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DOI <https://doi.org/10.32849/2663-5313/2024.1.21>**Ivan Shekun,***PhD Candidate, State Tax University, 31, Universytetska Street, Irpin, Kyiv Region, Ukraine, postal code 08200, shekun.tender@gmail.com***ORCID:** orcid.org/0009-0001-0366-8546*Shekun, Ivan (2024). Determinants of embezzlement in the sphere of official activity. *Entrepreneurship, Economy and Law*, 1, 119–123, doi <https://doi.org/10.32849/2663-5313/2024.1.21>*

DETERMINANTS OF EMBEZZLEMENT IN THE SPHERE OF OFFICIAL ACTIVITY

Abstract. Purpose. The purpose of the article is to analyze specific groups of determinants of embezzlement in the sphere of official activity, taking into account current challenges to Ukrainian state-building. **Results.** The article is devoted to examining the features of various groups of determinants of embezzlement in the sphere of official activity. It presents an analysis of approaches proposed by legal scholars and criminologists concerning the classification of determinant groups in relation to embezzlement committed through the use of official position. Based on these approaches, the author offers an original concept of a determinant complex of corruption-related criminality in the context of embezzlement committed through official activities. This complex includes: socio-economic determinants; political and legal determinants; security-related determinants; organizational and managerial determinants; cultural and psychological determinants. The article emphasizes that the identification of security-related threats is justified by the ongoing full-scale war, which has, firstly, increased the burden on the law enforcement system due to the rising number of criminal offenses and the complexity of their investigation amid wartime risks, and secondly, created favorable conditions for the commission of corruption-related economic crimes. Risks of unlawful embezzlement by officials also extend to humanitarian aid, as Ukraine receives substantial volumes of such aid to support both civilian and military needs under wartime conditions. **Conclusions.** It is concluded that each group of determinants of the examined category of crime requires further in-depth development at the level of relevant policy programs. Among the key measures to counteract corruption-related criminal offenses, including embezzlement, the following should be highlighted: strengthening independent financial control and auditing in the public sector; increasing the remuneration of civil servants to reduce incentives for unlawful conduct; establishing and actively implementing effective mechanisms for digital monitoring of financial transactions; improving the quality of criminal law provisions that stipulate liability for embezzlement involving abuse of official position, alongside enhancing penalties for such abuses; fostering legal culture and conducting anti-corruption educational initiatives, including those targeting individuals who, due to the absence of competitive selection during wartime, are appointed to positions and granted administrative and managerial functions for the first time.

Key words: embezzlement, abuse of official position, prevention, criminal offenses against property, corruption-related offenses, determinants.

1. Introduction

Crime as a whole, being a negative social phenomenon, has a destructive impact on socio-economic processes, national and public security, and poses a threat to the protection of the rights and legitimate interests of both individuals and legal entities. A particularly significant category of crime is corruption-related criminality, which undermines the authority of the state and its authorized institutions and affects other protected public interests, as such offenses often involve encroachments on property.

From this perspective, criminological analysis of the nature of criminal offenses involving embezzlement committed in the course of official activity, as well as the determinants of such conduct, plays an important role. Such analysis serves as

a basis for the development and implementation of effective measures and mechanisms for preventing and countering these unlawful acts.

It is worth noting that the amendments introduced in 2015 to Article 45 of the Criminal Code of Ukraine eliminated legal debates regarding which criminal offenses fall under the category of corruption-related crimes. According to the note to Article 45 of the Criminal Code of Ukraine, “corruption-related criminal offenses under this Code shall include criminal offenses stipulated in Articles 191, 262, 308, 312, 313, 320, 357, and 410, if committed through abuse of official position, as well as the criminal offenses provided in Articles 210, 354, 364, 364-1, 365-2, and 368–369 of this Code” (Criminal Code of Ukraine, 2001).

The issue of determinants of embezzlement in the sphere of official activity has been directly or indirectly addressed in the scholarly works of A.M. Boiko, I.M. Danshyn, O.M. Dzhuja, M.H. Kolodiaznyi, O.H. Kalman, O.S. Bondarenko, B.V. Osadchyi, S.A. Shubina, O.V. Khutoryanskyi, among others.

The purpose of this article is to analyze specific groups of determinants of embezzlement in the sphere of official activity, taking into account the current challenges facing Ukrainian state-building.

