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Issues of a criminal investigation of cases involving the use of fictitious invoices, the concept and structure of the forensic characteristics of fictitious invoicing

Madina Span*
Law Enforcement Academy under the Prosecutor General's Office of the Republic of Kazakhstan
021804, 94 Republic Str., Kosshy, Republic of Kazakhstan

Abstract

Relevance. Investigating criminal cases involving the use of fictitious invoices is a complex process that requires a high level of skill and professionalism from criminal law enforcement agencies.

Purpose. The research aims to analyse the status of criminal investigations of cases involving the use of fictitious invoices and to identify the main obstacles to the prosecution of criminals for these crimes.

Methodology. Historical, statistical, comparative, legal, analysis and synthesis were used.

Results. The problematic issues of investigation of criminal cases related to the use of fictitious invoices, as well as the concept and structure of the forensic characteristics of the manufacture of fictitious invoices were considered in this research. The circumstances that prevent law enforcement agencies from effective work in the field of criminal prosecution of economic crimes, which are both objective impossibilities to bring the offender to justice and subjective perception of the necessity to investigate this category of cases, were revealed. The issues related to evidence in criminal cases involving the use of fictitious invoices and recommendations to optimise the investigation of such cases were also discussed. Objective barriers for the pre-trial authority in bringing the perpetrators to justice were identified and ways to eliminate them were suggested.

Conclusions. The positions of Kazakhstani and world scientists on this and related issues were analysed. The shortcomings of the current legislation were highlighted and ways to address these shortcomings were suggested which, in turn, would increase the chances of pre-trial bodies to bring the perpetrators to justice and, at the same time, reduce the number of similar crimes. Overall, this article is a useful resource for legal, forensic, audit and accounting professionals who are involved in the investigation of criminal cases involving the use of fictitious invoices.

Keywords: business transaction; criminal code; frontman; value-added tax; pre-trial investigation.

Introduction

Taxpayers are constantly developing new ways of reducing their tax burden. These ways can be either legal, in which case they can be called tax optimisation methods, or illegal, in which case it is tax evasion. The Kazakhstan Republic (RK) is not immune to this problem, as it also has business entities and the potential for crimes related to issuing fictitious invoices. The growth of economic crime, organised crime and corruption is an acute problem, posing a real major threat to the strengthening and further development of the economy of the whole country [1]. Moreover, economic crimes, due to their characteristics, are more likely to be latent (i.e., concealed crimes). Latent economic crime is a set of hidden unregistered acquisitive crimes committed in the economic sphere by a person during their professional activities and/or in connection with those activities, which infringe on the property and other interests of consumers, partners, competitors, and the state. [2]. This means that such crimes have been committed, and the damage has been done, but for one

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*Corresponding author

reason or another, no investigation has been initiated. Latent crime has a greater impact on the economy because latent crimes are not investigated, perpetrators are not punished, damages are not paid. Fictitious invoicing can cause enormous economic losses for a state that is unable to combat this type of economic crime. Hungary, for example, claims that fictitious invoice crime causes the state budget to lose approximately HUF 10 billion annually, which was 1.5% of the country's GDP as of 2022 [3].

As S.A. Faizullina in her study on combating value-added tax evasion effectively states, it is necessary to identify such businesses quickly to prevent damage to the state [4]. However, it should be noted that it does not consider that business entities (in particular legal entities) are usually registered in the name of fictitious persons, which means that identifying such a company will only minimise but not prevent damage to the state, as it will not be possible to recover the losses. Investigating economic crimes has always been a rather complex task as it requires the authorised persons to know not only criminal law and criminal procedure but also several financial principles, accounting fundamentals and so on. The objective side of a crime is in principle very often at the junction of different branches of law (civil law, banking law, budgetary law, tax law), which necessitates not only meticulous analysis but also theoretical and practical knowledge in these fields, as V.N. Filatov states [5]. However, the author pays a lot of attention to the organisational problems of investigating economic crime, with little attention to the actual possibility of bringing the perpetrators of such offences to justice.

Moreover, it is worth agreeing with A. Saken [6] and A. Padalka [7] that during the pre-trial investigation, for the completeness of the case materials, the authorised person often needs to enlist the support of a financial and tax specialist, whose testimony will be used as expert evidence, while the forensic economic expertise may be carried out in court. However, it is worth questioning the practical usefulness of conducting an expert examination during the investigation of a crime for which it is impossible to prosecute the perpetrators. S.M. Rakhmetov, studying the issue of compensation for damages in prosecution for economic crimes indicates the impossibility to achieve compensation due to legislative imprecision [8]. In particular, he points out that when bringing a person to criminal responsibility he (including his accomplices, who have been prosecuted) may not have money that was obtained as a result of economic crimes, in this regard, legislative changes should be made. It should be noted that the proposed legislative amendments will not be of practical benefit since in the case of damage caused by economic crimes the persons potentially held liable are frontmen, which, in turn, leads to the impossibility of compensation for damages in any case.

Based on the above, it can be concluded that scholars who have studied this or a related topic have focused their research on ways to combat economic crime, without looking at the circumstances that create opportunities for such crimes. In this regard, the research aims to analyse the current state of investigations into economic crime, namely fictitious invoicing, to identify the circumstances that create barriers to bringing perpetrators to justice and to provide recommendations for the elimination of such circumstances.

