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## **Pre-trial investigation of criminal offenses in the field of economic activity, using the example of illegal business, illegal banking, microfinance and collection activities**

**Abstract.** *The article considers forensic methodological recommendations for pre-trial investigation of criminal offenses related to illegal entrepreneurial, illegal banking, microfinance and collection activities, which covered all countries, including Kazakhstan. The purpose of the article is to develop forensic tactical techniques for the production of investigative and tacit investigative actions during the pre-trial investigation of the organization of illegal entrepreneurial, illegal banking, microfinance and collection activities. The previously accumulated experience of Kazakhstan and foreign theory and practice of preliminary investigation of grave crimes and very grave crimes are taken into account. In particular, an attempt will be made to develop forensic prevention of criminal offenses related to the organization of illegal entrepreneurial, illegal banking, microfinance and collection activities.*

**Keywords:** *criminal business; organization of illegal entrepreneurship; illegal banking; illegal microfinance activities; illegal collection activities; forensic recommendation; forensic tactics and methods of pre-trial investigation; investigative and tacit investigative actions.*

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### **Introduction**

The relevance of the topic and content of the article is as follows. Thus, the approved Concept of Legal Policy of the Republic of Kazakhstan until 2030 states the following that... «authorized state bodies would be focused on strengthening the fight against the» shadow «economy» [1].

In the Messages to the people of Kazakhstan, dated September 01, 2021, and to the Parliament of the Republic of Kazakhstan, dated March 16, 2022, Head of State K.-J.K. Tokayev drew attention to the fact that... «practical issues of combating crime should not be overlooked. Fair indignation of citizens causes an increase in fraud. The Prosecutor General's Office will have to develop a set of measures to counter fraud and financial pyramids.» [2].

For most citizens of the country, criminal offenses in the field of economic activity

are associated with fraudulent actions that are directed against the object of criminal law protection. For example, the criminal encroachment can be: money in national or foreign currency; industrial, household and food products; different types of service, etc. It is correct to distinguish between the compositions of criminal offenses included in the 6th and 8th chapters of the Special Part of the Criminal Code of the Republic of Kazakhstan, this is possible only for investigative and operational-search apparatuses represented by the economic investigation service. The Economic Investigation Service is a member of the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan (hereinafter referred to as EIS). It is possible only in the process of qualifying the action or inaction of a suspect in the commission of these socially dangerous acts.

A criminal offense in the form of illegal entrepreneurship, illegal banking, microfinance and collection activities causes enormous damage to the fiscal policy of the state in the form of unpaid taxes and billions of criminal proceeds received, both in national and foreign currencies. Damage is caused, including to the citizens of the country, which is also calculated in millions and billions of dollars, also in national and foreign currencies.

The composition of the criminal offense provided for by Article 214 of the Criminal Code of the Republic of Kazakhstan: «Illegal entrepreneurship, illegal banking, microfinance or collection activities» is located in Chapter 8 of the Special Part of the Criminal Code of the Republic of Kazakhstan (CC of the RK) [3]. On the basis of Art. 11 of the Criminal Code of the Republic of Kazakhstan, this public dangerous act in the category of crime refers to small and medium severity.

In the new economic situation, after the pandemic, business entities operate on the basis of a variety of ownership forms using various organizational and legal forms. Accounting and assessment of the performance of enterprises and entrepreneurs have become completely different. It became necessary to establish property relations with founders, investors, counterparties, as well as with the state – regarding the payment of taxes and other mandatory payments to the budget and extra-budgetary funds and state control over participants in market relations in the process of socio-economic development.

In the new economic conditions, the analysis of crimes in the field of economic activity shows the following. Many socially dangerous acts committed in the financial and budgetary sphere and commercial activities, previously investigative practice were partially known, we will present this in the literary analysis section. But, however, criminal offenses in the field of economic activity cause significant damage to the foundations of the economic and fiscal system of the republic. Pre-trial disclosure and investigation of such crimes committed in the field of economics is a challenge, since crimes of this type are latent. The danger to society of the crime of illegal entrepreneurship, illegal banking, microfinance activities and collection

activities is as follows. «Criminal business» in the form of this composition of a criminal offense can be committed in conjunction with both the compositions of criminal offenses included in the 8th and 9th chapters of the Special Part of the Criminal Code of the Republic of Kazakhstan, and in the 6th and 15th chapters of the Special Part of the Criminal Code of the Republic of Kazakhstan. «Persons of criminal business» on the subjective side of a criminal offense implement deceptive veiled methods of obtaining colossal illegal income, which can be revealed only during tacit investigative actions and operational-search measures, which we proved back in 2005 [4]. The illegal enrichment of criminal business by persons in the minds of law-abiding citizens causes outrage and increases social tensions in society. Among other things, mercenary crimes committed in the field of economics are of particular concern. A significant number of thefts and other crimes against property are committed in the field of financial and credit circulation, in the banking and tax system, criminal business, as well as in the licensing and export of raw materials, for example, products, goods from the republic. Such crimes are often associated with bribery and other official crimes.

In 2021, the investigative apparatus of the country pre-trial investigation of illegal entrepreneurship, illegal banking, microfinance and collection activities was carried out on 36 facts. For the first half of 2022, statistics state 58 facts of pre-trial investigation of criminal business [5].

