

ARTICLES

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Chechen Republic**THE CLASSIFICATION AS ONE OF THE WAYS
TO IDENTIFY THE MAIN DIRECTIONS
OF CRIMINAL ACTIVITY IN THE RUSSIAN
FINANCIAL MARKET**

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Abstract. *The financial services market is an important and integral element of any economic system. In the Russian Federation, it is developing quite successfully and at a rapid pace. Along with the positive changes in society, it is logically reasonable to note the growth in the number of illegal organizations, whose activities are carried out outside the “legal field”. Such organizations can be either companies that do not have a license in cases where it is required, or companies that are simply not included in the register of the Bank of Russia; in other cases — simply fraudulent organizations engaged in the provision of services under the guise of carrying out activities in the field of finance. Illegal activities in the financial market undermine confidence in the financial market and form a negative opinion of the population about financial organizations in general. The article considers actual problems of determining the main directions of criminal activity in the financial market of Russia and establishes cause-and-effect relations with criminal-legal support of this sphere of legal relations. As a result of the analysis, the author has identified new features of the main directions of criminal activity in the financial market, determined their qualitative features and established a number of risks in the sphere of criminal-legal support of the financial market.*

Keywords: *criminal activity in the financial market, criminal law enforcement, classification in criminal law, criminal law, economic activity.*

Crimes committed in the sphere of economic activity are characterized by complexity, including due to the multilevel system of benefits that are damaged.

Modification of the mechanism of activity of illegal organizations, general increase in the qualitative and quantitative monitoring of illegal activities generally leads to an increase in the number of illegal participants in the financial market. A classic example of such manipulations are financial pyramids, as a rule, in realization of their activity choosing short-term projects with minimal initial payment.

According to the documentation of strategic planning, the banking sector, the microfinance market, the insurance market, professional participants of the securities market and mutual funds management business, as well as the financial consulting market — are allocated in separate independent blocks¹. Let us point out that these blocks are singled out in this way because they are quite vulnerable and need solutions to maintain their financial stability, which will ensure their increased participation in the financing of economic development. It is also logically reasonable to point out that these blocks are used, being vulnerable, in unfair fraudulent schemes, which is also reflected in the Concept of countering unfair practices in the financial market (developed and presented by the Central Bank of the Russian Federation)².

It is impossible not to emphasize the active aspiration of the state authorities to support the development of the financial market. This is facilitated by:

- active rule-making activity aimed at regulating relations in certain spheres of the financial market;
- introduction of special registers of “professional” financial market players; consolidation of control and supervisory functions in one structure;
- establishment of a number of norms of administrative and criminal liability for the protection of certain sectors of the financial market.

At the same time, the law enforcement system inevitably faces the problems of criminal-legal support of this sphere of public relations.

A number of issues are also actualized, without the resolution of which it becomes difficult to make positive forecasts in favor of a high level of protection by criminal-legal means of the considered sphere of legal relations.

Among the crimes “typical for the financial market”, the Bank of Russia includes the following corpus delicti: “... fraud — Article 159 of the Criminal Code of

¹ Osnovnye napravleniya razvitiya finansovogo rynka Rossiyskoy Federatsii na 2023 god i period 2024 i 2025 godov [The basic directions of development of the financial market of the Russian Federation for 2023 and the period of 2024 and 2025]. M., 2022. P. 36–39.

² Kontseptsiya protivodeystviya nedobrosovestnym deystviyam na finansovom rynke [Concept of countering unfair practices in the financial market]. M., 2018. Pp. 15–20.

the Russian Federation, insurance fraud — Article 159⁵ of the Criminal Code of the Russian Federation, falsification of financial documents of accounting and reporting of a financial organization — Article 172¹ of the Criminal Code of the Russian Federation, organization of activities to attract money and (or) other property — Article 172² of the Criminal Code of the Russian Federation, abuse in the issuance of securities — Article 185 of the Criminal Code of the Russian Federation ... etc.”¹.

A cursory review of the types of crimes included in Chapter 22 of the Criminal Code of the Russian Federation suggests that the criminal-legal protection of financial market participants from criminal encroachments has an unsystematic and even chaotic character.

The problems arising at attempts to regulate the analyzed and protected by the norms of the Criminal Code of the Russian Federation sphere of public relations and to bring it into conformity with the really existing conditions, originate from the moment of formation of the conceptual and categorical apparatus.