Materials and Methods

The main materials for this study were the writings of prominent Kazakh and foreign scholars on this topic, as well as on related topics, which in one way or another addressed the problems of investigating fictitious invoices and suggested ways to solve such problems. The legal basis for the study was as follows: current Legal statistics 2023 [9], Main indicators of the number of entities in the Republic of Kazakhstan (February 2023) [10], Criminal Code of the Republic of Kazakhstan [11], Entrepreneurial Code of the Republic of Kazakhstan [12], Code of the Republic of Kazakhstan No. 235-V ZRK "On Administrative Offenses" [13], Code of the Republic of Kazakhstan No. 120-VI ZRK "On taxes and other obligatory payments to the budget (Tax Code)" [14]. The following methods were used in preparing the publication. The historical method was used to examine the state of the criminal situation in the past and its development over time, as well as the status and statistical data by year specifically for economic crimes and fictitious invoicing crimes. The statistical method was used to identify trends in the number of recorded crimes, administrative offences over the years, the number of cases brought to court, the number of convictions for economic crimes.

The information obtained from official sources was further verified to derive statistical and proportional changes in the indicators that were reported in the relevant statistics (number of crimes, number of administrative offences, number of business entities). The comparative method was used to obtain information by comparing statistics in terms of their historical development and the reasons for this development, and by making comparisons both within the same category and between different categories, which made it possible to identify statistical preconditions for a decrease in economic crime without decreasing it. The legal analysis was used to examine the national legislation of the Republic of Kazakhstan on fictitious invoicing, pre-trial investigation, entrepreneurship, the Criminal Code of the Republic of Kazakhstan [11], Entrepreneurial Code of the Republic of Kazakhstan [12], Code of the Republic of Kazakhstan No. 235-V ZRK "On Administrative Offences" [13]. The shortcomings that affect the ability to investigate and prosecute criminals for issuing fictitious invoices were identified and ways to eliminate such shortcomings were suggested. The analysis method in the context of this topic was used to analyse the legislation related to the investigation of cases involving fictitious invoices and to analyse the practice of investigating such cases, subsequently identifying the reasons that lead to low detection rates of this category of crime.

Furthermore, statistics on the number of crimes and administrative offences were analysed, making it possible to establish trends in the registration of these offences. Proposals by other authors to solve a similar problem both within and outside the Republic of Kazakhstan have also been analysed, and an objective assessment of the effectiveness of such methods of prosecuting abusers has been given. The synthesis method in the context of this

research topic was used to synthesise knowledge and information obtained through analysis of legislation, jurisprudence, and other sources to create a complete picture of the problems associated with the investigation of cases involving fictitious invoices. As a result of the synthesis of the information received, it was possible to establish that the downward trend in economic crime is imaginary and has no real basis, as it contradicts another trend, which leads to an increase in crime, which contradicts the published statistics.

Results

Economic crimes are quite difficult to investigate and ultimately to prosecute. Looking at official statistics, then it can be seen that the number of recorded criminal offences is steadily decreasing, although tax and economic crimes are still present. In 2016, for example, 73,558 pre-trial investigations were initiated, while in 2022 there are only 30,274. This indicates a 59% decrease in initiated pre-trial investigations over 6 years. According to the same data, the number of administrative offences has steadily increased. In 2016 there were 4.03 million administrative offences, while in 2022 there will be 9.25 million, indicating an increase of 129% over 6 years [9]. Thus, based on these statistics it can be said that offences are present, but proportionally the number of criminal offences has decreased (1.8% in 2016 versus 0.2% in 2022). However, it should be noted that these statistics contradict the following information. For example, tracking the statistics of economic crimes, the number of initiated pre-trial investigations of economic crimes in 2016 was 3,943, which represents 5.3% of the total number of criminal offences [1].

In 2019, the number of recorded economic crimes was 1053, which was only 2% for the year. On the one hand, one can conclude that both criminal offences in general and economic crimes are decreasing, but there is another statistic that contradicts this statement. Based on official statistics, as of 2016, there were 1,498,243 registered SMEs (the category that leads in economic crime), while as of 2019 the number is 1,603,839 (107% of 2016) and as of 2022 it is 2,026,527 (135% of 2016) [10]. Given that the number of potential criminals (namely SMEs, who are most likely to commit economic crimes) is increasing year on year, it is suspicious that the number of economic crimes is decreasing.

In 2015, 357 criminal cases were pending before the pre-trial investigation authorities under Article 216 of the Criminal Code of the Republic of Kazakhstan (CC RK) (commission of an invoice without the actual performance of work, provision of services or shipment of goods). Sixteen persons were convicted in them, i.e., one of the 22.3 cases pending. In 2016, 571 criminal cases were pending before the pre-trial investigation authorities under the mentioned article of CC RK, but no one was convicted. In 2021, 607 criminal cases were pending before the pre-trial investigation bodies under the mentioned article of the CC RK, and 138 persons were convicted, i.e., one in 4.4 cases pending [8]. From these statistics comes the conclusion that things are not so straightforward when analysing the overall statistics on criminal offences and economic crimes, as these are only those crimes for which pre-trial investigations have been initiated and even so, the number of convictions does not exceed 30% of the total number of suspects. There are different methods of tax evasion, but one of the most common is the use of fictitious invoices, as they require the least effort with the greatest economic return.

