of financial and economic nature.

Presenting main material. Given the interpretation of the meaning of “financial and economic sphere” and “administrative offense”, the term “offense in the financial and economic sphere” should

describe socially dangerous, illegal, culpable act of a delict subject, encroaching on the relationship of creation, distribution and redistribution funds of financial resources and financial assets of the state to meet economic needs, production, distribution, exchange, consumption of goods or services, the implementation of public legal services in the financial and economic sphere, guaranteeing the implementation of its financial and economic functions.

The financial and economic sphere and the related delicts indicate the need to prevent offenses in this area. Despite the sufficiency of legal instruments of influence in the financial sphere, they are not always able to provide preventive influence on the subjects of financial relations to prevent and stop delicts. Therefore, it is important to study the means of prevention of financial offenses in Ukraine, to prevent and stop misconduct in the financial sphere and punishment for their commission [1].

Prevention of offenses in the financial and economic sphere is an established system of measures implemented by public administration bodies, including law enforcement agencies, local governments, NGOs and individuals and legal entities and related to the elimination of factors that cause illegal actions for financial and economic security and financial and economic rights, interests of individuals and legal entities, elimination of all negative trends in the financial and economic sphere, reducing their level and scale. For this purpose, the systematic work combining legal, organizational and educational measures is carried out [11, p. 146].

All preventive activities concern the identification and elimination (neutralization) of the causes and conditions of delinquent manifestations, the implementation of stimulating law-abiding behavior through active participation in the formation of legal awareness of persons prone to delinquency, developing socially useful skills and priorities. It is important that the implementation of prevention in close cooperation and coordination with the subjects of its implementation is recognized as indisputable [10, 11].

The specifics of the financial sphere make it possible to determine the prevention of offenses in the following areas: 1) in the budget sphere; 2) in the tax sphere; 3) in the customs sphere; 4) in the banking sector [19, p. 63].

Prevention of delicts in the financial and economic sphere encourages the subjects of its implementation to involve a wide range of legal, economic, educational, political and other measures. Their involvement is carried out in order to eliminate or overcome the negative factors that are the causes and conditions of the delinquent activity of a financial and economic nature, accompanied by legal regulation. Legal regulation of prevention of offences in the financial and economic sphere is that legal norms stimulate and encourage socially useful behavior, counteract those factors that negatively affect a person's activities in the financial and economic sphere, neutralizing their negative impact [2].

The legal measures used to identify and eliminate the causes of delinquent behavior in the financial and economic sphere include: bringing the current financial and economic legislation of Ukraine in line with EU law; clear legislative differentiation of misdemeanors in the financial and economic sphere, establishment of effective administrative and legal measures of punishment; elimination of conflicts in the legal regulation of the financial and economic sphere, which hinder the unambiguous interpretation of legal norms; improvement of legal regulation of administrative-procedural guarantees of realization of rights of subjects of financial and economic relations [5, p. 230].

Forms of implementation of preventive action are early and direct prevention of delicts. The first form concerns the influence on the motivation of the individual, which is relatively far from committing a delict, and the second – when a person is potentially capable of committing an illegal act, commits an attempt to commit it. That is, for the most part, they are separated by time, which "separates" the person from the moment of possible commission of the offense [4, p. 285].

The financial and economic sphere should be considered as a complex economic and legal phenomenon that embodies various branches of society, is a specific area of human activity to meet the interests of social community in the formation, mobilization and allocation of financial resources, exchange, distribution and redistribution of gross domestic product. The most important factor that determines the stability of the financial and economic system and is a condition for guaranteeing financial

and economic stability is the fight against financial and economic offenses. Offenses in the financial and economic sphere in Ukraine – is a socially dangerous, illegal, culpable act of a delict entity, encroaching on the creation, distribution and redistribution of funds of financial resources and financial assets of the state to meet economic needs, production, distribution, exchange, consumption of goods or services, implementation of public and legal services in the financial and economic sphere, guaranteeing the implementation of the state of its financial and economic functions. The system of offenses in the financial and economic sphere in Ukraine is a holistic clearly structured set of delicts related to the creation, distribution and redistribution of funds of financial resources and financial assets of the state to meet economic needs, implementation of public legal services of financial and economic nature, guaranteeing the implementation of the state of its functions in ensuring the functioning of the system of social production, distribution and exchange of products to meet the material needs of society, the implementation of control and management rights of entities in the field of financial and economic relations [14].