The danger of the crime also lies in the fact that the services of the organizers of illegal migration can be used by persons with a criminal history, repeatedly convicted, as well as planning to engage in espionage, terrorist and extremist activities against our country. The vast majority of published textbooks and teaching guide, in our country and abroad after 2005 and until 2022, in criminology and criminalistics, bypass this difficult theoretical problem at all. The issues of criminological characterization, forensic methodology and prevention of certain criminal offenses included in the 8th chapter of the Special Part of the Criminal Code of the Republic of Kazakhstan are just partially highlighted. And

after the «Pseudo-business Undertakings» was decriminalized, Article 215 of the Criminal Code of the Republic of Kazakhstan and «False Bankruptcy» of Article 240 of the Criminal Code of the Republic of Kazakhstan were classified as administrative torts, the «persons of the criminal business» became unattainable to be prosecuted. But, there is a slight distance from an administrative offense to the commission of a criminal offense that is only one step long.

Analysis of the results of questionnaires, surveys and interviews of employees of departments of the economic investigation service and employees of the tax committee shows that more than 50% of tax payers either evade their payment, or hide the true amounts of their income and other objects of taxation, or under any pretext receive a delay in the fulfillment of civil obligations. «Shadow economy turnover in 2019 is amounted to more than 40 billion tenge. The damage from economic crimes is amounted to more than 31 billion tenge in 2021»[6].

Analysis of practical activities on pre-trial disclosure and investigation of crimes related to illegal entrepreneurship, illegal banking activities, microfinance and collection activities presents serious problems for operational-search and investigative units of economic investigations. This is due to the specific nature of this type of crime, since it has a similar way of committing a crime in the form of fraud. It can be carried out in combination, using market legal forms of entrepreneurial activity, in a veiled form, using conspiratorial methods of management, and in most cases with the participation of an organized group or community using their criminal experience. Crimes committed in the field of financial, credit, economic and commercial activities, namely: causing harm to the state through fraud, illegal entrepreneurship or pseudo-business undertakings, illegal activities in order to obtain profits uncontrolled by the state and other incomes which are concealed from accounting in order to artificially reduce the amount of tax. As a result of such crimes, the state loses part of its income, which negatively affects the formation of the state budget. Such crimes, in our opinion, are uncomplicated by the mechanism of commission, but are very

difficult to detect and disclose in pre-trial order, since it is impossible to clearly control the volume of products sold by individual outlets of commercial structures, production and service activities. Large firms, joint-stock companies, etc. skillfully hide their income, submitting fake information and fictitious documents to the tax inspectorates, which underestimate the amount of income of these enterprises.

Of course, the investigative and operational-search apparatuses of the economic investigation service of the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan need to respond to every criminal fact in the form of the beginning of a pre-trial investigation of a criminal case and implement a forensic warning of the organization of a criminal business. This is socially justified and fully meets the interests of law-abiding citizens and the state.

Therefore, in our opinion, there is a need to develop updated comprehensive methodological forensic recommendations related to the implementation of a pre-trial investigation into the organization of illegal business activities, illegal banking activities, microfinance and collection activities, which are committed in conjunction with other criminal offenses. Also we will try to propose an algorithm for pre-trial investigation of the organization of illegal business, according to which it is necessary to clearly give a legal assessment of the action or inaction of the subject of a criminal offense under Article 214 of the Criminal Code of the Republic of Kazakhstan. We will try to determine forensic tactical operations to consolidate trace information. Complex forensic tactical operations are necessary to include them in the content of the initial, subsequent and accompanying stage of the pre-trial investigation of the organization of the criminal business, which acts as the foundation for the commission of mercenary-violent crimes.

#### **Literary materials**

Scientific works of various levels related to the methodology of pre-trial investigation of illegal entrepreneurship, illegal banking activities, microfinance and collection activities

are mainly dated until May 2022. Subsequently, after the specified period, publications on the method of pre-trial investigation of the «criminal business,» set out in available sources of the Internet or published in a typographic way, are unavailable. Then let's turn our attention to analyzing the content of available and published works of a scientific nature on this issue.

According to the method of pre-trial investigation of criminal offenses in the field of economic activity, there are the works of the following authors. So, in the Russian Federation and the CIS countries, these include: Voigel E.I. (2004) [7], Kostromina E.G. (2006) [8], Kurganova I.V. (2008) [9], Yanchurkin O.V., Zulfugarzade T.E. (2015) [10], Vlasova p.V. (2020) [11], Kanatov E.S. (2021) [12], Muravyov M.V. (2022) [13] and others.

The content of works and scientific publications in the form of articles written by the above mentioned authors mainly reflect the criminological characterization of certain types of criminal offenses in the field of economic activity and the forensic methodology of pre-trial investigation of certain criminal offenses in the field of economic activity, typical investigative situations, the content of the stages of the preliminary investigation in the form of investigative actions.

In the Republic of Kazakhstan, there are separate scientific works on the criminal procedure for pre-investigation verification and forensic prevention of illegal economic activity.