Article 216 of the CC RK provides for the offence of issuing an invoice without the actual performance of work, provision of services or shipment of goods. Part 1 of this Article sets out the circumstances and acts necessary for qualification [11]. Based on this research, it is possible to establish several characteristics that are mandatory for the existence of a criminal offence: a business entity, the issuance of a document for which no business activity is carried out, and major damage caused. Therefore, there is a person (the entrepreneur) who must do something (write a fictitious invoice) that should have consequences (major damage to third parties).

Based on Article 23(1) of the Entrepreneurial Code of the Republic of Kazakhstan, it can be concluded that the subject of the offence under Article 216 CC RK is a person who conducts commercial business activities [12]. While doing business, such entities will, in most cases, conduct some form of transaction with other business entities. Some kind of document must be used to record the fact that such transactions took place. An invoice is a document that confirms a business transaction between several business entities, including the sale of goods, provision of services, performance of work, and in which the amount of that business transaction is stated. Based on article 280 of the Code of the Republic of Kazakhstan No. 235-V ZRK "On Administrative Offenses" A fictitious invoice is an invoice issued by a payer, who is not registered for value-added tax or by a person who did not perform work, provide services or ship goods, and which includes the amount of value-added tax [13]. The same article also provides for administrative liability for similar acts when they cannot be classified as a criminal offence because the threshold for major damage is not met.

Article 216 of the CC RK also contains the characteristics of a fictitious invoice [11]. A fictitious invoice is an invoice that indicates a business transaction between several business entities in the form of the sale of goods, provision of services, performance of work, at a time when no such transaction took place between these business entities. From the above, it can be concluded that a business entity must issue an invoice for a transaction that such entity did not and does not intend to conduct, which indicates that such an invoice is not fictitious. The last attribute is major damage. According to Article 3 CC RK, it can be established that major damage under Article 216 CC RK is damage caused to a citizen in an amount exceeding two thousand times the monthly calculation index, or damage caused to an organisation or the state in an amount exceeding twenty thousand monthly calculation indexes [11]. Thus, it is an offence under Article 216 CC RK to issue an invoice by a business entity for which there has not been or will not be a transaction, resulting in damages of between 2 thousand and 20 thousand monthly calculation indices or more, depending on the legal status of the victim [11]. If the damage is less, then it is an administrative offence.

One of the most popular sequences of actions that can qualify for Article 216 CC RK is as follows [11]. A legal entity is created whose purpose from the outset was not to conduct business, i.e. the company did not intend from the outset to engage in trade, services or work. Such a company begins to imitate business activities with another company. The simulation consists of Company A (established to carry out the criminal activity) issuing fictitious invoices for which it sells goods/services/works to another company, for which the latter officially pays by bank transfer a certain amount inclusive of value-added tax (VAT). The total amount paid to company A is then returned to the payer, minus a small commission, which constitutes the real and unofficial income company A. A company that has "purchased" goods/services/works subject to VAT is entitled to deduct such VAT from its tax liabilities. As a result, the purchasing company receives a tax deduction of 12% of the total amount of the transaction (standard VAT rate following Article 422 of Code of the Republic of Kazakhstan No. 120-VI ZRK "On taxes and other obligatory payments to the budget (Tax Code)" [14]) at up to 5% of the total amount of the transaction (company A's commission), giving a total of 7% of the total amount of the transaction with no effort on the part of the buyer.

To illustrate, if the amount of a fictitious transaction between such companies is 1 million tenge, then the buying company receives a tax deduction of 70 thousand tenge (1 million tenge is paid, of which 950 thousand tenge is returned, and the company receives a tax deduction of 120 thousand tenge), and company A receives 50 thousand tenge income (deducted when returning the main transaction amount) in the absence of any other changes in the actions of counterparties. This deduction in the amount of 70 thousand tenge allows the company-buyer not to make a further payment of VAT to the state budget in cases where they are the seller of goods/services/works. Thus, by carrying out such transactions a certain number of times, one ends up in a situation where a company is completely exempt from paying VAT and even more so – the state becomes a VAT debtor to such a company. Usually, such companies exist for up to six months, as they are subsequently detected by the financial monitoring authorities, who appoint an audit to confirm the reality of the transactions. At such an inspection, Company A is unable to confirm the reality of its operations and, therefore, subsequently acquires the status of a suspect in a criminal case, losing any possibility of carrying out similar operations.