The main features of the system of offenses in the financial and economic sphere in Ukraine are integrity and clear structure in view of their content and social danger, perpetrators and other specifics, unity and mutual influence of factors that cause them, destructive impact on the state and financial economic relations, relations of public administration of the financial and economic sphere that exist in it, objectification through destructive, illegal action or inaction, which from a legal point of view is expressed in a person's failure to fulfill their financial and economic obligations, violation of law, non-compliance with regulations or prohibitions, violation of the rights of other participants in financial and economic relations, relations concerning the administration of the financial and economic sphere, abuse of office, creation of illegal barriers for participants in financial and economic relations, etc. Delinquent manifestations in the financial and economic sphere are characterized by the following features: direct impact on the financial and economic security of the state and financial and economic rights of individuals and legal entities; stability of negative impact and direct damage to organizational and economic, industrial relations, property relations, the functioning of the entire economic mechanism of the state, economic security, stability of economic and legal regulation of social relations, economic rights and legitimate interests of individuals and legal entities; diversity of participants in financial and economic relations; diversity of public administration bodies that implement control functions in this area; diversity of sectoral manifestations of financial and economic activity; a variety of regulations governing financial and economic relations; contribute to the formation of the “shadow” economy and corruption; high degree of latency of many delinquent manifestations in this area [18, p. 100].

Features of prevention of offences in the financial and economic sphere are:

1) prevention of offenses in the financial and economic sphere, consisting of a set of elements, i. e. measures of social, special, individual nature, and relates to the prevention and cessation of delicts, manifested as non-fulfillment of financial and economic obligations, violation of the law, non-compliance of regulations or prohibitions, violation of the rights of other participants in financial and economic relations, relations on the administration of financial and economic spheres, abuse of office, creating illegal barriers for participants in financial and economic relations, stopping illegal activities in financial and economic spheres, identifying and eliminating causes and conditions that contribute to the commission of such offenses, their neutralization;

2) prevention of administrative offenses in the financial and economic sphere involves a wide range of legal, economic, educational, political and other measures to eliminate or overcome the negative factors of public life, which may be manifested as causes and conditions of delinquent activities of financial and economic nature. Their implementation is carried out on the basis of taking into account the psychological characteristics of the subjects;

3) prevention is associated with the implementation by specialized and non-specialized subjects of prevention of legal phenomena, through which the subjects of financial relations achieve the legal goal of preventing delicts, encroaching on the creation, distribution, redistribution and use of financial resources,

Prevention of offenses by means of administrative law in the financial and economic sphere

funds or financial assets to meet their needs, the implementation of public services, the implementation of the state's economic functions;

4) the object of prevention of offenses in the financial and economic sphere is the behavior and lifestyle of persons with a probability of committing administrative offenses of a financial and economic nature, which reflect the direction against society; some psychophysical features; adverse environmental and living conditions;

5) the system of subjects of prevention of offences in the financial and economic sphere covers a wide range of entities endowed with special powers in the field of prevention, and not endowed with them, in particular public and government administration bodies, local governments, legal entities and individuals that act as participants in financial and economic relations [9 p. 285].

Thus, the main criteria for the classification of offenses in the financial and economic sphere in Ukraine are the content of legal relations protected by administrative-delinct legislation, specific objects of administrative offenses in the financial and economic sphere, the subjects of their commission, the source of such offenses, a sign of "public danger" and the specifics of the nature of the damage, signs of the subjective side (regarding the forms of guilt) and factors of financial and economic nature that determine the commission of administrative delicts.

Prevention of administrative offenses in the financial and economic sphere is a multilevel system of measures of social, special, individual nature, aimed at identifying and neutralizing the causes, conditions of administrative misconduct, encroaching on the regulation of mobilization (formation), distribution (redistribution), use of centralized and decentralized monetary funds, formation, consideration, approval, amendments, budget execution, payment of taxes and other obligatory payments, customs and tariff regulation and movement of goods across the customs border, functioning of banking structures, banking system in general, organizational and economic, industrial relations, property relations, the functioning of the entire economic mechanism of the state, economic security, stability of economic and legal regulation of social relations, financial and economic rights and legitimate interests of individuals and legal entities, preventing the possibility of their implementation, termination of such delicts, prevention of harmful consequences from their commission [20, p. 162].

The financial sphere should be considered as a specific sphere of society, which concerns the formation, distribution and redistribution of funds of financial resources, financial assets of the country to meet the economic needs of society, provide quality public services, ensure the implementation of state functions and more.

Administrative and legal means of prevention of offences in the financial sphere is a system of substantive and operational legal phenomena through which the subjects of financial control, law enforcement and other bodies, citizens, their associations and other subjects of counteraction to financial offenses, establish the causes and conditions for committing misdemeanors in the financial sphere, neutralize the factors that determine delinquent behavior, have a preventive effect to prevent tax, budget offenses, banking offenses, financial offenses in the customs sphere and other financial offenses. Means of administrative law are an important tool for the prevention of not only administrative offenses in the financial sphere, but also financial offenses, because with the potential of administrative law are able to prevent and stop delinquent behavior of a financial nature. Such measures are law enforcement and administrative in nature.