2. Foundations of the Criminalization of Official Activity

The challenges of combating criminal offenses related to the abuse of official position carry serious criminal-legal and social implications, as officials entrusted with making critical managerial decisions often misuse their authority for personal gain. Such actions understandably undermine public trust in government institutions and generate widespread societal dissatisfaction.

In general, the criminalization of official activity manifests in various forms, including offenses committed by representatives of law enforcement agencies and other state bodies responsible for maintaining public order; unlawful participation of public officials in entrepreneurial activities; interference with the administration of justice; and engagement in certain types of shadow activities that violate the law. The criminalization of official activity is a complex process, frequently characterized by self-organization and the application of innovative schemes. Importantly, the primary motivation behind such offenses is often not only illicit enrichment but also career advancement and the preservation of power.

Given the significant proportion of these criminal offenses involving unlawful embezzlement within the sphere of official activity—and considering the expanding range of property types that have become targets of misappropriation—the study of the determinants of such crimes remains highly relevant.

For example, according to statistical data from the Prosecutor General's Office, in 2021, a total of 11,092 criminal proceedings were registered under Article 191 of the Criminal Code of Ukraine, with 6,040 cases resulting in formal suspicion notices. In 2022, 6,284 proceedings were registered, with suspicions issued in 3,017 of them. However, in 2023, there was a renewed increase in such offenses, with 8,452 criminal proceedings recorded, and suspicions reported in 4,054 cases (Statistics of the Prosecutor General's Office, 2024).

It is noteworthy that the marked decline in such offenses in 2022 can be attributed to

the national focus on resisting the full-scale war initiated by the Russian Federation. During this period, there was unprecedented national unity around the goal of preserving Ukrainian statehood, and the number of criminal offenses significantly decreased, particularly in the early months following the invasion. However, in 2023, the number of proceedings under Article 191 of the Criminal Code increased by 1.5 times, which may be explained by society's gradual adaptation to wartime conditions and a return to detrimental behavioral patterns that fuel the commission of criminal acts, including embezzlement in the public service sector.

As noted by O.V. Shemyakin, corruption-related crime should be understood as “a relatively widespread negative socio-legal phenomenon that directly encroaches on the established order of official activity within legal entities of both public and private law, as well as the procedure for the provision of public services by non-official persons for the purpose of obtaining undue benefit. Corruption crimes can be committed within state authorities and administrative bodies, as well as in private legal entities and professional domains associated with the provision of public services” (Shemyakin, 2013).

It is appropriate to distinguish two groups of crimes based on the types of criminal offense elements that include features essential for classifying them as corruption-related: “In the first case, this refers to a qualified offense, in which the qualifying feature is the method of commission—namely, abuse of official position—provided for in a specific part of an article of the law as an additional element; in the second case, it refers to a basic offense, i.e., the crime is inherently of a corruption nature, which characterizes the entire article, not just a separate part” (Mashlyakevych, 2015). The subject of our study focuses specifically on the determinants of the first category of criminal offenses.

In criminology, the causes and conditions of crime are generally unified under the broader concept of *criminological determinants*. With respect to embezzlement—particularly in the sphere of housing and communal services—S.A. Shubina, O.V. Khutoryanskyi, and D.M. Tychyna argue that “the most productive way to identify and explain the factors of embezzlement-related criminality in Ukraine lies within a structural-functional analysis of the spheres and mechanisms of reproduction of such crimes, particularly corruption-related offenses. These serve as the criteria for structuring the set of determinants, within which the following are identified: socio-economic, organizational-managerial, legal, and cultur-

al-psychological factors” (Shubina, Khutoryan-skyi, Tychyna, 2023).

B.V. Osadchyi, studying the determinants of crimes involving embezzlement, misappropriation, or unlawful acquisition of property through abuse of office, maintains that “the entire set of factors that determine crimes of this kind should be divided into the following groups: political and economic transformation; legislative shortcomings; socio-cultural factors; globalization and external challenges” (Osadchyy, 2023).

M.I. Melnyk classified the determinants of corruption-related crime according to the spheres in which it proliferates as follows: “1) political; 2) economic; 3) organizational-managerial; 4) legal; 5) ideological; 6) moral-psychological; 7) others” (Melnyk, 2002). Similarly, T.V. Kornyakova identifies political, economic, legal, organizational-managerial, and socio-psychological criminogenic factors contributing to corruption-related criminality (Kornyakova, 2009).