Thus, Baizhanov N.A. (2006) [14] and Berkinbaev T. B. (2006) [15] considered the forensic methodology of preliminary investigation of certain criminal offenses in the economic sphere.

Abdirova G.A. (2009) [16] considered the use of special knowledge during the preliminary investigation of criminal cases on crimes in the field of economics.

Filatov V.N. (2019) [17] considered the introduction of a criminal procedure institute for pre-investigation verification of criminal offenses in the field of economics before proceeding with a pre-trial investigation.

In our opinion, these scientific studies do not fully cover forensic content and do not fully disclose the forensic methodology

for pre-trial investigation of the organization of illegal entrepreneurship, illegal banking, microfinance and collection activities.

Publications by foreign authors, from the UK, Germany, the USA and other countries, have a similar indicator of calendar time and cover general issues of criminological prevention and partly the methodology of pre-trial investigation of economic crimes. For example, this was considered: Ambos, K. (2018), Rachavelias, M.G. (2019), Levi, M. (2017), Solivetti, L.M. (2018), Miceli, T.J. (2021) and (2022), Box, M., Gratzner, K. & Lin, X. (2019), Blackburn, K., Neandis, K.C. & Rana, M.P. (2017) and others [18]. There are no other works by foreign authors disclosing the content of the forensic methodology for pre-trial investigation of the organization of criminal business, which carries out the production of a criminal case, including in the condition of COVID-19 pandemic.

Yes, all these works are valuable, but they do not provide an exhaustive answer to the application of previously developed theoretical provisions of the forensic methodology for pre-trial investigation of the organization of illegal entrepreneurship, illegal banking, microfinance and collection activities, including in a pandemic. Theoretical recommendations for the implementation of investigative actions are not fully disclosed, subject to the recommendations for the use of forensic tactical techniques, combinations and operations.

The methodological basis and research methodology is a dialectical and materialistic approach to the processes of cognition of socio-legal phenomena. In particular, the phenomenon in the form of illegal entrepreneurship, illegal banking, microfinance and collection activities, and generating criminal consequences for which it is necessary to give a legal assessment during the pre-trial investigation of a criminal case.

The basis of the scientific research was a philosophical understanding of the social essence of the process of criminalization of migration relations in the country and the resulting negative consequences for the person, society and the state. The fundamental provisions of philosophy in the form of the epistemological rationale for organizing a

criminal business and the way to solve the prevention of this criminal social phenomenon were applied.

The theoretical basis of the scientific research was the work of scientists and specialists in criminal law and criminology, the criminal procedure, criminal investigation, forensic examination, and the theory of operative research activities. These are listed and outlined above in the literary analysis section.

Besides, A.F. Aubakirov, R.S. Belkin, A.Ya. Ginzburg, E.G. Dzhakishev, G.A. Matusovsky, B.Kh. Toleubekova and other authors' conceptual fundamentals were taken into account while preparing this article [19]. The methodological recommendations developed by the above mentioned authors formed the basis of the proposed version of theoretical comprehension and the prevention of economic crime.

### **Results**

In the main part, in the form of results, let's try to set out the following.

The methodology for pre-trial investigation of crimes in the field of economic activity related to illegal entrepreneurship, illegal banking activities, microfinance and collection activities should be understood as follows. This is a system of tactical tasks and operations determined by the subject of evidence, reflecting the specifics of the pre-trial investigation of this group of crimes and meeting the criteria of efficiency and economy, which are due to one type of criminal offense combined into one part of the crime, which is provided in Art. 214 of the Criminal Code of the Republic of Kazakhstan, and the nature of criminal consequences. The general points in the pre-trial crime investigation procedure are the basis of a private investigating procedure for groups of crimes. The regularity of the formation of a private pre-trial crime investigation procedure is determined by the current realities and the criminal situation in the country. The type of crime, the identity of the suspect and the objective logic of the facts make it possible to form elements of a private procedure for investigating this type of criminal offense in the field of economic activity. This will help to find its continuation

in the practical activities of the economic investigation service.

In this regard, the structure of a private pre-trial investigation procedure in the field of economic activity related to illegal entrepreneurship, illegal banking, microfinance and collection activities is based in the context of Art. 113 of the Code of Criminal Procedure of the Republic of Kazakhstan, giving a list of circumstances about the subject of evidence. In relation to the peculiarities of the criminal offense of the considered type, which in the objective side is characterized by 4 alternative actions. Thus, the structure of a private pre-trial crime investigation procedure is under Art. 214 of the Criminal Code of the Republic of Kazakhstan may include the following elements:

a) theoretical foundations of a private pre-trial crime investigation procedure in the field of economic activity;

b) organizational and methodological basis for pre-trial disclosure of this criminal offense;

c) the range of circumstances, which must be considered in order to determine the type of crime and to prove it;

d) criminalistic description of the above mentioned crime (it allows you to understand the specifics of this type of crime);

e) typical investigative situations in the beginning of the pre-trial investigation of the criminal case, a system of typical tactical tasks and tactical operations aimed at solving their progress in the initial and subsequent stages of the pre-trial investigation;

f) the content of the initial stage of the pre-trial investigation of a crime of this forensic type, which includes organizational issues and the initial verification of materials in an operative research mode;

g) organizational and tactical features of investigative and tacit investigative actions and operative research activities at the subsequent and accompanying stage of the pre-trial investigation of this type of criminal offense in the field of economic activity;

h) measures to prevent criminal offenses in the field of economic activity.