A comprehensive analysis of administrative and legal means of crime prevention in the financial sphere makes it possible to identify the most significant features of these tools. Firstly, this system of measures is implemented with regard to relations associated with mobilization (formation), distribution (redistribution), the use of centralized and decentralized funds. They relate to the prevention of delicts, defined by the Code of Administrative Offenses, financial delicts, the legal structure of which is outlined in the content of the Tax Code of Ukraine, the Budget Code of Ukraine, certain regulations. Secondly, this system of administrative remedies should be defined as a set of closely related, complementary substantive and active legal phenomena that help the subjects of legal relations to achieve certain public law goals to

prevent delicts related to the formation, distribution, redistribution, use of centralized and decentralized monetary funds, financial resources and financial assets of the state in order to meet the needs in the field of management, provision and receipt of public-legal services, implementation of guarantees for the state to perform its functions. The third feature of the studied tools is due to the specifics of the type of activity of administrative and legal means of prevention of financial delicts. Their implementation is inextricably linked to the presence of many of levels and a wide variety of species. The implementation of preventive measures is carried out at the social, special and individual levels. The implementation of these tools mostly requires special competence, authority of the subjects of crime prevention in the financial sphere. The fourth feature of the studied administrative and legal means is manifested in a wide range of influences on the functioning of a significant range of entities, which may include officials of ministries, other executive bodies, local governments, banks, businesses, public funds, budgetary institutions [6; 10; 13].

Important criteria that contribute to the understanding of the specifics of the prevention of delict in the financial sphere are the specifics of the type of financial relations that determine the content of financial and legal institutions. In view of the above mentioned, we can distinguish the prevention of budget, tax, customs delicts, offenses in the banking sector, and so on.

Prevention of delicts in the budget sphere should be considered as a multilevel system of measures to ensure the effective functioning of the budget system. These measures serve to identify the facts of illegal, inappropriate and inefficient work of public administration bodies related to the formation, distribution, use of funds, violation of budgetary discipline, clarification of the factors that cause these delicts, reasons and conditions of their commission, patterns in formation of the system of delicts in the budget sphere and increasing the efficiency of the use of finances in the state. Signs of prevention of offenses in the budget sphere by means of administrative law are that prevention refers to offenses that may take the form of actions or omissions, illegal disinformation, organizational, administrative, rule-making corruption and other activities. Often the activity of violating the budget legislation concerns corrupt actions of the administrator or recipient of budget funds. Preventive measures are taken during the state financial control, which is implemented by entities that have special powers in the budget sphere. In the course of prevention of offenses in the budget sphere, the means of administrative law are closely intertwined with the means of financial law, and their separate existence is impossible. The legal institute of state financial control itself is a complex legal institute, which combines the instruments of financial and administrative law. The potential of the latter is realized due to the need to stop delinquent actions in the financial sphere, including budgetary ones, to seize certain documents and items on management decisions, which serve to prevent similar offenses in the future, and so on. The subjects of the implementation of crime prevention in the budget sphere of administrative law are a wide range of state institutions that form the system. The general social preventive influence is realized through the implementation of state plans and programs of economic, social nature at the national or regional level, based on the development strategy of the region. Individual preventive impact is aimed at the activities of a wide range of entities that are officials of the administrator and recipients of budget funds [16, p. 151].

Administrative and legal means of prevention of offenses in the tax sphere are a system of substantive instruments (administrative and legal norms for the prevention of delicts in the tax sphere, acts of individual action against potential offenders (regulatory and protective acts)) and activity tools, implemented in combination with measures of organizational, managerial and moral-educational, technical and other nature. Prevention of offenses in the tax sphere by means of administrative law requires coordinated action of tax control entities, law enforcement agencies and the public to neutralize economic, legal, moral, organizational, technical and other causes of delicts related to violations of the order of collection and administration of taxes, fees, the procedure for exercising the rights of taxpayers and fees, rights, responsibilities, competence of regulatory authorities and subjects of administration of taxes, fees and other violations of tax legislation. The introduction of information-analytical systems for collecting information on delinquent activity is essential for the prevention of tax offenses. Expanding the possibilities of computer processing of information about the objects of tax control, risks in the tax sphere, the causes and conditions of possible offenses is the key to effective counteraction of tax offenses [14].

Prevention of offenses by means of administrative law in the financial and economic sphere

Prevention of financial offenses in the customs sphere by means of administrative law is a special area of counteraction to financial offenses and aims to establish the causes and conditions of such administrative offenses of customs and customs-tariff nature, neutralize factors that determine such activities as illegal, implementation of preventive influence on customs and customs-tariff relations and implementation of prevention and cessation of delicts related to them. Customs offenses of a financial nature are a specific group of delicts. Their specificity is due to the fact that they are usually a continuation of a chain of other illegal activities to carry out fictitious activity, violation of the order of foreign economic activity and business activities. Achieving the desired result is possible only through the comprehensive application of measures of general, special and individual nature to offenders, effective identification of risks of delinquent behavior in the customs sphere, automation and informatization of customs control and registration processes, communication with customs and control authorities of other states, organization of joint special operations on prevention of such delicts, approbation of the best foreign experience of counteraction to customs delicts of financial character, etc. In this regard, the experience of the United States, Singapore, the United Kingdom and Sweden in building a system capable of effectively combating violations of customs regulations is important. The experience of the US Customs Service, the UK Border Agency and the Romanian Customs Service (DGV) is valuable in this regard. At the heart of modern systems of customs organization are several innovations, the implementation of which is the key to effective counteraction to customs offences [17].