Specialists in the field of criminal law theory² for decades have been paying attention to the issue of uncertainty of the conceptual and categorical apparatus and to the issues of interpretation of the criminal law. The lack of due attention to terminology, as well as the unity of understanding of the used categories, determines the difficulties arising not only in research activities, but also in law enforcement practice.

So, before identifying “white spots” in the sphere of protection of interests of financial market participants by criminal law means and analyzing the activities of entities involved in the problematic plane under study, it seems appropriate to reveal the essence and content of the financial market — to determine the conceptual and categorical apparatus used and to classify the illegal components of such a market.

First, attention should be paid to *the institutional aspect* of the phenomenon under study. V.V. Chistyukhin states that “the financial market is a special sphere of economic relations that develop between the state, financial organizations and

¹ Kontseptsiya protivodeystviya nedobrosovestnym deystviyam na finansovom rynke [Concept of countering unfair practices in the financial market]. M., 2018. P. 11.

² Kudryavtsev V.N. Obshchaya teoriya kvalifikatsii prestupleniy. 2-e izd., pererab. i dop [General theory of qualification of crimes. 2nd edition, revised and supplemented]. M.: Yurist, 2007. P. 177; Yatsenko B. V. Tolkovanie ugolovnogo zakona kak sposob preodoleniya ego neopredelennosti [Interpretation of criminal law as a way of overcoming its uncertainty] // Vestnik Rossiyskoy pravovoy akademii [Herald of the Russian Legal Academy]. 2014. No. 3. Pp. 55–59; Koval M.I. Aspekty primeneniya nekotorykh terminologiy v ugolovnom i ugolovno-ispolnitelnom zakonodatelstve [Aspects of the application of certain terminology in criminal and penal legislation] // Evraziyskiy yuridicheskiy zhurnal [Eurasian Legal Journal]. 2021. No. 4(155). Pp. 239–240.

consumers of financial services”¹. Such understanding of the financial market is of a general character due to its spreading (expansive) interpretation, reflecting the most important characteristics of the analyzed phenomenon.

It seems acceptable to use this definition as the main one in the current study, which allows the author to touch upon other features of the financial market without distorting its system-forming elements.

Within the framework of this study, we do not aim to go deep into the study of this problem, but it seems logically reasonable to note that initially the financial market was in some sense synonymous with the capital market. Then the term was used in the sense of money market.

At present, there are two approaches to its understanding:

- the financial market is defined through financial instruments (the so-called product approach);
- financial market as a segment of the economy, where financial products, including goods and services, are circulated².

Due to the fact that the financial market is a generic concept, there are several classifications, which differ in a number of ways. In fact, the question about the number of financial markets is purely rhetorical. Intentions and responses of the researcher on the given topic will be determined by the statement of the question itself³.

Proceeding from the aim of this study — to identify the main directions of criminal activity in the financial sector — let us point out that it is possible to classify by categorization of illegal actions.

The Bank of Russia ranks companies with signs of illegal activities in the financial market into *three groups*:

- 1) financial pyramids;
- 2) illegal lenders;
- 3) illegal professional participants of the securities market, including illegal forex-dealers⁴.

¹ Chistyukhin V.V. Finansovyy rynek kak kategoriya finansovogo prava [Financial market as a category of financial law] // Vestnik Universiteta imeni O.E. Kutafina (MGYuA) [Herald of O.E. Kutafin University (MSAL)]. 2021. No. 9(85). Pp. 113–123.

² Arzumanova L.L. Finansovoe pravo: uchebnik (2-e izdanie, pererab. i dop.) [Financial law: textbook (2nd edition, revised and supplemented)]. M.: Prospekt, 2020. P. 357.

³ Guseva I.A. Finansovye tekhnologii i finansovyy inzhiniring: uchebnik [Financial technologies and financial engineering: textbook]. M.: KnoRus, 2021. P. 35.

⁴ Spisok kompaniy s vyyavlennymi priznakami nelegalnoy deyatel'nosti na finansovom rynke [List of companies with identified signs of illegal activities on the financial market] // Bank Rossii [Bank of Russia]: [Electronic resource]. — URL: <https://cbr.ru/inside/warning-list/#search> (date of address: 24.01.2023).

Five clusters are responsible for further classification of companies. They include companies with signs of illegal activities in the insurance industry and companies with signs of illegal activities of investment platform operators¹.