However, one of the main problems in ensuring the inevitability of punishment is that it is almost impossible to identify those who were really behind the offence. This is because such companies are usually set up not by those who issue fictitious invoices and receive illegal income from this, but by any other front persons (including persons without residence, persons with a dubious past). As a result, this is a situation where the financial monitoring body has identified a company whose activities fall under the scope of Article 216 CC RK and refers the case to law enforcement authorities, but the latter, after meeting the director of such company A (e.g. to comply with all criminal procedure formalities and/or interrogations) receive a person who is only legally the owner and/or director of the company, but, has nothing to do with the offence, cannot tell anything to help the investigation and is not a real criminal subject [11]. Consequently, although the company director is formally responsible for all the transactions that accompanied the fictitious invoices, his punishment will not result in the actual perpetrators being stopped. It is a well-known fact that Company A is unlimited in the number of fictitious invoices issued, and it is not uncommon for such companies to issue fictitious invoices worth tens or hundreds of millions of tenge in 3-6 months, make a profit and disappear, leaving law enforcement authorities to deal with the nominal director and other fictitious persons. Thus, the lack of real responsibility of such offenders and the high potential for earning money creates a situation where such companies are constantly being set up, thus causing serious damage to the country's economy.

A similar situation occurs in Mexico, where such fraudulent schemes are so commonplace that they are even part of the economy and such companies A have been around for about two years each [15-17]. This is one of the things that distort statistics on economic crime, including under Article 216 CC RK, as in many countries, and especially in post-Soviet countries, the performance of law enforcement agencies is assessed according to a conventional statistical system [11]. This system stipulates that the higher the percentage of solved cases present in a (regional, city) law enforcement office, the better the quality of its work. As a result, there are situations where a clear offence may not be recorded by law enforcement agencies because the person in charge, after listening to the complainant or looking at the application, already knows in advance that, given certain problems, including those described above, it is not possible to bring the offenders to justice and therefore such a case would spoil the statistics.

The lack of recording of all recorded cases of fictitious invoicing offences (even if it is objectively impossible to prosecute the offenders) makes it impossible to create a complete picture of this category of cases. This, in turn, leads to a situation where the public and the state (in particular, the legislature) may not see any problem with these types of crimes, as the media (mass media) only cover isolated incidents and the statistics do not show the real number of such crimes. In addition, in 2020, the Supreme Court of the Republic of Kazakhstan issued a Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 "On some issues of application by courts of legislation on cases of criminal offences in the field of economic activity". [18]. Following this resolution, the need to combat economic crimes was noted and some of the following provisions were made. The objective side of the criminal offence under paragraph one of Article 216 of CC RK is expressed in the commission of acts of invoicing without performing work, providing services, shipping goods to obtain a material benefit, causing major damage to a citizen, organisation or the state [11].

Thus, the RK Supreme Court indicates that when referring a case to the court under Article 216 CC RK, the court must consider whether the transactions specified in the issued invoice could have been carried out by a particular counterparty [11]. This indicates that the court is obliged to try to explain the reality of the invoice issued through a detailed analysis of the material, labour, financial

and other possibilities for realising such a transaction, including the possibility and actual involvement of third parties (subcontractor, seller). Such an obligation in most cases has no real consequences because, in most cases, the criminal companies have absolutely no resources that could be used in the execution of the business transaction described in the issued invoice. However, this allows the perpetrators to argue directly in court that there is no crime under Article 216 CC RK. Such a situation can occur when a fictitious invoice describes the provision of services.

The nuance is that the provision of services is in most cases some work that has no tangible result (training, transportation) or the result disappears over time (cleaning, repairs), which means that it is impossible to establish the reality of the service provided, as there is no objective way of knowing that certain people, for example, were given a seminar if it was held offline in a private setting. This leads to a situation where the court cannot prosecute the person during the trial because there may be no offence under Article 216 CC RK in this situation (such as in the case described above) and then the person is not prosecuted under this article [11]. To avoid such situations, law enforcement authorities must reclassify a crime at the stage of the pre-trial investigation to be able to prosecute offenders in the future (for example, for Article 245 CC RK – evasion of tax and (or) other obligatory payments to the budget from organizations, which includes the use of an invoice without the actual performance of works, services or shipment of goods). Such requalification leads to the fact that Article 216 of the CC RK is becoming less and less used for the qualification of crimes [11].

The same regulatory resolution of the Supreme Court of the RK in paragraph 14 establishes that the subject of a criminal offence under Article 216 of the CC RK is private entrepreneurs, which includes citizens, kandas, non-residents, stateless persons carrying out entrepreneurial activities, as well as persons performing managerial functions in non-state commercial legal entities [18]. It can be noted that the Supreme Court of the RK has expanded the number of subjects of this crime, since Article 216 CC RK [11] only specifies the subjects of entrepreneurship, which, as described above, following Article 23 of the Entrepreneurial Code of the Republic of Kazakhstan [12] are citizens, kandas and non-governmental commercial legal entities engaged in business activities (subjects of private enterprise), state enterprises (subjects of state enterprise), i.e. the resolution added non-residents, persons without citizenship. It should be noted that such measures are correct because otherwise the legal entity would be held liable and the authorised person of such company (who is responsible for all the criminal acts for which the company has been held liable) remains unpunished, which does not prevent him from continuing his illegal activities, even if this requires the creation of a new legal entity.