The theoretical basis of the private methodology of pre-trial investigation of this type of crime in the field of economic activity

will be the norms of criminal and criminal procedure legislation, the provisions of criminology and other branches of scientific knowledge related to civilized economic activity.

Thus, the criminal law characteristic of illegal entrepreneurship, illegal banking, microfinance and collection activities is an integral element of the forensic characteristic, which is part of the structure of the methodology for pre-trial investigation of this type of criminal offense. It is necessary for investigative and operative research units of the economic investigation service to clearly identify signs of corpus delicti in the field of economic activity.

The criminological characteristic, as an important element of the forensic characteristic of crimes of this type, will allow the investigative and operative research units of the economic investigation service to choose the optimal tactical technique for the production of an investigative or tacit investigative action or operative research activities. Thus, the criminal law and criminological characteristics of illegal entrepreneurship, illegal banking, microfinance and collection activities in the context of the underlying factors will determine in the future the peculiarities of the organization, tactics and methods of pre-trial investigation of this type of crime. Criminal law and criminological analysis is the fundamental basis of the forensic theory of pre-trial investigation of crimes in the field of economics.

Taking into account the fact that the main purpose of the study is to understand the forensic side of criminal activity in the field of economics, the processes of its pre-trial disclosure and investigation, as well as the preparation of recommendations for its optimization, we did not delve into the criminal law and criminological aspects of this multifaceted activity. We suppose that the domestic specialists with the appropriate knowledge can do that.

The peculiarities of the forensic characteristic of the investigated group of crimes, in our opinion, are more manifested in such elements: 1) characterization of the initial information about the crime; 2) information on the subject and tools of criminal encroachment;

3) data on the method of preparation, commission and concealment of a crime, which forms a mechanism for committing a crime, where the suspect takes into account the situation of committing a crime; 4) data on typical personality characteristics of the suspect; 5) information on the personal characteristics of the victim; 6) summarized data on the most common motives for the crime.

The question of the initial information about the crime committed refers to one of the important elements of the forensic characteristics of this group of crimes. In forensic literature, the initial information is associated with reasons that, in accordance with Art. 180 of the Code of Criminal Procedure of the Republic of Kazakhstan serve to resolve the issue of starting a pre-trial investigation of a criminal case. As our research have shown, the legally established reasons and sources of information that formed the basis for the formation of reasons do not fully coincide. Moreover, the content side of the most common reasons for starting a pre-trial investigation of a criminal case in the investigated category of cases internally is broken up into the most typical sources of information. According to the measure encountered, the reasons for the beginning of the pre-trial investigation of the criminal case in the considered part are as follows: 1) applications of citizens (Clause 1 of Part 1 of Article 180 of the Code of Criminal Procedure) – 12% out of the total number of reasons; 2) confession (Paragraph 2 of Part 1 of Article 180 of the Code of Criminal Procedure) – 0%; 3) messages in mass media (Paragraph 3, part 1, article 180 of the Code of Criminal Procedure) – 0%; 4) information disclosure about the crime by officials and bodies authorized to start a pre-trial investigation of a criminal case – 88%. The last reason in its content breaks up into information emanating: from the confidant – up to 58% of the total number of reasons for the cases under consideration; from the prosecutor's office – 15%; from the relevant services of the Ministry of Internal Affairs and the National Security Committee – up to 15%. This circumstance is the basis for the conclusion that the vast majority of the crime signs of the investigated group are detected by the criminal prosecution authorities in

the performance of their official duties. In turn, it indicates the interest of officials who, performing managerial functions, in our opinion, should much more often detect signs of crimes, which corresponds to the reason enshrined in paragraph 4 of part 1 of article 180 of the Code of Criminal Procedure. Their interest is aimed at solving personal issues by illegally manipulating identified by him violations.

The subject of criminal encroachment, in the forensic understanding of the group of crimes under consideration, is an abstract object characterizing the civilized and state-established procedure for carrying out entrepreneurial activities. It is disclaimed in the constituent documents and is associated, among other things, with legitimate bankruptcy processes. Partly an additional subject of criminal encroachment here are: the life and health of citizens, property interests, state security, the financial and budgetary system of Kazakhstan and etc. Unlike other crimes, where the material objects of criminal encroachment are available – theft, environmental, etc., the subject of criminal encroachment of this type of economic crimes must be perceived and recorded according to documents of entrepreneurial activity and control agencies.

The tools of committing this group of crimes in the field of economic activity, with the help of which the suspect directly commits a crime and affects the subject of criminal encroachment, are monetary resources in national or foreign currency, securities and their surrogates (for example, plastic cards). They provide settlement operations between business entities and individuals. This represents 77% of the total number of committing crimes tools. The widespread implementation into the financial sphere of methods for carrying out settlement operations using information technologies based on the use of electronic computing and communication equipment is a significant part. Significant amount of financial information reflecting the ownership rights of subjects are stored on computer storage media in the form of «electronic» documents. Criminal acts with such documents may involve improper access to computer information.