It is important to underline that according to the results of only the first three months of 2023, the list includes: 212 companies with the signs of illegal activities of a professional participant of the securities market, 421 companies with the signs of a financial pyramid scheme, 404 companies with the signs of an illegal lender, 14 companies with the signs of illegal activities in the insurance market, and 7 companies with the signs of an illegal investment platform operator.

In dynamics, the change in the number of companies with identified signs of illegal activities in the financial market can be seen in Table 1.

Table 1

Year	2020	2021	2022	2023 (January–March)
Signs of a “financial pyramid” scheme	272	805	1960	421
Signs of an illegal lender	649	625	1248	404
Signs of an illegal professional securities market participant	363	783	1174	212
Signs of illegal activities in the insurance market	0	0	17	14
Signs of an illegal investment platform operator	0	0	3	7

Earlier we pointed out the growing number of illegal participants in the financial market, as well as the reasons for increasing the quality of monitoring of such activities; however, it is worth noting that the mechanism of operation of illegal organizations has changed, including during the pandemic.

The above-mentioned financial pyramids were considered by us in the sense that such uncomplicated machinations, at first, do not alarm either the forces of the Bank of Russia or law enforcement agencies. It is logical to point out that such activity, even completed in the early stages, has a tremendous negative impact.

In addition, it is worth noting that, in addition to the above-mentioned vulnerable blocks of the economic sector, this list on the use of such models and in fraudulent

¹ Spisok kompaniy s vyyavlennymi priznakami nelegalnoy deyatel'nosti na finansovom rynke [List of companies with identified signs of illegal activities on the financial market] // Bank Rossii [Bank of Russia]: [Electronic resource]. — URL: <https://cbr.ru/inside/warning-list/#search> (date of address: 24.01.2023).

schemes in bad faith, today complements the market of collective investments and trust management.

In doctrinal sources¹ the most common is the classification according to the *sectoral principle*, as the normative regulation is historically based on this approach. However, it is here that there is a polysemy of views.

For example, the Deputy Chairman of the Central Bank of Russia V. V. Chistyukhin identifies 10 types of markets (sectors), including: a) the market of securities and derivatives; b) the market of banking services, insurance market; c) the foreign exchange market, the market of payment services; d) the market of collective investments (which includes the pension market); e) the market of microfinance, etc².

Some authors rank illegal activities by types of unfair (fraudulent) schemes based on strategic planning documents: a) cyber fraud; b) “license-free” activities; c) unfair practices related to the concealment of true information; d) misuse of insider information; e) financial pyramids; f) money laundering and terrorism financing; g) insurance market³.

By the degree of compliance with the requirements established by the law, we can distinguish legal and illegal participants of the financial services market.

By subjects one should identify professional market participants, non-professional and the state.

However, the presented classifications are not without flaws. The above needs clarification.

Thus, an organization registered in accordance with the established procedure and carrying out financial activities in accordance with the regulator’s permission may at some point begin to operate on the principle of a financial pyramid, i.e. when the volume of borrowed funds significantly exceeds its own assets, and dividends are paid by attracting new participants in the absence of comparable

¹ Chistyukhin V.V. Finansovyy rynek kak kategoriya finansovogo prava [Financial market as a category of financial law] // Vestnik Universiteta imeni O.E. Kutafina (MGYuA) [Herald of O.E. Kutafin University (MSAL)]. 2021. No. 9(85). P. 28; Shimshirt N.D. Finansovye rynki i instituty: uchebno-metodicheskoe posobie [Financial markets and institutions: textbook]. Tomsk: Izdatelskiy dom Tomskogo gosudarstvennogo universiteta, 2015. P. 11; Barinov E.A. Rynek dragotsennykh metallov kak segment finansovogo rynka [Precious metals market as a segment of the financial market] // Uchenye zapiski Rossiyskoy akademii predprinimatelstva [Academic notes of the Russian Academy of Entrepreneurship]. 2020. T. 19. No. 2. P. 100.

² Chistyukhin V.V. Finansovyy rynek kak kategoriya finansovogo prava [Financial market as a category of financial law] // Vestnik Universiteta imeni O.E. Kutafina (MGYuA) [Herald of O.E. Kutafin University (MSAL)]. 2021. No. 9(85). P. 29.