In the pre-trial investigation of crimes under Article 216 CC RK, law enforcement authorities can (and should) focus directly on the persons who took certain decisions, rather than on a legal entity, which is a purely legal formation and does not exist in the material world, which completely excludes direct action, guilt and, consequently, punishment (it was even more illogical the absence of authorized persons because the forms of punishment under Article 216 CC RK include correctional work, community service, restriction of liberty) [11]. The above-mentioned regulatory ruling of the Supreme Court of Kazakhstan in paragraph 15 provides that the issuing of several invoices without the actual performance of work, provision of services or shipment of goods, covered by a single intent, constitutes a single continuing criminal offence. Where several fictitious invoices are issued to different counterparties and the prosecuting authority classifies these acts as one continuing criminal offence, the courts should check whether the perpetrator has a single intent. If, however, the commission of these acts is not linked to a single intent and forms a recurrence, if the amount of damage in respect of each counterparty does not reach the amount specified in Article 3 (38) CC RK, the actions of the defendant should be classified as an administrative offence [11]. The commission of two or more acts not connected by a single intent constitutes multiple criminal offences and shall be qualified under Article 216 Paragraph 1, Second Section of the CC RK [18].

This provision poses several problems for pre-trial investigation bodies, as in a way it completely excludes criminal liability for issuing fictitious invoices as evidenced by the following. According to Article 20 of the CC RK, the direct intention is the desire for consequences, and the indirect intention is the awareness of the possibility of consequences without the desire for them to occur [11]. Thus, the legislation in force provides for two types of intent, direct and indirect, the difference being solely concerning the consequences of their unlawful actions. Considering the text of Article 216 CC RK it can be concluded that indirect intention is impossible in this case because the business entity writes fictitious invoices. After all, it is impossible to write fictitious invoices in which such an entity does not wish the situation where it receives VAT deductions or is indifferent to them [11]. Where an actor wishes such consequences, this is direct intent, and where he does not wish such consequences, he does not write a fictitious invoice. However, the RK Supreme Court does not use the above dichotomy of intent which is enshrined in the CC RK but introduces a new concept of intent which implies a potential connection of counterparties to whom fictitious invoices have been issued.

This is confirmed by the fact that the Supreme Court of Kazakhstan speaks of a “single intent” meaning that several fictitious invoices were issued to a single counterparty or different counterparties, but they are linked because the court denies a single intent in a situation where several fictitious invoices were issued to different and, more importantly, unrelated counterparties and states that this constitutes multiple criminal offences. On the one hand, the Supreme Court thus creates a situation where several fictitious invoices will not be qualified under Article 216 Paragraph 1 of the CC RK, but under Article 216 Paragraph 2 of the CC RK, which implies greater responsibility [11]. However, on the other hand, if each of the fictitious invoices does not cause damage on a large scale, then there will be a situation where instead of one criminal investigation and therefore criminal prosecution, there will be several administrative and, consequently, administrative liability. However, this situation is not logical because the intention in issuing fictitious invoices

is overwhelmingly to manipulate VAT payments, regardless of how many counterparties are involved.

This leads to the fact that even if a business entity has issued 50 fictitious invoices to 50 different other business entities, the purpose remains the same – manipulation of VAT payments, which from a formal point of view allows summing up all the damage on 50 fictitious invoices and bringing the person to criminal liability instead of initiating 50 administrative investigations. At the same time, under Article 62 of Code of the Republic of Kazakhstan No. 235-V ZRK "On Administrative Offences," a person shall not be held administratively liable after two months from the date of an administrative offence, except in cases provided for in this Code [13]. Thus, the term for administrative liability is quite low and taking into account the necessity of much work by pre-trial investigation authorities (confirmation of the fact of the fictitious invoice, which implies confirmation of the existence of an invoice, as well as failure to provide goods/services/work and impossibility of such provision by such business entity, the existence of damage and the amount of such damage) bringing to responsibility becomes almost impossible. Moreover, it is logical that with the increase in potential fictitious invoice criminals, the number of such offences decreases – they are rarely able to cause the required damage with each invoice, so cases are dealt with administratively. This explains, among other things, the increase in the number of administrative offences recorded.

Considering all the factors described above, it can be concluded that the pre-trial investigation authorities have several problematic issues that hinder the investigation of crimes involving fictitious invoices and, as a result, such crimes cause significant damage to the country's economy.

Discussion

Little research has been conducted on this topic because, as described above, a crime under Article 216 CC RK is largely latent, which means that neither the public nor the state can fully appreciate the threat of such a phenomenon and, consequently, begin to study it to find a way out of this situation [11]. From the current studies, this study is entirely consistent insofar as it concerns the shadow economy and the damage that economic crimes (including fictitious invoicing) cause to the public budget of any country. M.M. Hybka suggested that to combat fictitious invoices all taxpayers should be divided into categories which would imply different tax regimes, namely from the strictest to the freest tax surveillance regime [19].

Subsequently, in the case of such a division, a higher level of scrutiny can be identified for the businesses that are in the most stringent regime in case such a business is identified as taking the initiative to become a VAT payer. Such businesses could, for example, include newly established companies that have registered as VAT payers and could potentially be a company that will issue fictitious invoices, thus needing more scrutiny than audited companies that have been in existence for years without any tax offences. This will make it much harder for criminals to find fake directors for the company, as anyone will now not qualify, and the person who does qualify is unlikely to want to set themselves up. However, this is an analogue of electronic VAT administration in Ukraine, which implies a simpler and more accessible procedure for filing relevant documents with the tax authorities, and only creates an additional barrier, according to A.N. Slipchenko [20].

