

Pseudo-Business Is Modern Threat of Economic Security of the Republic of Kazakhstan

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Abstract: In this study, a researcher is considered the modern threats of pseudo-business of economic security of the Republic of Kazakhstan. The analysis of dynamics of pseudo-business is carried out on the basis of statistical data. Questions of compensation of the damage caused by actions of “pseudo-businessmen” are considered.

Key words: Pseudo-business, economic crime, organized crime, economy sector, financial and credit sphere, trade intermediary firm, tax avoidance, entrepreneurial activity

INTRODUCTION

An actuality of study and its communication with other main research works is considered in introduction, it is defined the purpose and proceeding from it a research problem, it is revealed the scientific novelty and its theoretical and practical importance, the competitor’s contribution to juris prudence is shown, also the structure and volume of work is specified.

First section of article (The All legal characteristic of pseudo-business): The cardinal reforms which are carried out in Kazakhstan dictate necessity of creation of a strong legal basis of the state and public life in the conditions of formation of the sovereign and independent state. The modern transition period based on stage-by-stage development of the market relations and consisting in formation of the long-term base in all areas of activity of the Kazakhstan society is impossible without normal functioning of economic activity.

Along with concrete progress in social and economic, political and other spheres of domestic society during the periods of creation of market economy of the state, there is observed the certain negative consequences, also which are characterized by criminalization of the specified spheres of public life that eventually was reflected in growth of economic corpses delicti which are in separate chapter 7 of the Criminal Code of RK.

N.A. Nazarbayev reasonably notes that the existing reality forced “To work immediately. We started carrying out the privatization, to create absolutely other taxation system, to form domestic business” (Nazarbayev, 2000). Along with the formed institute of business there is begun to appear, earlier unknown to criminal law, the new illegal acts: pseudo-business, illegal business, illegal bank activity and others. The created conditions of the free

market in Kazakhstan based on private ownership positively influenced on the formation and perspective development of business but also became the favorable environment for activization of various criminal manifestations of an economic orientation.

The accruing billow of the business commission, except material prejudice to the Kazakhstan society, negatively affects on the constructing economic relations. So, throughout the indicated above we will underline the next words by Rogov (1991): “The economic crime has considerable impact on the general condition of crime. With certain reservations it is possible to claim that in a sense it is that “base”, on which it is kept the “building” of all crime”.

The situation, stated above, specifies that in the basis of bigger number of crimes it is lien the economic reasons.

So world financial crisis introduced the amendments in activity of businessmen. For facilitation purposes of financial loading the Government of RK takes the appropriate measures. So, according to Government resolutions in 2008-2009, the checks of subjects of small and average business were stopped. The purposes of the moratorium were maintenance of small and medium business in the period of temporary economic difficulties and also optimization of the State control of business.

But as it is showed time, the specified measures were not as effective as some representatives of small and medium business in general were ceased to pay taxes. Thus, it is known, importance of the coming in taxes in the budget.

The criminal and legal statistics testifies that from year to year the number of the criminal cases grows, initiated on pseudo-business: “in 2011, 631 criminal cases, in 2012, 361 in 2013, 842”.

Further, “in 2011 the damage on crimes in the sphere of pseudo-business made 48.1 billion tenges, it is compensated only 3.9 billion tenges, it is not compensated in 2012, 11.2 billion tenges, in 2013, 41.3 billion tenges and it is compensated only 43.1 million tenges.

In the current year the Government of Kazakhstan suggests to impose the moratorium on checks of activity of the enterprises working within programs of the forced industrial and innovative development for 2010-2014 and “A road map of business-2020” for implementation of projects if its by estimation, will require investments of over 10 trillion tenges. We will judge about efficiency of the entered measures shortly and it is on the cards that subsequently it can be added works to bodies of financial police.

The following reasons are influenced on the active growth of the pseudo-business: imperfection of the modern legislation, the existing gaps in a civil, penal, banking, tax law and that it is important legal nihilism widespread in society. Including, one of problems in fight against pseudo-business is imperfection of the legislation regulating the mechanism of an exception of offsets of contractors of turnovers with “cashing firms” (Volzhenkin, 2002).