Administrative delicts of banking nature are an important part of financial and economic misconduct. Signs of prevention of illegal activities in the banking sector, which will provide a comprehensive understanding of the content and features of preventive influence on the banking sector are the following: 1) firstly, the prevention of administrative offenses in the banking sector involves various types of illegal acts that cause significant damage not only to commercial banks and credit institutions operating under the general monetary mechanism in the field of bank lending, but also to depositors, generally have a negative impact on the economy of the state, harm the state interests associated with the avoidance of inflation, the devaluation of the national currency; 2) the system of investigated offenses, the prevention of which is directed by the state, concerns delinquent behavior as employees of the bank (officials, which may include bank managers; their deputies, heads of credit departments; their deputies, credit inspectors and operators), abusing their official position cause damage to banking institutions or individual customers, as well as illegal activities of bank customers or third parties that violate the order of banking activities; 3) offenses in the banking sector have a polysystemic negative impact, destructuring other systems (budget, tax, currency). Therefore, the development and implementation of measures to prevent delinquent behavior in this area should be carried out taking into account the polysystemic nature of the investigated offenses; 4) the banking sector is relatively “closed” from various control influences of public administration bodies, which should be taken into account when planning preventive measures.

The object of administrative offenses in the economic sphere is the state economy as a whole and its constituent elements (established procedure for industry operation, construction and use of fuel and energy resources, trade, catering, provision of services and business activities, possession, use and disposal of property, engaging in agricultural activities, etc.), economic rights and freedoms of individuals and legal entities. Particularly important areas of economic relations in which administrative offenses are committed are industry, construction and use of fuel and energy resources (Chapter 8 of the Code of Administrative Offenses), trade, catering, services (Chapter 12 of the Code of Administrative Offenses), property (Chapter 6 of the Code of Administrative Offenses), agriculture (Chapter 9 of the Code of Administrative Offenses), etc. [6].

Classification of administrative offenses in the economic sphere is the key to determining effective means of prevention of such delicts, allows to consider, when choosing the latter, specifics of the species manifestation of illegal behavior of the person, the possibility of adverse consequences of property and non-property nature. Administrative offenses in the economic sphere can be classified according to a number of criteria, determining among which are the object of these administrative offenses, the source of

fixation of administrative offenses, their legal composition, the nature of the damage, the specifics of the objective side of the offense (act or omission).

Administrative and legal means of prevention of offences in the economic sphere is an important system of administrative law instruments aimed at ensuring economic security, stability of economic and legal regulation of public relations, neutralization of factors that negatively affect it, violate economic rights and legitimate interests of individuals and legal entities, cessation of delinquent behavior in the economic sphere. They are marked by a number of signs. The most important means of prevention of administrative offenses in the economic sphere are the rules, individual decisions of public authorities, activities related to active means to prevent, stop delinquent behavior, eliminate the factors that cause it, neutralize the causes and conditions of its implementation, elimination of preconditions for their repetition. Means of prevention of administrative offenses in the economic sphere are manifested in the form of tools of a special kind of social management or law enforcement activity, aimed at establishing the principles of economic and national security, priority protection of economic rights and legitimate interests of citizens and economic interests. This system of means is a tool used by state, non-state institutions, public formations, citizens. Preventive measures are implemented through the potential of regulatory, organizational and educational preventive action. Means of prevention of administrative offenses in the economic sphere may relate to general social prevention, or are implemented in the framework of special and individual measures for the prevention of economic offenses [19, p. 122].

An important group of offenses in the economic sphere are delicts in the field of industry, construction and use of fuel and energy resources. Prevention of these offenses by means of administrative law is an important area of preventive influence on the economy, as it is aimed at creating safe, stable conditions for its development. Proper implementation can eliminate the factors that affect the efficiency of many economic processes, which, although not considered in the context of industry, construction and energy, but are under their constant influence, are determined by the state of these areas of the economy. There are three types of delicts in the system of investigated delicts: 1) administrative offenses in the field of industry; 2) administrative delicts in the field of construction; 3) administrative misdemeanors related to the use of fuel and energy resources. Among the subjects of prevention of such delicts are the State Labor Service, the Ukrainian State Architectural and Construction Inspectorate (SACI of Ukraine), the Ukrainian State Agency on Energy Efficiency and Energy Saving (SAEE), enterprises and organizations in charge of electricity networks, state energy regulators, local governments, administrative commissions under the executive bodies of city councils and many others. It is emphasized that many preventive actions are taken during supervision and control, for example in the field of electricity and heat supply.