Creating a method of e-administration must not only be accompanied by a meticulous analysis of how the system functions and under what principles the administration should be conducted. When establishing e-administration, it is also important not to give the supervisory authorities too much freedom or power which would lead to unjustified infringement of taxpayers' rights. In Ukraine, with the introduction of the electronic VAT administration system, all VAT payers are periodically subject to unjustified blocking of VAT amounts and are therefore obliged to go to court to enforce their rights, clearly indicating that the system was poorly modelled so that the burden of litigation was shifted from the supervisory authorities to the taxpayers. That said, this author, like G.T. Hutagalung and D. Martani [3], S.A. Faizullina [4] and V.N. Filatov [5], does not provide ways to avoid the problem of fictitious invoices, or to remove the possibility of such a crime in principle, but to deal with criminals who have already decided to engage in such an intention.

Electronic categorisation of a business can result in nothing as it does not remove the fact that the frontman will be the only official person in the event of criminal prosecution. If businesses lose the opportunity to receive VAT deductions from the outset (e.g., falling into the strictest category, where a tax audit of the business activities of such a company is conducted before VAT deductions are paid), then over time a market of VAT-paying companies will be created. Some people will set up a company, carry out real activities, move into the free VAT regulation category and then sell such a company to those who want to make money by issuing fictitious invoices, who have no restrictions on registering such a company in a shell company. At this stage, all the supposed innovations have not changed anything, but have simply created an obstacle for the tax authorities themselves, as now verified companies (from the free category) will conduct such illegal activities.

An African study conducted by J.D. Mvunabandi et al. surveyed and analysed whether proactive forensic audits could improve the chances of combating economic crime [21]. As a result of this study, the authors concluded that it could and that such audits would help to combat damage to the public economy. However, this analysis is flawed because it creates 2 problems rather than solving any. For example, if the institution of proactive auditing is introduced into the system of tax oversight, then a conflict is created with the conduct of tax audits. If this audit is carried out with notice to the taxpayer in a clearly defined manner, then it is no different from regular tax audits, which in many countries have in no way prevented economic crime. It should be noted that such audits only indicate how long such a criminal company will exist, i.e., how much time the perpetrators have from its inception to make money before they are uncovered. Moreover, a pre-emptive forensic audit implies that this audit will be conducted by a court and/or in a legal process. The problem then arises, which is that there are usually no economic experts in the courts, which means that the court cannot carry out such an audit. This raises the issue of hiring

additional specialised staff who would be able to carry out the audit in question, which inevitably entails additional costs from the state budget (salaries of specialists) and which cannot bring results due to the circumstances described above.

If such an audit is conducted in a court process rather than by a court, then the attributes by which such an audit differs from a forensic economic examination are unclear. In addition, the most basic one is that each state body has its powers, and in the case of the introduction of pre-emptive judicial audit, the powers of tax supervision are shifted to the court, which is unacceptable as it creates a conflict of powers of state bodies [22]. In other studies, conducted by R. Xie et al. [23] and Y. Hongfei [24], emphasise the verification of electronic invoices, which should avoid any manipulation by malefactors. At the same time, it does not seem possible that criminals are not able to arrange an electronic signature for a front person, who is nominally the authorised person and who will be responsible for all the acts. Of course, depending on the country, the number of people who would be willing to put their fate in the hands of others for a fee, and therefore be held liable, varies. However, it should not be forgotten that this figure is influenced not only by the well-being of the persons who are offered to take responsibility but also by the level of detection of the crime, the types of responsibility for such crime.

Signature verification provides an opportunity to expose fraudulent activity by a business that is usually legitimate and has committed fraud for one reason or another, whereas signature verification on documents that have been issued by a business that has been set up to issue fictitious invoices provides nothing. M. Masoudinia, when examining the investigation of economic crimes and their effect on public order, points out that punishment is an important deterrent for persons who think of committing a crime [25]. It is worth agreeing with this author's assertion, as the Republic of Kazakhstan under Article 216 CC RK, which provides for an offence with major damage, provides for penalties such as community service and correctional labour, which are disproportionate to the harm that can be caused by such acts [11].

E. Babakhani and H. Rostami, comparing the success of economic crime investigations in Iran and France, note that in France it has been quite effective to introduce a special judicial branch that deals exclusively with economic crime [26]. It should be noted that the creation of specialised authorities to deal with economic crimes is justified (as, for example, the creation of a separate body to deal with pre-trial investigations). However, in the presence of the problems described in the paper, which make it virtually impossible to prosecute the perpetrators, such differentiation of judicial powers would be of no avail. W. Hongning points to the possibility of using an early warning method of economic crime to detect such offences in time and to minimise the damage caused by them [27]. The proposed method may allow a reduction in economic crime because, by using this method, detection would be kept to a minimum, resulting in a disproportionate amount of effort spent on the crime relative to the economic benefit derived from the crime. F. Morshedi points out that countries' legislation should be more focused on victims of economic crime because such persons, once harmed, cannot obtain redress, due to the lack of assets of the perpetrators [28]. It should be noted that the author in this case is attempting to resolve the consequences of the problem but is not in any way attempting to solve the problem itself, which would obviate the need to decide how best to restore the victims' violated rights.