Research objective: is development of theoretically reasonable regulations concerning criminalistics model of investigation and disclosure of pseudo-business with participation of an organized criminal group and also main ways of its use in practical activities of investigative and field services.

The public relations developing during activities of investigative and operatives for identification, investigation and disclosure of pseudo-business with participation of an organized criminal group are an object of research.

MATERIALS AND METHODS

Recognition by court of firm as the pseudo-enterprise is complicated by that neither civil nor the criminal legislation does not give accurate definition to concept “pseudo-enterprise”, except for Article 192 of Criminal code which gives definition to concept of actus reus as “pseudo-business”.

In pursuance of an order of the head of state, fight against pseudo-business is one of the priority directions of operational and service activity of bodies of financial police as pseudo-business has negative impact on

creation of competitive business and conducts to blasting national economy, expressed in tax avoidance, embezzlement of budget funds given for government procurements and the subsequent their legalization (Nurgaliyev, 1997).

At the initiative of Agency in 2007 responsibility for pseudo-business was strengthened. So, Article 192 of the Criminal code is added with the parts 2 and 3 providing responsibility for the aggravating circumstances and this type of a crime is transferred to category of serious crimes. Thus, the maximum penalty in the form of imprisonment till 10 years with confiscation of property is prescribed for creation of the pseudo-enterprises. Besides, it is added the corresponding changes to Art. 192 of the Criminal code of Kazakhstan, regarding addition with the new norm (Art. 192-1 of the Criminal code of Kazakhstan) providing responsibility for commission on behalf of the subject of business of transactions without intention to carry out an entrepreneurial activity. The changes added to the Criminal code allow avoiding claims from fiscal bodies for conscientious businessmen (Akimzhanov, 2005).

On January 12, 2009 the Supreme Court of RK is accepted the Standard resolution No. 1 “About some questions of use of the legislation on pseudo-business” which is included in structure of actual law and it is obligatory.

Changes in the Tax code of RK are directed and included on strengthening of this fight. So, taxing authorities received powers by a court decision to cancel the certificate on registration on a value added tax of the pseudo-enterprises, thus expenses on operations with the taxpayer, recognized by court the pseudo-enterprise, from the moment of the beginning of criminal activity established by court, belong to the expenses which are not subject to a deduction (subparagraph 1-1 of point 1 of Art. 140 of Internal Revenue Code (IRC)).

Now in Mazhilis of Parliament of RK it is considered the law in draft “About changes and additions in some Acts of the Republic of Kazakhstan concerning a further humanization of the Criminal legislation and strengthening of guarantees of legality in criminal procedure”. Regulations of the project are directed on liberalization and a humanization of the criminal legislation, simplification of pre-judicial procedure, establishment of additional guarantees of legality in criminal procedure for subjects of business. It is supposed to decriminalize 36 structures of crimes, including seven in the economic sphere by their transfer to the category of administrative offenses.

The Committee of financial monitoring of the Ministry of Finance is created in the country for prevention of activity of “cashing” firms which monitors all doubtful operations and there is accepted a package of legislative acts on counteraction to money laundering.

Decriminalization (Art. 192 of Criminal code) means for the State the big losses of the budget, prosperity of a hidden economy which will doubt the authenticity of the necessity of functioning of system of financial monitoring of the country and will lead to other negative consequences (Sone, 1998).

The offer of Chamber of the Union “Atameken” and some deputies about an exception of Art. 192 from the Criminal code of Kazakhstan, and Art. 154 of the Code of RK about administrative offenses, and also entering of corresponding changes and additions into the Code of RK “About taxes and other obligatory payments in the budget” can not be supported.

For all that the Agency together with other government bodies for prevention and timely suppression of the facts of offenses in this sphere there is carried out the corresponding legislative work, including directed on reinstatement of interests of conscientious contractors of the pseudo-enterprises.

Business is a breeding ground for the criminal groups which are carrying out in it public (power) functions and investing in it the main part of illegally gained income and also makes a base for corruption of civil officers.

Therefore the state is obliged to settle the law the corresponding relations and to protect, established by the legislation, the order by various, including criminal and legal, means. Actuality of a problem of protection of lawful business and responsibility for pseudo-business is explained by this circumstance.