Therefore, it is important to take into account that modern computer technologies have had a revolutionary impact on the criminal technique of making traditional documents on paper, which can be distinguished from original ones only by using special knowledge and technology.

The method of committing a crime in the structure of the forensic characteristic occupies a special place, since in its «trace» informativity it really combines four elements: the subject and tools of criminal encroachment, the circumstances of the crime, the identity of the crime committer and the victim, the circumstances that contributed to the crime. We think that there is a dialectical relationship between the object and the subject, the victim, the methods of committing the crime and its concealment, the reasons and conditions for committing the crime. In our opinion, knowledge about the method of committing this group of crimes is of triple senses, which are: criminal law, criminal procedure and forensic.

The method of committing this group of crimes in the field of economics is very multiformed, that is why here is a lawlessness, which in turn undermines the basis of country living and the well-being of every person. In addition, economic crime includes in its structure a professional and organized extensive common-law network. It can be defined as a system of actions caused by the situation and chosen by the suspect to achieve a criminal goal. The actions of the subject of the crime are associated with an analysis of the conditions, place, time and tools corresponding to the general criminal plan and achievement of the goal. The leading role in the implementation of the method of committing economic crimes is given to the identity of the suspect, characterizing his physical and psychological properties.

A typical mechanism of crimes in the field of economy in the Republic of Kazakhstan is manifested in 4 types: upstream and downstream industries; financial and credit services, human services. This can be expressed in the following forms:

– illegal production of wage goods (alcoholic and food products, tobacco products, medical products, etc.);

- financing of knowingly unprofitable objects;
- construction of financial pyramids;
- artificial creation of organizational, financial, production and management conditions and prerequisites knowingly leading to bankruptcy;
- housekeeping, taking care for the aged and disabled people, children, etc., tutoring, car repair, various jobs for headhunting, illegal gambling business, construction and repair services, etc.

The mechanism for committing crimes in the field of economics is related to the situation. In forensic science, under the situation in a generalized form, a set of conditions in which a crime occurred and determines the development of the investigative situation is indicated. The typical situation of committing this group of crimes should include: place, time, material, climatic, production, household and other environmental conditions, peculiarities of the behavior of the participants in the illegal event, psychological connections between them and other factors of objective reality. Thus, the concept of a crime situation should be formulated on the basis of a general scientific understanding of the situation in any field of human activity, i.e. a specific life situation and a broader concept than the «accident circumstances». Analysis and generalization of external and other data on the situation of the crime in the forensic characterization of this group of crimes will allow the investigator during the investigation to determine the approximate area, and sometimes the actual place of residence or job of the suspect, as well as make an assumption about the locations of evidence information. Taking this into account, the places of preventive, tacit investigative actions and operative research activities are determined.

In the crime circumstances, certain important personality traits of the suspect are manifested, and a forensic assessment of the crime is impossible without taking it into account. During the pre-trial investigation of the criminal case, the investigator analyzes the actions of the suspect, also can make a certain judgment, and sometimes determine precisely which objects have been affected and what traces could remain on them. Besides,

questions about the identity of the suspect and his typology are being resolved in order to choose the further appropriate tactical technique for conducting an investigative action and some operative research activities. Forensic science has currently outlined two specific areas for studying the personality of the criminal, and these points of view impress us. The first direction is to obtain data on the identity of an unknown subject of the crime, the second is to study the identity of the detainee. In addition, the suspect uses other citizens to do the duties of «zits-leaders (chairmen).» As a rule, famous personalities are invited – athletes, former politicians, artists, military, former law enforcement officials. As an example, we will cite the famous literary character from the novel «The Golden Calf» – this is Pound, who served his sentence instead of real subjects of crime. In reality, «persons of criminal business» carried out economic illegal activities and were only the founders of various partnerships and joint-stock companies, and in some cases, remained in the «shadows» and only financed fraudulent projects [20, p.176-181].

Thus, officials, financially responsible persons, as well as those who performed managerial functions in commercial and other organizations, are a participant in the criminal business.

The analysis of criminal cases of this category and the personal practical experience of the authors make it possible to conclude that an active participant in criminal economic activity is a person who has a high educational level and personal organizational abilities. A typical forensic characteristic of the subjects of crime in the economic sphere should include personal psychological and physiological characteristics, the degree of their criminal activity, information about relationships with other persons, interests, professional skills, criminal and after criminal activity.

We consider it necessary to note that in a broad sense, individuals and legal entities can be the victim of a crime, since both can be harmed by a criminal offense. In the criminal procedural sense, only an individual, a citizen, can be as a victim. Criminally significant trace information from the victim can be obtained by studying:

– the nature of the actions of the victim at the time of the crime, his relationship with the subject of the crime, his actions at the end of the encroachment;

– the nature of the business and personal relations of the victim that took place before the crime event with the suspect, acquaintances, partners, persons of professional interest to the victim of the crime, close relatives;

– characteristics of psychological, social, professional features and personality of the victim.