³ Nakostik D.D. Riski uvelicheniya nedobrosovestnykh uchastnikov finansovogo rynka v usloviyakh sanktsiy [Risks of an increase in unscrupulous financial market participants in the context of sanctions] // Vestnik evraziyskoy nauki [Bulletin of Eurasian Sciences]. 2022. T. 14. No. 5. Pp.1–9.

income from business activities. Experts in the field of financial law divide professional participants in the financial market mainly *on a sectoral basis*: a) credit organizations (banks and non-profit organizations); b) professional participants in the securities market (brokers, dealers, registrars, organizations engaged in depository activities); c) subjects of the collective investment market (non-state pension funds); d) joint-stock investment funds; e) specialized depositories; f) subjects of the insurance business (insurers, reinsurers, insurance brokers); g) microfinance institutions (Microcredit organizations, consumer credit cooperatives, pawnshops, agricultural consumer cooperatives, housing savings cooperatives), etc.

As can be seen, there are “overlaps” in this classification.

For example, credit organizations in the form of NPOs are included in microfinance institutions, and collective investment entities can participate in the collective investment market.

An even more difficult task is to rank financial market entities that carry out their activities illegally.

For example, illegal lenders may operate as microfinance companies, pawnshops, commission stores, leasing companies, Internet projects distributed in social networks and (or) messengers. The latter, according to the Central Bank, amounted to 43.1% in 2022¹. Among financial pyramids, we can distinguish pseudo-credit organizations that issue loans; pyramids that do not hide their “status”; organizations that offer services for refinancing or co-financing of existing accounts payable; organizations that trade in the Forex market; online casinos; Internet resources that sell “turnkey” ready-made sites of high-growth projects, economic games and others. Illegal professional participants of the securities market mainly work under the guise of forex dealers (95%)².

Having disclosed some problematic issues of the financial market of Russia, having analyzed regulatory legal acts and used statistical data of the Bank of Russia, having considered classifications (on various grounds of dishonest (fraudulent) schemes and their participants), we were able to cover a large volume of the phenomena under study and avoid one-sidedness in their scientific interpretation.

Thus, the analysis of available in scientific theory classifications and carrying out additional ones allowed us to identify new features of the main directions of

¹ Protivodeystvie nelegalnoy deyatel'nosti na finansovom rynke. Bank Rossii. Analitika. Protivodeystvie nedobrosovestnym praktikam uchastnikov rynka [Countering illegal activities in the financial market. Bank of Russia. Analytics. Countering unfair practices of market participants] // Bank Rossii [Bank of Russia]: [Electronic resource]. — URL: <https://docs.yandex.ru> (date of address: 24.01.2023).

² Ibid.

criminal activity in the financial market of Russia, to determine their qualitative features, which together allowed us to identify a number of risks in the sphere of criminal and legal support of the financial market:

1. Legislative and other regulatory legal acts in terms of determining the rights and obligations of the participants of the analyzed market are at the stage of formation.

2. Conceptual directions of development of the financial market in accordance with the real demand of a society for safety in this sphere of legal relations are not formulated and not fixed in full volume.

3. Inconsistency between the level of financing of the sphere of counteraction to criminal encroachments on the financial market, including electronic circulation of information — electronic keys of access to it (password system) and legislative protection of the latter.

It is realistic to minimize the number of illegal actions in the Russian financial market by improving the quality of the regulatory framework responsible for the designated and formed sector. More effective experience of the regulator in identifying signs and instruments of market manipulation, as well as the use of insider information can be used in the case of a step-by-step application of means of state response to deviant behavior of professional participants, specifically: 1) disciplinary prescription on prevention of violations on transactions by prior agreement with shares, futures contracts, units, bonds; 2) suspension of trading accounts of identified persons; 3) sending materials for bringing to administrative responsibility under Article 15.21 or 15.30 of the Code of Administrative Offenses of the Russian Federation; 4) bringing to criminal responsibility under Article 185³ or 185⁶ of the Criminal Code of the Russian Federation. This approach eliminates the risks of prosecution under objective imputation due to “arbitrary” approaches to assessing the “criminal” financial result under Article 185³ of the Criminal Code of the Russian Federation, based not on regulations but on the recommendations of the Bank of Russia; a person who disagrees with the regulator’s decision can appeal the decision at an earlier stage and present his arguments without the threat of criminal prosecution.

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