3. Analysis of Determinants of Corruption-related Crime in the Sphere of Official Activity

Taking into account the approaches of the aforementioned scholars, it is considered appropriate to structure the determinant complex of corruption-related crime in the context of embezzlement involving official activity as follows:

- **socio-economic determinants;**
- **politico-legal determinants;**
- **security-related determinants;**
- **organizational and managerial determinants;**
- **cultural and psychological determinants.**

Let us briefly analyze selected groups from this classification.

Socio-economic determinants generally reflect the tendency whereby a low level of social welfare and the failure to ensure the level of social protection declared by the state lead to the deterioration of social guarantees for the population and a decrease in quality of life, which in turn generates a desire to “compensate” for such shortcomings through unlawful means aimed at improving one’s personal living standards. It is also important to consider that a high level of economic crime is inversely proportional to the level of economic growth in the country. This results in low economic well-being among the population, which, prior to the full-scale invasion, was already characterized by the presence of only a small middle class (sources estimate that the middle class in Ukraine accounted for merely 7–8%, with this figure declining further following the onset of the war). Embezzlement, as a form of misap-

propriation, is no exception, as declining income levels among public officials, financial hardships, and the imbalance between remuneration and the scope of authority increase the risks of abuse.

Politico-legal determinants encompass, first of all, the tendency within the Ukrainian governance and political systems for individuals who often lack understanding of the mechanisms of a rule-of-law state in a market economy to participate in political processes. Their participation is primarily motivated by the desire to lobby for personal or third-party business interests. This, coupled with low political culture and the absence of effective mechanisms for political accountability, leads to an increase in both the frequency and severity of embezzlement offenses committed through abuse of office—including by high-ranking public officials and representatives of the business elite.

As for the **legal prerequisites**, despite the establishment and functioning of an anti-corruption justice system, there remain issues concerning the quality and coherence of anti-corruption legislation in general, and criminal law in particular. These shortcomings result in legislative competition and conflict during the classification of identified acts of embezzlement committed through abuse of office, leading to misapplication of the law—an issue repeatedly highlighted by the Supreme Court in its reviews of judicial practice.

Efforts to eliminate corruption risks in both existing and draft laws and regulations are guided by the provisions of the *Law of Ukraine on Prevention of Corruption* (2014) and the *Procedure for Conducting Anti-Corruption Expertise* (2015), which regulate the conduct of anti-corruption assessments of both current and proposed legal acts. However, the conclusions of such assessments are advisory in nature.

According to the current anti-corruption legislation, “mandatory anti-corruption expertise is carried out by the Ministry of Justice of Ukraine, except for draft legal acts submitted to the Verkhovna Rada of Ukraine by Members of Parliament. In those cases, expertise is conducted by the relevant parliamentary committee responsible for anti-corruption policy” (*Law of Ukraine on Prevention of Corruption*, 2014). Additionally, the National Agency on Corruption Prevention (NACP) “may, on its own initiative and in accordance with its established procedure, conduct anti-corruption expertise of draft legal acts submitted to the Verkhovna Rada of Ukraine or the Cabinet of Ministers of Ukraine. To this end, the Cabinet of Ministers must send it all relevant draft legal acts. The Agency shall inform the respective parliamentary commit-

tee or the Cabinet of Ministers of the conducted expertise, which serves as grounds for suspending the review or adoption procedure of the draft act for up to ten days" (*Law of Ukraine on Prevention of Corruption*, 2014).

We believe that in order to improve the quality of normative legal acts and minimize corruption risks and lobbying influences, anti-corruption expertise should become an integral and **mandatory** part of the legislative process. Such expertise must be carried out by a body independent of the entity adopting the act—for instance, the National Agency on Corruption Prevention—which would prevent situations where representatives of the same body that adopts the act also evaluate it for corruption risks.

We support the view of M. Kolodyazhnyy that "war constitutes a powerful (from a criminological perspective) determinant of crime. It necessitates the transformation of the entire social system and its adaptation to meet the needs of society in the face of external military aggression. At the same time, war and crime exert a mutually determinative influence. Not only does war negatively affect society, but crime as a whole is also capable of shaping social processes and the behavior of members of society in specific ways" (Kolodyazhnyy, 2023).

Indeed, the increase in security threats resulting from the full-scale war has, first, led to a rise in the burden on the law enforcement system, including both the number of criminal offenses and the complexity of their investigation due to the risks posed by active hostilities. Moreover, it has created favorable conditions for corruption-related economic crimes. In some cases, public officials take advantage of the high level of public trust in the military; in others, they exploit shortcomings in property accounting systems—including military assets—to commit embezzlement through abuse of office.

