

# Protection of the credit relations in Ukrainian criminal law

## Protección de las relaciones crediticias en el derecho penal de Ucrania

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### Abstract

The article examines the features of the protection of credit relations by the criminal law of Ukraine. The scope of the article is to study peculiarities of credit and financial relations in Ukraine, to reveal types of crimes in the field of credit relations and specifics of their subjects, to analyze qualifying features of crimes in the field of credit activity. To achieve the purpose of the article, formal-logical and dogmatic-legal research methods were used. Using the formal-logical and dogmatic methods, credit relations as an object of legal protection in criminal law were analyzed. The characteristic features of the personality of criminals who commit crimes in the field of credit relations have been studied. Their specific differences from other types of criminals are revealed, which are manifested in the fact that people who commit crimes in the field of credit relations, as a rule, have a high social status, higher education and are financially secure. Thanks to the research conducted in the article some important features of crimes in the field of credit activity were revealed, such as the fact, that among those who commit crimes in the field of lending, there is a high proportion of women. This fact has an important meaning for the social sciences, since it underlines inequality and gender discrimination.

**Keywords:** Credit relations; protection; criminals; crimes; bank lending; financial institutions

### Resumen

El artículo examina las características de la protección de las relaciones crediticias por el derecho penal de Ucrania. El estudio tiene por objeto analizar las peculiaridades de las relaciones crediticias y financieras en Ucrania, exponer los tipos penales en el campo de las relaciones crediticias y explicar las características de la calificación de los delitos en el campo de la actividad crediticia. Para lograr el propósito del artículo se utilizaron los métodos de investigación lógico formal y dogmático jurídico. Utilizando los métodos lógico-formal y dogmático, se analizaron las relaciones crediticias como objeto de protección jurídica en el derecho penal. Se han estudiado también los rasgos característicos de la personalidad de los delincuentes que cometen delitos en el ámbito de las relaciones crediticias. Se exponen diferencias específicas con otros tipos de delincuentes que se manifiestan en el hecho de que las personas que cometen delitos en el campo de las relaciones crediticias, por regla general, tienen un alto estatus social, educación superior y seguridad financiera. Gracias a la investigación realizada en el artículo se exponen algunas características importantes como el hecho de que entre quienes cometen delitos en el campo del crédito hay una alta proporción de mujeres. Este hecho tiene un significado importante para las ciencias sociales, ya que subraya la desigualdad y la discriminación de género.

**Palabras clave:** Relaciones crediticias; protección; delincuentes; delitos; préstamos bancarios; instituciones financieras

## INTRODUCTION

According to modern legal realities, in Ukraine almost the largest percentage of legal conflicts arise in the field of credit relations. Accordingly, the fight against crimes in the field of lending is one of the most important problems in the activities of judicial and law enforcement agencies, due to several factors.

First, the manifestations of credit fraud not only cause damage to creditors, but also negatively affect the stability of the entire financial system of Ukraine. Second, credit crimes are characterized by high latency, as not all victims, primarily heads of financial institutions, file lawsuits with law enforcement (fearing for the business reputation of their organizations). Third, those who have committed crimes in the field of credit, in various forms conceal their criminal actions, in particular, use the services of fictitious enterprises, disguise their true intentions through sham legal agreements, using modern computer equipment forge accounting and other documents, take measures to launder funds obtained by criminal means, etc.

Increasingly, large enterprises, small production and trade structures, as well as states and individuals are becoming participants in credit relations. The development of market relations in Ukraine, socio-economic transformations have necessitated the provision of legal protection of the rights and legitimate interests of participants in financial and credit relations.

With great potential for positive impact on economic development, the credit system is negatively affected by the lack of regulation of certain legal provisions, shortcomings of credit and financial technologies, insufficient training of credit workers, document management, as well as the possibility of abuse by credit and financial institutions. These circumstances exacerbate the criminogenic situation, contribute to the growth of criminal encroachments on credit resources of the state.

## METHODOLOGY

To achieve the purpose of the article general and specific research methods were used, such as formal-logical and dogmatic-legal.

Using the formal-logical method, the provisions of the legal acts in the field of credit relations and their protection in the criminal law of Ukraine have been analyzed. The formal-logical method was used to study peculiarities of credit and financial relations in Ukraine, to expose types of crimes in the field of credit relations and specifics of their subjects, to analyze qualifying features of crimes in the field of credit activity.

The current situation and needs in the field of protection of credit relations were revealed using dogmatic and legal methods. The comparative-legal method was used to compare crimes in the field of credit activity with other types of crimes as well as to compare subjects of different types of crimes.