The data obtained will allow you to fully characterize the identity of the suspect, the motives for committing a crime and, accordingly, will help to more accurately outline the circle of persons among whom the subject of the crime should be sought, and plan seeking procedure to search for the most important evidence in the case. At the same time, in most cases, the state, as an abstract collective image, acts as the party to which the harm is caused. During the pre-trial investigation of illegal business, the injured party is represented by employees of the territorial tax committee. In financial pyramids, the victims are: deceived investors of investment projects; counterparties represented by the bank; legal entities and individuals.

The motive and purpose in the forensic characterization of crimes in the field of economics is interconnected with other elements of its structure. To achieve the goal, the subject of the crime is developing a detailed economic operation in advance, which from the outside does not arouse suspicion among the fiscal and supervisory authorities. A criminal thought of a potential person of an illegal business can arise anywhere. He can discuss the self-serving criminal motive with a potential accomplice in the criminal business. This is determined by the personality of the subject of the crime, the profile of illegal economic activity, territorial and geographical factors. The motive and purpose of the suspect is embodied in the financial mechanism necessary for the implementation of the criminal plan.

During the pre-trial investigation of the criminal business, we will highlight two typical investigative situations: a) an unknown

person, committed a socially dangerous act; b) the offender is detained. But there is a suggestion. There is another less typical situation – the suspect has been identified, but he is hiding from the criminal prosecution authorities of the Republic of Kazakhstan.

The first group includes investigative situations when there is information about the crime, but the person who committed it is unknown. The proportion of such situations is 11.81% out of the total number of criminal cases studied.

The second group consists of situations in which the person who committed the crime is known, the nature of the unlawful act is determined. The proportion of such situations is 82.68%.

The third group consists of situations in which the identified person is hiding from the preliminary investigation bodies. The proportion of such a situation is 5.51%.

Tacit investigative actions and operative research activities at the initial stage of the investigation of this group of crimes are a continuation of the activities of operational units of the economic investigation service. The continuation of the operative research activities of the economic investigation service can include accompanying operative research activities that are carried out after the detection of a crime and the start of a pre-trial investigation of a criminal case. The further activities of the operational units of the economic investigation service can be constant and accompany the criminal case until it is sent to the judicial body. Types of tacit investigative actions (Chapter 30 of Section 6 of the Special Part of the Code of Criminal Procedure of the Republic of Kazakhstan) and operative research activities carried out on behalf of the investigator or within his competence, on his own initiative (Part 2 of Article 10 of the Law of the Republic of Kazakhstan «About ORA») may vary. They are acceptable to all investigative situations of a pre-trial investigation of this group of crimes in the field of economics. The production algorithm may depend on the operational situation in the region. It is advisable to continue the tactical-forensic combination or operation to reveal the true social appearance of the suspect. These activities are carried

out jointly with the operational units of the temporary detention center and the pre-trial detention center, the territorial police, etc. You can continue operative observation, under the guise of creating a conspiratorial enterprise or other entity, the introduction or application of a model of criminal activity in relation to a defendant in a criminal case. Including to carry out a set of search activities to establish other eyewitnesses to the crime committed, material objects of the criminal business and concealed illegal income. The results of tacit investigative actions and operative research activities can be documented in the form of a report, certificate or criminal procedure document, which reflects information about the identified contacts and connections of the subject of the crime with another person or persons, economic illegal activities, to which accounts money loans were transferred, etc. Then, during the proof, include them in the criminal case (Article 239 of the Code of Criminal Procedure of the Republic of Kazakhstan). The data of tacit investigative actions and operative research activities may form the basis for the production of subsequent investigative and tacit investigative actions.

Criminally significant objects in the form of production premises, technological equipment, other place of manufacture of products or goods, construction work or services, containers, electricity costs, other auxiliary items are fixed as an inspection of the crime scene or other material objects identified – Articles 219, 220, 221 and 224 of the Code of Criminal Procedure of the Republic of Kazakhstan. Inspection of the scene is one of the most difficult urgent investigative actions, on the results of which the progress of further pre-trial investigation depends.

Despite its apparent simplicity of inspecting the scene, documents, warehouses, raw materials, semi-finished products, finished products, weight measuring devices, laboratory and technological equipment of the criminal business, there are some peculiar issues. So, the investigator or operating officer of the Economic Investigation Service (EIS) must meet with a specialist before the start of the inspection. We believe that the investigator needs to additionally obtain explanations from a specialist who carries

out his professional activities in a particular branch of the economy or business. The expert is involved on the basis of Article 80 of the Code of Criminal Procedure of RK. This person will help the preliminary investigation to fully consolidate the evidence and assist not only in inspecting the crime scene, but also in selecting the necessary technical documentation.

The organization and tactics of witnesses and victims' examination in cases of this category has its own specifics. Victims and witnesses have been known since the discovery of the crime and the inspection of the scene. In cases where the suspect is caught red-handed or «while the scent is hot» those involved in the arrest are questioned as witnesses. A large group of witnesses for the types of crimes analyzed are consumers of goods, works or services. Employees of the enterprise, officials and financially responsible persons of the enterprise, including employees of fiscal authorities. Another group of witnesses are criminal business counterparties, implementers or suppliers. The next group is represented by relatives, colleagues, acquaintances of the suspect.