Prevention of offenses in trade, catering, services and business by means of administrative law is a set of measures of administrative and legal influence on legal relations to neutralize factors that negatively affect the protection of the rights of subjects of these relations, violate their right to conduct business, trade activities, activities in the field of services, harm the economic interests of these entities, the state-determined procedure for such activities and the economy as a whole. It has a number of characteristic features: 1) the subjects of preventive influence are public administration bodies that operate on a clearly defined regulatory basis and have the powers of preventive nature, that are enshrined in regulations, to prevent and stop illegal actions in the field of services and certain business activities, settlements and foreign exchange transactions, antitrust and economic competition law, and actions of subjects of power in relation to business entities. Such entities also include public councils at government bodies, public organizations and business entities themselves, citizens; 2) focus on prevention and termination of activities of persons that negatively affect the state-guaranteed procedure for the provision of services and business activities (Articles 155, 156-1 of the Code of Administrative Offenses), some of its types (Articles 156, 156-2, 156-3, 156-4, 160, 161, 164-14 of the Code of Administrative Offenses); the procedure for obtaining permits, licenses, carrying out permitted types of business activities (Articles 164-16, 166-12 of the Code of Administrative Offenses), the procedure for settlements and foreign exchange transactions (Articles 155-1, 162, 162-1, 163-15, 164-4 of the Code of Administrative Offenses)), antitrust regulation

(156-3, 164-3, 166-1, 166-2 of the Code of Administrative Offenses), provision of administrative services to business entities (Articles 166-3 of the Code of Administrative Offenses, 166-21, 166-24, 166-27 of the Code of Administrative Offenses); 3) such measures reflect a combination of economic and administrative methods of influencing the behavior of officials and business entities, reflect a close combination of legal and non-legal measures (educational, explanatory, coercive), can be used orally, and in the form of legally significant actions (inspection and seizure of documents, objects, inspection, establishment of certain administrative restrictions, revocation of permits and licenses), through the issuance of an individual legal act (instruction); 4) prevention of offenses in trade sector, catering, services and entrepreneurship is carried out on such principles as legality, differentiated approach, combination of general and individual measures to prevent delict, control of public administration, the idea of dominance of consumer interests over the interests of businessmen and protection of rights of businessmen from illegal actions of public administration, systematicity, proportionality, planning and forecasting [6].

Preventive influence on delinquent behavior of persons in the field of property is aimed at encouraging citizens, officials to law-abiding behavior, reducing the number of delicts for possession, use and disposal of property and the amount of damage caused by delicts, neutralizing the causes and conditions of delinquent behavior, promoting socially acceptable models in the field of property, on its acquisition, sale, termination through the use of educational, propaganda tools, a positive impact on potential violators through their social adaptation. Among the entities endowed with powers in this area are the bodies of the specially authorized body of executive power in the field of labor, specially authorized bodies of executive power in the fields of water management, geology and subsoil use, fisheries protection bodies, forestry bodies, hunting bodies, bodies of the specially authorized central body of executive power in the field of ecology and natural resources of Ukraine, the National Police, local self-government bodies, their officials, public organizations and citizens [15, p. 131].

Administrative delicts in the field of agriculture have a number of common features: they have a generally negative impact on agriculture as a special sector of the economy, whose task is to provide the population with food and raw materials for a number of industries; the objective side of such delicts concerns the destruction of crops harvested in the field, damage to plantations, violation of phytosanitary and veterinary and other state-established requirements for agricultural production, during its transportation across the customs border, for seed and nursery, for protection of animals and plants and actions in the field of agriculture that harm the health of the population; the subjects of such delicts are officials, citizens engaged in agriculture, officials responsible for monitoring compliance with the requirements for seed production, crop production, animal husbandry, veterinary and sanitary regulations, persons working as mechanics; such violations are manifested in active and passive form. The activities of the subjects of crime prevention in agriculture are manifested through the targeted influence of officials, citizens engaged in agriculture, officials whose competence includes monitoring compliance with the requirements for seed production, crop production, animal husbandry, veterinary and sanitary regulations, etc., to bring their activities in accordance with the requirements of current legislation in the field of crop, animal husbandry, veterinary and other rules specified in current legislation, termination of delinquent behavior in the field of agriculture, identifying the causes and conditions of such administrative offenses, factors determining the illegal activities of person in the field of agriculture, protection of the rights of consumers of agricultural products, preventive influence on persons prone to illegal behavior, preventive influence on persons prone to illegal behavior in this area [9, p. 186].

Means-regulators of offenses in the financial and economic sphere need to be improved in modern conditions, in particular norms, provisions of current administrative legislation, administrative and legal acts of general and individual action, which determine the legal basis for prevention and cessation of delinquent behavior in the financial and economic sphere, and activities, in particular law-making, law enforcement in the financial and economic sphere, that are able to neutralize factors that negatively affect the activities of participants in financial and economic relations, encourage them to commit tax, budget offenses, banking offenses, customs misdemeanors, offenses on the established procedure for the

functioning of industry, construction and use of fuel and energy resources, trade, catering, provision of services and business activities, ownership, use and disposal of property, engaging in agricultural activities.