To summarise, it can be concluded that all the current works on this and related topics suggest solutions to the problem when it already exists or ways of identifying the damage already caused to the state budget in the form of certain deductions. However, what most researchers fail to consider is that such a system (for detecting the damages already caused) has existed in most countries for decades, but not one country has eliminated the problem in this way alone and economic crimes persist in each country [29]. None of the existing studies draws attention to the reasons why economic crimes in general and fictitious invoicing are committed, where the opportunities to commit such crimes come from and why criminal prosecution in most cases does not stop the perpetrators.

Conclusions

The main problem in pre-trial investigations of cases involving fictitious invoices is precisely the ability of offenders to avoid liability by not having any legal trace of their presence in the company and involvement in fictitious transactions. This can be eliminated in several ways. Thus, one option could be to create a regulatory requirement that a company that wishes to be registered as a VAT payer and therefore potentially eligible for a VAT refund must certify in some way that the risks of creating fictitious invoices during business activities are minimised.

One such option is that the director of the company that wants to become a VAT payer must be a person who has already been a director of a VAT payer company for a certain period, e.g., from 6 months. At the same time, he has never been convicted under Article 216 CC RK. Such a requirement will lead to the fact that the frontman can only be a person who has officially and successfully run the company before, which means that in most cases he does not belong to the category of people who would be prepared for this type of fraud. Furthermore, to reduce the latency of offences under Article 216 CC RK, it is necessary to repeal the regulatory ruling of the Supreme Court which provides that different fictitious invoices to different counterparties without a single intent should be treated as separate offences. This would allow offenders in most cases to be prosecuted in criminal proceedings rather than in administrative proceedings, where the time limit for prosecution is only 2 months from the issuance of the fictitious invoice.

Considering the complexity of the criminal offence under Article 216 CC RK, it is also necessary to change the penalties for this offence. As of today, the offender may be subject to penalties such as community service and correctional labour, which is unthinkable given the overall damage to the country's economy. With these types of liability and even considering the fines, it becomes economically profitable to write fictitious invoices, because by writing invoices worth billions of tenge the wrongdoers get much more than they will be fined. It would be rational to get rid of correctional and community

service altogether in Article 216 CC RK and raise the fine from 3 thousand to 10 thousand monthly calculation indices. All these actions together would allow for a more effective investigation of fictitious invoicing offences, which would protect the country's economy.

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Conflict of Interest
None.

References

[1] Abdramanova NK, Abdukarimova ZT, Alaukhanov YeO. Latent economic and corruption crime as an indicator of the shadow economy. *2nd Int Sci Pract Conf "Modern Manag Trend Digit Econ: From Reg Develop Global Econ Growth"*. 2020;138:214-219.
[2] Fernandez RM. Effects of economic crimes on sustainable development. In: *Peace, Justice and Strong Institutions* (pp. 1-9). Cham: Springer; 2019.
[3] Hutagalung GT, Martani D. Evaluation of the application of E-invoice 3.0 at KPP Pratama Jakarta Mampang Prapatan. *Budapest Int Res Crit Inst-J*. 2022;5(3):18147-18155.
[4] Faizullina SA. Ways to solve the problems of value added tax evasion. *Bull Turan Uni*. 2019;1(81):104-108.
[5] Filatov VN. Beginning of pre-trial investigation on economic offenses in the Republic of Kazakhstan: Problematic issues. *Law State*. 2020;3-4(88-89):138-160.
[6] Saken A. The role of forensic economic expertise in the investigation of tax crimes (based on the materials of the Republic of Kazakhstan). *Society Law*. 2022;4(82):68-73.
[7] Padalka A. Relevant issues of application of forensic and economic examination during financial investigations. *Law Life*. 2021;1:222-226.
[8] Rakhmetov SM. Monitoring the practice of applying certain norms of the criminal code on liability for criminal offenses in the field of economic activity. *Bull Inst Legis Legal Info Repub Kazakh*. 2022;4(71):124-134.
[9] Legal statistics. 2023. https://qamqor.gov.kz/crimestat/indicators
[10] Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan. 2023. Main indicators of the number of entities in the Republic of Kazakhstan (February 2023). https://new.stat.gov.kz/ru/industries/business-statistics/stat-org/publications/14836/
[11] Criminal Code of the Republic of Kazakhstan. 2014. https://adilet.zan.kz/rus/docs/K1400000226/info
[12] Entrepreneurial Code of the Republic of Kazakhstan. 2015. https://adilet.zan.kz/rus/docs/K1500000375
[13] Code of the Republic of Kazakhstan No. 235-V ZRK "On Administrative Offenses". 2014. https://adilet.zan.kz/rus/docs/K1400000235
[14] Code of the Republic of Kazakhstan No. 120-VI ZRK "On taxes and other obligatory payments to the budget (Tax Code)". 2017. https://adilet.zan.kz/rus/docs/K1700000120
[15] Rocha-Salazar JJ, Segovia-Vargas MJ, Camacho-Miñano MM. Detection of shell companies in financial institutions using dynamic social network. *Expert Syst Appl*. 2022;207:117981.
[16] Cruz-Pérez BL. Fake invoices market in Mexico: A theoretical analysis of simulated operations as a means of tax evasion. *Gen Coordinat Postgrad Stud, UNAM, Thes reposit harv Gen Direct Libr Digit Info Serv*. 2020;1(2):305-357.
[17] Barajas S, Campos R, Sobarzo H, Zamudio A. *Tax evasion derived from the different billing schemes*. Mexico: The College of Mexico; 2011.
[18] Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 "On some issues of application by courts of legislation on cases of criminal offenses in the field of economic activity". 2020. https://adilet.zan.kz/rus/docs/P200000003S
[19] Hybka MM. Evaluating risk-based selection methods for tax audits in Poland. *Int J Business Econ Develop*. 2020;8(2):9-19.
[20] Slipchenko AN. Electronic VAT administration system in Ukraine. *Uni: Econ Law*. 2017;6(39). https://7universum.com/pdf/economy/6(39)/Slipchenko.pdf
[21] Mvunabandi JD, Nomlala BC, Harold P. The practicality of forensic auditing techniques to detect non-government organizations' financial statement fraud in South Africa using a proactive approach. *Indonesian J Account Audit*. 2022;26(1):76-87.
[22] Miliienko OA, Sabitova AA, Sabitova SA, Khussainov OB, Begaliyev YN. Protection of human rights in administrative proceedings from the standpoint of international law. *J Nation Academ Legal Sci Ukraine*. 2020;27(4):43-52.
[23] Xie R, Mao W, Shi G. Electronic invoice authenticity verifying scheme based on signature recognition. *J Phys: Conf Series*. 2019;1213:032019.
[24] Hongfei Y. *National report on e-commerce development in China*. Vienna: UNIDO; 2017.
[25] Masoudinia M. Jurisprudential investigation of economic crimes affecting public order. *Econ Jurisprud Stud*. 2022;4(3):14.
[26] Babakhani E, Rostami H. Differential investigation of economic rimes in Iranian and French law. *Comp Stud Islam Western Law*. 2022;9(1):31-62.
[27] Hongning W. Research on early warning methods of economic crimes based on data mining. *Argentine J Clinic Psychol*. 2020;29(4):621.