For tactically competent search proceedings, the EIS investigator is obliged to clearly understand what he will look for. The purpose of the search is to find evidence and orientating information in accordance with criminal procedure law. The peculiarity of the search in cases related to the criminal business is that the items being sought (jewelry, currency, documents, etc.) are both necessary evidence in the case under investigation and are valuable for compensation for the damage caused to the state and citizens.

A lot of problems arise in practice when removing large consignments of inventory – alcoholic beverages, food products, household appliances, metals, cars, etc. Seized property must be transferred for storage to commercial, state-owned enterprises or organizations. In the future, the investigator gives an order to sell the property. Bulky items, including large quantity of goods, in accordance with Part 3 and 4 Article 211 of the Code of Criminal Procedure of the Republic of Kazakhstan, must have a special storage procedure. During the inspection, such items must be

photographed or filmed on video, sealed and transferred for storage. Attach to the materials of the criminal case a document on the location of such material evidence (act of acceptance, preserved receipt, bill of lading, etc.), and a sample of material evidence sufficient for a comparative study can also be attached.

According to the material evidence attached to the materials of the criminal case, both at the initial and at the subsequent stage of the investigation, it is necessary to obtain the results of expert activities. Depending on the subject of the study, the following types of forensic economic examinations can be assigned: a) forensic accounting; b) judicial financial and credit expertise; c) forensic examination of economic activities; d) judicial financial and budgetary expertise. Article 250 of the Code of Criminal Procedure of the Republic of Kazakhstan regulates the procedure for the production of a comprehensive examination. There is a proposal on the production and appointment of a comprehensive judicial budgetary and credit and financial expertise, where tax authorities, financiers and economists will combine their theoretical knowledge and practical experience. We believe that the specialists involved can maximize their scientific and practical potential in order to save criminal procedural source of collecting evidence and comply with the criminal procedure period of accelerated criminal proceedings.

According to the third investigative situation, when the suspect is identified and he is hiding from the preliminary investigation, it is additionally necessary to obtain his personal data for subsequent detention. They are introduced into the materials of the criminal case after examination of witnesses, victims, accomplices, other investigative and tacit investigative actions or operative research activities. In this case, it is necessary to draw up a subjective portrait using the hardware and software complex «Image Plus», «Image Plus Plus», «Express Search», «Photo Systems», «Stream» and «Papyrus». Investigator of EIS, using the capabilities of the Operational Control Centers, can organize and carry out operative research activities to establish and search for the location of the suspect and deliver him to the investigation or court bodies

(part 3 of article 193 of the Code of Criminal Procedure of the Republic of Kazakhstan).

All the above, ultimately, is an analytical attempt to determine the rational direction for establishing and consolidating evidence, positive use of the potential of the criminal procedure law in the production of investigative, tacit investigative actions and operative research activities in the pre-trial investigation of this type of criminal offense in the field of economic activity at the initial, subsequent and final stage.

### **Discussion**

It should be noted that the proposed algorithm for pre-trial investigation of criminal business takes into account previously developed and proven methods of pre-trial investigation of criminal offenses in the Republic of Kazakhstan.

Thus, E.K. Utebaev in 2005 proposed a methodology for pre-trial investigation of criminal offenses in the field of economic activity.

R.Kh. Temirgazin in 2021 proposed a methodology for pre-trial investigation of criminal offenses of a technogenic nature.

A.B. Seidanov in 2022 determined the methodology for pre-trial investigation of medical criminal offenses and others.

Of course, other methods of pre-trial investigation of criminal offenses may arise. During the pre-trial investigation of criminal offenses, digital technologies and new ways of recognizing the external signs of defendants in a criminal case can be widely used.

### **Conclusions**

In conclusion, we should summarize the main points of the article. The main purpose of the pre-trial investigation of criminal offenses in the field of economic activity can be aimed at establishing the causes and circumstances of the commission of these socially dangerous acts. It is necessary to find out: what happened in this economic activity in which an entrepreneur, business or legal entity operates. If there is a crime, then start a pre-trial investigation. To the person of the criminal business, who extracted large-scale and especially large-scale illegal income, implement preventive forensic recommendations for the pre-trial

investigation of criminal offenses in the field of economic activity. If there are no signs of the composition of criminal offenses included in chapter 8 and 9 of the Special Part of the Criminal Code of the Republic of Kazakhstan, then assist an entrepreneur or business entity in organizing a civilized law-abiding business procedure. For the counterparty and investigative bodies of the Republic of Kazakhstan, it is not a strategic goal to prosecute and impose criminal punishment on a potential entrepreneur. It is important to restore social justice and compensate for material and financial damage suffered to the counterparty, citizens and the state.

But the organization of illegal entrepreneurial, illegal banking, microfinance and collection activities may be fertile ground for committing other criminal offenses in the aggregate, forming the content of a special part of the criminal legislation of the Republic of Kazakhstan. For some officials of executive government bodies, fiscal and law enforcement agencies, illegal business carried out by criminals can act as a «titbit» object for extracting colossal shadow income in national and foreign currencies. Thus, the law enforcement agencies of the Republic of Kazakhstan should assist each other in the interaction and exchange of criminally significant trace information about the criminal business, interaction in the dissemination of information among the population about existing laws that ensure a civilized procedure for the implementation of entrepreneurial and economic activities of the subjects of the country's economy. This can be carried out with the help of local police, tax officials and the akimat (city administration). From the public, confidants and employees of communal organizations of apartment owners to receive timely information about rented apartments in which citizens who show marginal or criminal behavior are concentrated. This information can be received by operative research agencies of the economic investigation service.