Pseudo-business, creation of “firm phantom” is carried out without the business purpose in specially specified illegal purposes: illegal receiving the credits and (or) tax exemption, extraction of other property benefit and also cover forbidden (i.e., illegal) activity. Here, we have the prepared activity to commission of quite certain crimes (illegal receiving the credit, tax avoidance, legalization of the property got by the criminal way and so forth), widespread in activity of organized criminal groups. As a rule, such groups have cover in the form of legal commercial structure or “holding” a web of the firms and individual entrepreneurs, covering illegally gained income, presenting to their people around as lawfully received (legalizing) and making their illegal investment or a transfer abroad.

Thus as contractors are practically all enterprises in any area (among them conscientious businessmen)

including state-financed organizations as now carrying out the government procurements through the pseudo-enterprises got the development activities. Budgetary funds are redistributed through the created cashing firms giving for implementation of social projects, state programs for their further transfer to public officials as bribes.

In 2007, the damage on crimes in the sphere of pseudo-business made 13.4 billion tenges and there is compensated only 2.1 billion tenges in 2008, 21.7 billion tenges and there is compensated 6.9 billion tenges in 2009, 21.7 billion tenges and there is compensated only 6.9 billion tenges and in 8 months 2010, 59.1 billion tenges and there is compensated 16.1 billion tenges.

These indicators, undoubtedly, testify to existence of obvious “demand” from unfair businessmen for illegal services which render the pseudo-enterprises for cashing in of money and tax avoidance.

In the course of the solved tasks, set for law enforcement agencies in presented scientific article, it can be offered some measures for compensation of the damage caused by actions of pseudo-businessmen.

Questions of identification of damage on this category of crimes, really are difficult. According to the Standard resolution of the Supreme Court of the Republic of Kazakhstan from January 12, 2009 No. 1 “About some questions of the use of legislation on pseudo-business”, the damage in each case has to be defined proceeding from the sums of the obtained credit which are not paid by the contractor of the pseudo-enterprise of taxes and so forth (Rogov, 1991). The damage done to the State is determined as the sum of taxes where the contractor evaded from them. The taxes cannot be accrued to the pseudo-enterprises that it is excluded the inclusion of their sums in the damage, caused as a result of pseudo-business. By-turn, the damage is accurately measurable category of reality which cannot be rather estimated. In investigative practice often there are questions how correctly and precisely to define damage to the state. According to the Standard Resolution, the damage has to contain in the sums of a value added tax and corporate income tax, reflected in the giving invoices by the pseudo-enterprise to contractors.

According to Art. 82 of the Tax code of RK, the object of taxation by the corporate income tax (further-CIT) in particular is the taxable income. The taxable income is determined as a difference between cumulative revenue and deductions. The cumulative revenue joins all types of income of the taxpayer including the income from realization.

Object of taxation of a value added tax (further-the VAT) is the taxable turn to which in particular, it is belonged the turnover, made by the payer of the VAT on realization of goods, works, services in the Republic of Kazakhstan, except for a free turnover.

However, unambiguously it is impossible to claim that it is final and right damage as the last must to be established under final sentence of court. At that time the corpus delicti in Art. 192 of the Criminal code of Kazakhstan is material and it will be impossible to expect a sentence of court without the direction of business in court.

Investigative court practice developed in such way that in this case the damage, caused to the State from pseudo-business is determined as the sum of the taxes and a penalty fee, added to the pseudo-enterprise. On the strong opinion such approach in principle is wrong. Calculating taxes to the pseudo-enterprise, we give to it legitimacy. As existence of the taxation objects is assumed an entrepreneurial activity. Therefore, a if we recognize the commercial organization by the pseudo-enterprise this organization cannot be accrued taxes. It is obvious that in cases of illegal cashing in of money when there is no realization of goods, works, services is illegally exempted from taxes as the contractor. As it, on the basis of the fraudulent documents which were received from the pseudo-enterprise, underestimates the sums of the taxes which are subject to payment in the budget. In this case, it is necessary to resolve an issue of its criminal prosecution for tax avoidance. Anyway, collecting by a damage sentence from the perpetrator does not exempt the contractor from performance of the duties which are directly provided by the tax legislation.

Specifics of criminal cases of this category are that they attract consequences for all persons who had relations with the pseudo-enterprises.