[28] Morshedi F, Gholami H. Review the legal challenges of supporting economic crimes victims. *Religat: J Social Sci Human*. 2019;4(18):278-285.
[29] Kussainova AK, Sabitova AA, Sabitova SA, Saparaliyeva SM, Begaliyev YN. Formation and development of taxation and legislation on administrative responsibility for tax offences in the Republic of Kazakhstan. *J Fin Crime*. 2023;30(2):453-463.

Проблеми кримінального розслідування справ, пов'язаних з використанням фіктивних рахунків-фактур, поняття та структура криміналістичної характеристики фіктивних рахунків-фактур

Мадіна Спан
Академія правоохоронних органів при Генеральній прокуратурі Республіки Казахстан
021804, вул. Республіки, 94, м. Коси, Республіка Казахстан

Анотація

Актуальність. Розслідування кримінальних справ, пов'язаних з використанням фіктивних рахунків-фактур, є складним процесом, що вимагає від правоохоронних органів високого рівня кваліфікації та професіоналізму.

Мета. Метою дослідження є аналіз стану розслідування кримінальних справ, пов'язаних з використанням фіктивних рахунків-фактур, та виявлення основних перешкод на шляху притягнення злочинців до кримінальної відповідальності за ці злочини.

Методологія. Використано історичний, статистичний, порівняльно-правовий, аналіз та синтез.

Результати. У дослідженні розглянуто проблемні питання розслідування кримінальних справ, пов'язаних із використанням фіктивних рахунків-фактур, а також поняття та структуру криміналістичної характеристики виготовлення фіктивних рахунків-фактур. Виявлено обставини, що перешкоджають ефективній роботі правоохоронних органів у сфері кримінального переслідування економічних злочинів, які полягають як в об'єктивній неможливості притягнення правопорушника до відповідальності, так і в суб'єктивному сприйнятті необхідності розслідування цієї категорії справ. Також були обговорені питання, пов'язані з доказуванням у кримінальних справах, пов'язаних з використанням фіктивних накладних, та рекомендації щодо оптимізації розслідування таких справ. Виявлено об'єктивні бар'єри для органів досудового розслідування у притягненні винних осіб до відповідальності та запропоновано шляхи їх усунення.

Висновки. Проаналізовано позиції казахстанських і світових вчених з цього та суміжних питань. Виявлено недоліки чинного законодавства та запропоновано шляхи їх усунення, що, в свою чергу, підвищить шанси органів досудового розслідування на притягнення винних до відповідальності і, водночас, зменшить кількість подібних злочинів. Загалом ця стаття є корисним ресурсом для фахівців у галузі права, криміналістики, аудиту та бухгалтерського обліку, які беруть участь у розслідуванні кримінальних справ, пов'язаних з використанням фіктивних рахунків-фактур.

Ключові слова: господарська операція; кримінальний кодекс; підставна особа; податок на додану вартість; досудове розслідування.