The adoption of a number of normative legal acts should serve to solve the problems of crime prevention in the financial and economic sphere, including the Law of Ukraine “On Crime Prevention in Ukraine” and the Concept of implementation of state policy in the field of financial and economic crime prevention for the next five years. Adoption of the Concept of implementation of state policy in the field of financial and economic crime prevention for the next five years would allow to specify the system of means, methods of financial and economic crime prevention and subjects of its implementation in the new socio-economic and political conditions, considering the risks and threats of a new type. In this program document, the state should identify the main risks and threats of financial and economic nature, especially new ones related to economic development, scientific and technological progress and computerization of most financial and economic processes, those related to the financial and economic aspects of confrontation with other states on the background of JFO, to identify the subjects of preventive action, the means of its implementation, ways and means of neutralizing the causes of these delicts. Also, at the time of adoption of the Law of Ukraine “On Prevention of Offenses in Ukraine”, which would not only outline the system of measures to protect priority areas of public relations from illegal encroachments, but also the principles and methods of their implementation, the system of factors that determine this activity, the legal basis for the general and individual prevention of such delicts would be outlined. Particular attention in this legal act should be paid to the subjects of preventive action, their tasks, rights and responsibilities, forms and methods of interaction, the procedure for exercising their powers and ways to involve the public in preventive work. It is also time to develop departmental documents on the prevention of offenses committed by officials in the financial and economic sphere. Adoption of such well-known documents in tax, budget, banking and other areas, which would outline the specifics of preventive influence on officials of public administration bodies, authorized representatives of legal entities in these areas, whose activities are associated with the risks of delicts using official position, given the impact of corruption, is extremely relevant. The urgent task is to identify a system of preventive measures that would be effective for a particular area of socio-economic relations [17].

It is possible to group the main problems of prevention of offenses in the financial and economic sphere by means of administrative law into several blocks: 1) shortcomings of the modern financial and economic system, variety of risks to ensure financial and economic security of the state, the dynamics of their changes; 2) imperfection of the regulatory framework for the prevention of offenses in the financial and economic sphere, the lack of unified regulations that would determine the features of the legal framework, tasks, types and procedure for preventive work on financial and economic delicts; 3) shortcomings in the functioning of the subjects of crime prevention in the financial and economic sphere, coordination of their preventive activities, communication relations with public authorities, local governments, regulatory and law enforcement agencies; insufficient involvement of representatives of business entities, public organizations and citizens in the prevention of such offenses. The powers of the subjects of preventive influence on the financial and economic sphere, including the powers of the Bureau of Economic Security of Ukraine for the prevention of such administrative delicts, are insufficiently regulated in the current legislation; 4) the lack of proper level of digitalization of crime prevention processes in the financial and economic sphere, information support of the process of public financial control, implementation of modern IT solutions in the activities of public financial control bodies, etc. [8].

Ways to overcome the outlined problems of prevention of offences in the financial and economic sphere should include the formation of legal guarantees of the financial and economic system of the state aimed at ensuring its effective functioning, the formation of modern legal instruments as substantial legal phenomena that allow financial control entities and other bodies, members of the public to counteract financial and economic offenses, improve the enforcement activities of such entities through the establishment of an appropriate level of cooperation, exchange of information, testing a unified set of preventive measures to neutralize the causes and conditions contributing to encroachment on the financial

and economic system, control systems for their implementation, implementation of modern IT solutions in the activities of public financial control bodies to identify, analyze and assess the risks of public bodies in the financial and economic sphere, improving the legal status of the Bureau of Economic Security of Ukraine and expanding its capabilities for the prevention of offenses in the financial and economic sphere.

The practical activity of public administration bodies, which organize and implement measures to prevent delicts of the financial and economic sphere, needs to be improved. In particular, it is important to improve the regulatory definition and practice of the State Audit Office, strengthen public financial control over extremely risky areas, develop electronic interaction of regulatory authorities, improve regulation of audit mechanisms and measures of expert-analytical nature of the Accounting Board, involve civil society institutions, media, scientists, experts to the sphere of their activity, improvement of communication with other public administration bodies, detailed delineation of the procedure of mutual exchange of information between the State Tax Service of Ukraine, the State Treasury Service of Ukraine, The State Financial Monitoring Service of Ukraine and other entities, establishment of automatic access to databases on the results of control measures; digitalization of processes in the activities of control services in order to create conditions for the effective implementation of their tasks and functions. It is especially important to attract the potential of automated information systems and hardware and software to identify both the delicts in the financial and economic sphere, and the causes and conditions of their commission. Strengthening the prevention of financial and economic offenses is associated with the establishment of the Bureau of Economic Security, which will acquire the functions of a central executive body that implements state policy on prevention, detection, cessation, investigation and detection of economic offenses, which directly or indirectly damage the public interest in the field of finance. According to the current legislation, the activities of the newly created body will counteract the risks in the budget, tax, customs, monetary or investment spheres, the impact of which leads to the toning of the economy and weakening the economic security of the state [12].