Thus, the existing tax legislation allows indemnifying the caused damage from unfair contractors of the pseudo-enterprises by the use of tax sanctions.

The legal entity admits the pseudo-enterprise by a court decision. After, this decision goes to taxing authorities for compensation of damage from contractors of the pseudo-enterprise who by use of pseudo-invoices evade paying taxes. Taxing authority on the basis of this judgment the taxpayer pseudo-enterprise acts from the register of payers of the VAT and the name of the pseudo-enterprise is placed on the Website of the MF RK Tax Committee (TC). After that according to regulations of TC MF RK within 10 days to all contractors of the pseudo-enterprise is directed the notices about independent of the infringement abatements by results of

cameral control (notice No. 7). Date of performance of this notice-30 working days, further by taxing authority have to be exposed the notices No. 9 with simultaneous closing of accounts of the taxpayer-contractor in case of not infringement abatement. However, taxing authorities after end of dates of performance of the notice No. 7 at default on obligations concerning taxpayers contractors do not take concrete measures.

RESULTS AND DISCUSSION

Practice of exposure, disclosure and investigation of pseudo-business proves is based on the operations of mass special and operational search events that according to Art. 237 of the Criminal Procedure Code (CPC) of RK on criminal cases of small weight are inadmissible. Value of results of operational search actions at identification and fixing of illegal actions in the course of pseudo-business is invaluable and in case of reference Part 1, Art. 192 of the Criminal code of Kazakhstan to category of gravity of a crime will significantly facilitate process of proof and exposure of criminal activity.

Now, around the world it is carried out the strengthening of fight against this type of crimes which have the international scale.

So, for example in the European Union countries it is revealed the so-called scheme of "Rotary fraud" where as a result of mutual settlements with the pseudo-enterprises, registered in the different countries, the budgets of the European Union countries lose many-milliard sums at compensation of the VAT from the budget for export operations.

The European countries, for awareness on all operations which are carried out by clients of the relevant monetary institution, entered policy "Know yours client" which gives the chance of collection of information about clients.

The policy: "Know yours client" includes an order, according to which it is required carrying out identification (assessment) the client for prevention of any possibility of opening of fictitious accounts.

Considering that now our state was included into the customs union, it is increased the probability of money-laundering through the pseudo-enterprises.

In addition for suppression of activity of cashing firms in the country it is created the Committee of financial monitoring of the Ministry of Finance which monitors all doubtful operations and the package of acts on counteraction to money laundering is accepted.

The considered list of problems in practice of use of Art. 192 of the criminal code of Kazakhstan there is not exhaustive. Now, the necessity for change of Art. 192 of

the criminal code of Kazakhstan, preparation of the new resolution of the Supreme Court of RK on the matter or entering into it of corresponding changes and also modification of the relevant departmental acts is ripened.

According to the pursued policy of Agency of RK on the fight against economic and corruption crimes, developed on the basis of the priorities of development of the state, determined by the president of the country, it is necessary to strengthen collaboration of law enforcement and other government bodies in taking measures to compensation of the damage, caused by actions of pseudo-businessmen and in general, to intensify fight against pseudo-business.

Thus, there is obvious dynamics of growth of pseudo-business for the last years, creation of the false enterprises turned into the whole business where there are involved in it the dishonest unclean hands notaries and law firms which register in government bodies of the pseudo-enterprise, workers of the bank sphere, government institutions.

In this regard, counteraction to pseudo-business by law enforcement agencies will be strengthened and intensified.

CONCLUSION

The conducted theoretical and practical researches were allowed to formulate the following most important conclusions: special social danger of this crime in the considered sphere consists in the following:

- First, they are one of key threats to a financial system and also economic security of the state in general
- Secondly, monopolizations of this activity and involvement in an orbit of economic crime of various circle of people which concerns not only criminal elements but also representatives of authorities

- Thirdly, crime execution in the sphere of economy, allows to strengthen the economic situation in society and on the basis of it to counteract carrying out democratic transformations in the state scale
- Fourthly, the specified type of a crime in the sphere of economy involves a number of negative consequences, including: it is injured to a number of the diverse public relations such as penetration into such areas as policy, culture, the moral and ideological sphere, a large-scale tampering of state apparatus at all levels of its management; generates new types of illegal enrichment

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