#### DISCUSSION

##### *The concept of credit relations as an object of criminal law protection*

Credit is a complex legal category, the only position on the essence of which is still missing in Ukrainian legal doctrine. Thus, [Polyvach \(2012\)](#) believes that such an ambiguous definition determines the origin of the term “credit”. According to some scholars, the term “credit” comes from the Latin word “credere”, which means to trust, while others believe that it comes from the Latin word “creditum” —loan, debt. Proponents of the latter interpretation correlate credit with loan. In their view, credit should be understood as a form of movement of loan capital, which is historical in nature and due to certain needs of society ([Polyvach, 2012](#)). Borrowed capital is money capital that its owner provides for a specified period, on a repayable basis, for a specified fee to another entity. Characterizing loan capital, it is worth noting its distinctive feature —it is not used by its owner. In exchange for the money capital provided for temporary disposal, its recipient must pay the owner of the capital a certain amount of money — interest.

However, this interpretation of credit relations is related to the consideration of them only as those that arise between the lender and the borrower solely on a monetary basis. This significantly narrows the essence of these relations, because their social aspect is not taken into account. At the same time, credit relations are not identical to money. They should be considered as specific, modified monetary relations that have emerged in connection with the development of commodity-money relations.

Credit is mostly considered in narrow and broad meanings. Accordingly, the narrow meaning of the loan is understood as the amount of funds received by the borrower from the lender, and broadly —as a set of public relations that arise, are carried out and terminated in the process of providing previously raised funds by the lender to the borrower ([Hetmantsev & Shuklina, 2007](#)).

The essence of credit has a number of different aspects and it is difficult to combine them in one definition. In this regard, according to the specific characteristics, participants, stages, there are several definitions of the essence of the credit. The scientist suggests that the credit means the relationship between lender and borrower, the reverse movement of value, the movement of borrowed value, the movement of borrowed capital, the movement of means of payment on the principles of reversibility, etc. ([Sokolenko, 2014](#)). Each of these definitions reveals one or another side of the credit, however, at the same time can not claim an exhaustive description, because to some extent it is limited, does not express the whole essence. Therefore, it is not advisable to focus on one of them and in some way limit certain deep qualities of credit relations.

The success of credit relations should be based not only on economic but also on social ties between the subjects. Proponents of such approach understand the concept of credit as the trust enjoyed by a person who has made a commitment to make a future payment.

The principle of lending “trust-responsibility” is social in nature and depends on certain natural factors (innate human qualities, natural living conditions, the availability of natural resources in the state, etc.), civic and spiritual education. In this case, the cat-

egories of spirituality and morality are the basis for the formation of trust-responsible relations (Polyvach, 2012).

In essence, a credit is an economic relationship between entities which appears in connection with the transfer to each other for temporary use of free funds, which should be returned with some interest.

Regardless of the monetary or commodity form of the loan, it always has a monetary nature, and its final stage is always carried out in cash.

Since a credit transaction involves the temporary use of someone else's property, there is a need for material liability of its participants for the fulfillment of their obligations. Therefore, participants in credit relations must be economically independent and carry out their activities on the basis of commercial calculation and self-sufficiency, be the owners of certain funds or assets and freely dispose of them. Individuals can act as subjects of credit relations on the part of the borrower, provided that they are legally capable and have stable sources of income.

Credit relations are characterized as value relations because they arise in connection with the movement of money or material values. This value is moved on a repayable basis, after some time these funds are returned to the ascending position, because the borrower is obliged to repay the borrowed funds. For the use of other people's funds, in addition, you must pay interest on the loan. That is, the borrower must repay the lender a larger amount of credit than he or she received. To ensure the rational use of the loan, its repayment and loan interest within the period specified in the loan agreement, the borrower must effectively organize the reproduction process. Thus, the loan encourages the borrower to be reasonable and increase the efficiency of the funds received.

The legal basis of lending is a loan agreement. According to [Commercial Code of Ukraine \(2003, art. 345\)](#), credit relations are carried out on the basis of a loan agreement. Pursuant to [Civil Code of Ukraine \(2003, art. 1054\)](#), under a loan agreement, a bank or other financial institution (lender) undertakes to provide funds

(loan) to the borrower in the amount and on the terms established by the agreement, and the borrower undertakes to repay the loan and pay interest.