Improving the administrative and legal support for the prevention of offenses in the financial and economic sphere should be the result of identifying and adapting best practices in the functioning of public administration bodies in the financial and economic sphere in foreign countries. In foreign countries, there are four main models of organizational and legal mechanism for the functioning of authorized bodies of the state, which have the opportunity to implement measures to prevent delicts in the financial and economic sphere. According to the first, the police have a wide range of powers to combat financial and economic delicts, and tax, budget, customs and other bodies perform only the function of administering of financial and economic activities. The second model envisages the formation of a paramilitary law enforcement body endowed with appropriate competence for the prevention of financial and economic delicts. According to the third, a stable tandem of tax and customs institutions is being formed, as well as the creation of a specialized law enforcement body endowed with control functions over financial institutions. The fourth model provides for the formation of a significant number of entities that have control powers, can implement the prevention of delicts in the financial and economic sphere, to impose penalties. The practice of foreign countries to create a single paramilitary law enforcement agency, which is responsible for combating economic offenses, should be taken into account.

Conclusion. Thus, legal means of prevention of offenses in the financial sphere is a certain system of legal phenomena, using which law enforcement agencies, financial control entities, other bodies, citizens, their associations and other entities establish the causes and conditions of delicts in financial sphere, eliminate the factors that create delinquent behavior, have a preventive effect to prevent the commission of budget and tax offenses, offenses in the customs and banking spheres, other financial offenses and misdemeanors.

Prospects for further research. Analysis of the formation of scientific views on solving the problem of combating offences in the financial and economic sphere is an important part of the scientific basis.

It is necessary to focus on current trends in scientific research to determine the patterns of formation of this category, the specifics of theories and statements related to the subject field of research.

REFERENCES

1. Andriyenko, V. M., Mihus, I. P., Koval, Ya. S. (2017). Mizhnarodnyy dosvid formuvannya derzhavnoyi polityky u sferi zabezpechennya finansovoyi bezpeky yak skladovoyi natsionalnoyi bezpeky. *Demokratychnye vryaduvannya*. Vyp. 20. URL : http://nbuv.gov.ua/UJRN/DeVr_2017_20_7.
2. Zakon Ukrainy "Pro Byuro ekonomichnoyi bezpeky Ukrainy" vid 28.01.2021 r. No. 1150-IX. *Ofitsiynyy visnyk Ukrainy*. 2021. No. 25. S. 11.
3. Zayats, O. S. (2018). Protydiya administratyvnym pravoporushennyam u finansoviy sferi: monohrafiya. Lviv : LvDUVS. 240 s.
4. Kalyuzhnyy, R. A., Komzyuk, A. T., Pohribnyy, O. O. ta in. (2008). Naukovo-praktychnyy komentar Kodeksu Ukrainy pro administratyvni pravoporushennya Kyiv : Vseukrayinska asotsiatsiya vydavtsiv "Pravova yednist". 781 s.
5. Kovaliv, M. (2017). Rol ta mistse profilaktyky u sferi borotby z administratyvnymy prostupkami. *Visnyk Natsionanoho universytetu "Lvivska politekhnika"*. Seriya: yurydychni nauky: zbirnyk naukovykh prats. No. 865. S. 230–235.
6. Kodeks Ukrainy pro administratyvni pravoporushennya. URL : <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.
7. Kolisnyk, O. Ya. (2011). Ekonomichna pryroda byudzhethnoyi bezpeky derzhavy. *Naukovi zapysky Natsionalnoho universytetu "Ostrozka akademiya"*. Ser.: Ekonomika. Vyp. 16. S. 369–377. URL : <http://nbuv.gov.ua/j-pdf/13>.
8. Ochurenko, S. V. (2017). Rozmezhuvannya ta vzayemodiya finansovoho prava i administratyvnoho prava. *Verkhovenstvo prava. Supremaŭia Dreptului*. No. 4 URL : <http://sd-vp.info/2017/rozmezhuvannya-tavzayemodiya-finansovogo-prava-finsovogo-prava-i-administrativnogo-prava/>.
9. Padalko, R. (2013). Administratyvno-pravova pryroda ekonomichnoyi bezpeky Ukrainy. *Naukovyy visnyk Natsional'noho universytetu bioresursiv i pryrodokorystuvannya Ukrainy*. Vyp. 182. Ch. 1. S. 285–292.
10. Polozhennya pro Departament zakhystu interesiv suspilstva i derzhavy Natsionalnoyi politsiyi Ukrainy, zatverdzhenny nakazom Natsionalnoyi politsiyi Ukrainy vid 12 bereznya 2020 r. No. 202. URL : <http://tranzit.ltd.ua/nakaz/files>.
11. Poptanych, Yu. M. (2017). Normatyvne rehulyuvannya diyalnosti pidrozdiliv Natsionalnoyi politsiyi Ukrainy, shcho zdiysnyuyut' zapobihannya pravoporushennyam u finansoviy sferi ta haluzyakh ekonomiky: administratyvno-pravovi aspekty. *Naukovyy visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav*. No. 4. S. 146–154.
12. Pro zatverdzhennya Polozhennya pro Departament zakhystu ekonomiky Natsionalnoyi politsiyi Ukrainy : Nakaz Natsionalnoyi politsiyi Ukrainy vid 07.11.2015 r. No. 81. *Ofitsiynyy sayt Natsionalnoyi politsiyi Ukrainy*. URL : <http://www.npu.gov.ua/uk/publish/article/1813727>.
13. Proekt Zakonu Ukrainy "Pro profilaktyku pravoporushen". URL : <https://cv.court.gov.ua/tu26/6/2358>.
14. Skakun, T. O. (2018). Ekonomichni zlochyny: sutnisni oznaky ta kryminalistychnyy analiz yikh vchynennya. *Efektivna ekonomika: elektron. nauk. fakhove vydannya*. No. 3. URL : http://www.economy.nayka.com.ua/pdf/3_2018/155.pdf.
15. Tolochko, V. V. (2018). Profilaktychna diyalnist orhaniv Natsionalnoyi politsiyi Ukrainy shchodo zabezpechennya ekonomichnoyi bezpeky. *Naukovyy visnyk publichnoho ta pryvatnoho prava*. Vyp. 6. Tom 2. S. 151–158.
16. Tolochko, V. V. (2018). Profilaktychna diyalnist' orhaniv Natsional'noyi politsiyi Ukrainy shchodo zabezpechennya ekonomichnoyi bezpeky. *Naukovyy visnyk publichnoho ta pryvatnoho prava*. Vyp. 6. Tom 2. 2018. S. 151–158.
17. Khomenko, V. P. (2017). Zapobihannya zlochynam u fiskal'nyy sferi yak skladova zabezpechennya finansovoyi bezpeky derzhavy. *Naukovyy visnyk Natsionalnoyi akademiyi vnutrishnikh sprav*. No. 2. S. 37–47. URL : http://nbuv.gov.ua/UJRN/Nvknuvs_2017_2_5.
18. Shmihelska, N. O. (2015). Administratyvno-pravove rehulyuvannya profilaktyky pravoporushen' u sferi ekonomiky: dysertatsiya na zdobuttya naukovooho stupenya kandydata yurydychnykh nauk : dys... kand. yuryd. nauk: 12.00.07. Kyiv. 173 s.