Article 3 of the Criminal Code of the Republic of Kazakhstan should be clarified in the form of an acceptable definition of

large-scale and especially large-scale criminal income. In our opinion, it could be edited in a following version – that «under criminal income on a large-scale and especially large-scale, recognize an amount that is equal to or exceeds the size of the monthly calculated income at the time of the criminal offense.» The specified size, which takes place in the form of consequences from the criminal actions of a criminal business, investigative or operative research units of the economic investigation service must be established at the time of the start of the pre-trial investigation of the criminal case or during the subsequent stage of the pre-trial investigation.

This explanation will allow to avoid an investigative and judicial fail, eliminate the contradiction in law enforcement practice and develop a single mechanism for preventive activities of subjects of criminal procedure.

Special attention can be paid to early preventive activities in the warm season – spring, summer and autumn, in places of concentration of civil and industrial construction facilities, wholesale and retail trade, leisure institutions and organizations, including those created for minors and young children, where criminal business can exist.

In the police, prosecutor's office and courts, it is necessary to provide for the functioning on a permanent basis of social digital networks and hotlines for those who have become victims of the criminal business. Police and other officials of the criminal process should promptly respond to each request for help, give advice to the victim of the criminal business.

The Government of the Republic of Kazakhstan should provide the new jobs in the border regions of the country, control employment of the population and involve them in socially useful paid labor activity. Also to legalize prostitution and establish legal control over it. Take an active position and intolerance against organized illegal entrepreneurial, illegal banking, microfinance and collection activities, and to give each fact a legal assessment by implementing a criminal case in court and sentencing.

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**Заңсыз кәсіпкерлік, заңсыз банктік, микроқаржылық және коллекторлық қызмет мысалында экономикалық қызмет саласындағы қылмыстық құқық бұзушылықтарды сотқа дейінгі тергеп-тексеру**

**Аңдатпа.** Мақалада барлық елдерді, соның ішінде Қазақстанды қамтыған заңсыз кәсіпкерлік, заңсыз банктік, микроқаржылық және коллекторлық қызметпен байланысты қылмыстық құқық бұзушылықтарды сотқа дейінгі тергеп-тексерудің криминалистикалық әдістемелік ұсынымдары қарастырылады. Мақаланың мақсаты заңсыз кәсіпкерлік, заңсыз банктік, микроқаржылық және коллекторлық қызметті ұйымдастыруды сотқа дейінгі тергеу барысында тергеу және жасырын тергеу әрекеттерін жүргізудің криминалистикалық тактикалық тәсілдерін әзірлеу болып табылады. Ауыр және аса ауыр қылмыстарды алдын ала тергеудің қазақстандық және шетелдік теориясы мен практикасының бұрын жинақталған тәжірибесі ескеріледі. Оның ішінде заңсыз кәсіпкерлік, заңсыз банктік, микроқаржылық және коллекторлық қызметті ұйымдастырумен байланысты қылмыстық құқық бұзушылықтарға криминалистикалық профилактика әзірлеуге әрекет жасалатын болады.

**Түйін сөздер:** қылмыстық бизнес; заңсыз кәсіпкерлікті ұйымдастыру; заңсыз банк қызметі; заңсыз микроқаржы қызметі; заңсыз коллекторлық қызмет; криминалистикалық ұсыныс; сотқа дейінгі тергеудің криминалистикалық тактикасы мен әдістемесі; тергеу және жасырын тергеу әрекеттері.

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**Досудебное расследование уголовных правонарушений в сфере экономической деятельности, на примере незаконной предпринимательской, незаконной банковской, микрофинансовой и коллекторской деятельности**

**Аннотация.** В статье рассматриваются криминалистические методические рекомендации досудебного расследования уголовных правонарушений, связанных с незаконной предпринимательской, незаконной банковской, микрофинансовой и коллекторской деятельностью, которая охватила все страны, в том числе и Казахстан. Целью статьи является разработка криминалистических тактических приемов производства следственных и негласных следственных действий в ходе досудебного расследования организации незаконной предпринимательской, незаконной банковской, микрофинансовой и коллекторской деятельности. Учитывается ранее накопленный опыт казахстанской и зарубежной теории и практики предварительного

расследования тяжких и особо тяжких преступлений. В том числе будет предпринята попытка разработать криминалистическую профилактику к уголовным правонарушениям, связанным с организацией незаконной предпринимательской, незаконной банковской, микрофинансовой и коллекторской деятельностью.

**Ключевые слова:** криминальный бизнес; организация незаконного предпринимательства; незаконная банковская деятельность; незаконная микрофинансовая деятельность; незаконная коллекторская деятельность; криминалистическая рекомендация; криминалистическая тактика и методика досудебного расследования; следственные и негласные следственные действия.

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