Risks of unlawful embezzlement by public officials also arise in the sphere of humanitarian aid. In wartime conditions, Ukraine receives substantial volumes of humanitarian assistance intended to support both civilian and military needs. However, some officials abuse their positions to unlawfully misappropriate this aid or parts thereof, which not only causes material harm but also undermines public trust in state institutions.

For instance, according to the data of the Prosecutor General's Office, in 2021, 191 criminal proceedings were registered under Article 410 of the Criminal Code of Ukraine, with 18 indictments filed; in 2022, 239 proceedings were registered, with 28 indictments; and in 2023, 216 proceedings, with 18 indictments (Statistics of the Prosecutor General's Office, 2024).

4. Conclusions

In conclusion, embezzlement through abuse of office constitutes a complex criminal offense, which arises from both objective socio-economic conditions and subjective motives of offenders in the spheres of public administration, finance, law enforcement, and the corporate sector.

We believe that each of the above-mentioned groups of determinants should be further elaborated at the level of specific targeted programs. However, among the key measures for combating corruption-related criminal offenses—including embezzlement—the following should be emphasized:

- strengthening independent financial control and audit in the public sector;
- increasing the remuneration of public officials to reduce incentives for unlawful conduct;
- developing and actively implementing effective mechanisms of digital monitoring of financial transactions;
- enhancing the quality of criminal law provisions that establish liability for embezzlement through abuse of official position involving different types of property, while simultaneously increasing sanctions for such offenses;
- promoting legal culture and conducting anti-corruption educational initiatives, including for individuals who, in the absence of competitive selection during wartime, are appointed for the first time to positions with administrative and managerial responsibilities.

Accordingly, it is essential to combine effective legislative initiatives, feasible technical solutions, and cultural changes to minimize abuse and strengthen public oversight.

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ДЕТЕРМІНАНТИ ПРИВЛАСНЕННЯ У СФЕРІ СЛУЖБОВОЇ ДІЯЛЬНОСТІ

Анотація. Мета. Метою статті є проаналізувати окремі групи детермінантів привласнення у сфері службової діяльності, враховуючи сучасні виклики для українського державотворення. **Результати.** Статтю присвячено розкриттю особливостей окремих груп детермінантів привласнення у сфері службової діяльності. Наведено аналіз підходів правників-кримінологів щодо класифікації груп детермінантів привласнення у сфері службової діяльності, на основі яких запропоновано авторське бачення детермінаційного комплексу корупційної злочинності в частині привласнення із використанням службової діяльності, до структури якого віднесено: соціально-економічні детермінанти; політико-правові детермінанти; безпекові детермінанти; організаційно-управлінські детермінанти; культурно-психологічні детермінанти. Акцентовано, що виділення безпекових загроз зумовлено повномасштабною війною, що призвело, по-перше, до зростання навантаження на правоохоронну систему в кількості вчинюваних кримінальних правопорушень, в складності їх розслідування через ризики воєнних дій тощо, а також створило сприятливі умови для корупційних злочинів економічного характеру. Також ризики незаконного привласнення службовою особою існують також щодо гуманітарної допомоги, оскільки в умовах війни Україні надаються значні обсяги гуманітарної допомоги для підтримки цивільних та військових потреб. **Висновки.** Підсумовано, що кожна із груп детермінантів досліджуваної злочинності має бути надалі детально розроблена на рівні відповідних програм, проте серед основних заходів для протидії корупційним кримінальним правопорушенням, в тому числі, привласненню, є: посилення незалежного фінансового контролю та аудиту у державному секторі; підвищення рівня оплати праці державних службовців, щоб забезпечити втрату мотивації до правопорушень; створення та активне впровадження ефективних механізмів цифрового моніторингу фінансових операцій; підвищення якості кримінально-правових норм, що передбачають відповідальність за привласнення із використанням службового становища того чи іншого виду майна, з одночасним посилення покарання за зловживання службовим становищем; розвиток правової культури та проведення антикорупційних освітніх заходів, в тому числі, із особами, які нині за відсутності конкурсного добору в період війни призначаються на посади та наділяють адміністративно-господарськими функціями вперше.

Ключові слова: привласнення, використання службового становища, запобігання, кримінальні правопорушення проти власності, корупційні правопорушення, детермінанти.