19. Yarmolenko, Yu. V. (2014). Administratyvna vidpovidalnosti za porushennya vymoh finansovoho zakonodavstva. *Nashe pravo*. No. 2. S. 162–168.

20. Chernyshova, O. O. (2014). Stan ta perspektyvy podalshoho vdoskonalennya protydyi pravoporushennyam u sferi intelektualnoyi vlasnosti. *Pivdenoukrayinskyi pravnychyy chasopys*.

Дата надходження: 17.08.2022 р.

Ірина Комарницька

Національний університет “Львівська політехніка”,
доктор права, доцент кафедри цивільного права і процесу
Навчально-наукового інституту права,
психології та інноваційної освіти
ORCID: 0000-0003-4314-877X

ПРОФІЛАКТИКА ЩОДО ПРАВОПОРУШЕНЬ ЗАСОБАМИ АДМІНІСТРАТИВНОГО ПРАВА У ФІНАНСОВО-ЕКОНОМІЧНІЙ СФЕРІ

Метою статті є отримання результатів у застосуванні наукового аналізу теоретико-методологічних та адміністративно-правових засад профілактики правопорушень у фінансово-економічній сфері засобами адміністративного права; визначено поняття, особливості профілактики правопорушень у фінансово-економічній сфері та адміністративно-правові засади її реалізації.

Представлено наукове підґрунтя дослідження профілактики правопорушень у фінансово-економічній сфері засобами адміністративного права. Воно відображає тенденції наукового пошуку щодо визначення закономірностей, способів формування й побудови теорій та тверджень, системи сучасних знань про особливості фінансово-економічної сфери, специфіку деліктів у фінансово-економічній сфері, особливостей профілактики правопорушень фінансово-економічного характеру, тощо, і охоплює кілька груп наукових розвідок.

Запропоновано авторський підхід до визначення поняття профілактики адміністративних правопорушень у фінансово-економічній сфері як багаторівневої системи заходів соціального, спеціального, індивідуального характеру, які спрямовані на виявлення причин, умов вчинення адміністративних проступків, що посягають на порядок регулювання мобілізації (формування), розподілу (перерозподілу), використання централізованих і децентралізованих грошових фондів, формування, розгляду, ухвалення, внесення змін, виконання бюджету, сплати податків та інших обов'язкових платежів, митно-тарифного регулювання та переміщення товарів через митний кордон, функціонування банківських структур, банківської системи загалом, організаційно-економічних, виробничих відносин, відносин власності, функціонування усього господарського механізму держави, економічної безпеки, стабільності економіко-правового регулювання суспільних відносин, фінансово-економічних прав та законних інтересів фізичних та юридичних осіб.

Ключові слова: фінансова сфера, економічна сфера, фінансово-економічна сфера, економічна безпека, фінансова безпека, адміністративне правопорушення, профілактика правопорушень, засоби адміністративного права.