In the [Law of Ukraine \(2000, art. 2\)](#) “on Banks and Banking” the legislator enshrined the concept of funds as money in national or foreign currency. The deposit is defined as funds in cash or non-cash, in the currency of Ukraine or in foreign currency, which are placed by customers on their personal bank accounts on a contractual basis for a specified period of storage or without such a period and should be paid to the depositor in accordance with the laws of Ukraine and the terms of the contract. According to the [Law of Ukraine \(2001, art. 3\)](#) “on Payment Systems and Funds Transfer in Ukraine” funds exist in cash (in the form of banknotes) or non-cash (in the form of bank accounts).

The subjects of credit relations are the lender and the borrower. According to the [Civil Code of Ukraine \(2003, art. 1054\)](#), the lender may be a bank or other financial institution. The [Law of Ukraine \(2001\)](#) “on Financial Services and State Regulation of the Financial Services Market” contains the concept of a financial institution, according to which the financial institution is a legal entity that provides one or more financial services, and entered in the relevant register in the manner prescribed by law. Financial institutions include banks, credit unions, pawnshops, leasing companies, trust companies, insurance companies, funded pension institutions, investment funds and companies and other legal entities whose exclusive activity is the provision of financial services.

According to the [Law of Ukraine \(2000, art. 47\)](#) “on Banks and Banking” without obtaining a banking license is not allowed to attract deposits and other repayable funds and loans, as well as to maintain accounts. Persons convicted of banking activities without a banking license shall bear criminal, administrative or civil liability in accordance with the legislation of Ukraine. Thus, a legal entity cannot provide a loan to another person without obtaining a special permit — a license, and an individual has no right to provide a loan at all.

### *Concept, signs and types of crimes in the field of credit relations*

Crimes committed in the field of credit activity are one of the most dangerous economic and financial crimes, as their negative impact spreads and is reflected not only on the credit system, but also on other important objects of economic activity.

Credit crime is a type of financial crime, which means a set of crimes that are directly related to the encroachment on the relationship of formation, distribution, redistribution and use of financial resources of economic entities. Criminality in the credit system is considered to be a complex set of crimes that encroach on the security of credit relations, which are placed under the protection of criminal liability legislation.

Crimes in the field of credit relations are defined as illegal acts that infringe on the property rights of banks or other credit institutions, committed with the use of various credit operations authorized by business entities or other persons ([Davydenko & Gerasimov, 2013](#)).

The credit sphere of the state is a strategic segment of the market economy, which plays an important role in the implementation of economic relations. According to statistics, crime in this area has become a large-scale phenomenon during the years of economic reforms. Criminal encroachments here differ in variety, highly intellectual character, special refinement, fast adaptation of criminals to new methods and forms of business activity, new technologies of carrying out banking operations ([Dzhuzha, Golosnichenko & Chernyavsky, 2010](#)).

Of course, for the crimes in the credit sphere, economic factors are decisive. These include, first of all, the presence of a significant sector of virtually uncontrolled “shadow economy” in Ukraine, which should be considered as one of the main conditions for committing crimes in this area. The economic determinants of crime include the financial crisis, high tax pressure in the country, lack of mechanisms for proper interaction of credit and financial institutions with relevant supervisory and law enforcement agencies, disruption of

financial relations between credit institutions (including management, supervisory), the existence of a significant number of troubled banking institutions, lack of transparency and healthy competition in lending.

Signs of credit crimes are primarily related to breach of credit obligations. The [Criminal Code of Ukraine \(2001, art. 11\)](#) provides a general definition of a crime that contains its features. A social feature of a crime is a public danger, which consists in the fact that the act harms the relations protected by criminal law or contains a real possibility of causing such harm. Assessment of the public danger of an act as a sign of a crime occurs at two levels: first, at the legislative level, when the legislator criminalizes a certain socially dangerous act; secondly, on the law enforcement, when the body of inquiry, investigator, prosecutor, judge assesses the public danger of a specific crime. The legal expression of public danger is illegality. The normative feature consists in the actions provided by the criminal law, and internal—in the guilt of the act and the subject of the crime ([Myslyvyi & Klochko, 2016](#)).

It should be noted that such criminal acts encroach on:

1. The procedure for the production and use of money and securities that have a value expression;
2. relations in terms of ensuring the interests of legal entities or individuals and the state related to insolvency;
3. public relations of currency regulation;
4. public relations to ensure the legality of financing, lending, the implementation of certain activities in the credit and financial sphere.

Neither in criminology nor in criminal law there is no single generalized and systematized classification of crimes in the credit sphere, although the need for a more specific approach is caused by modern theory and practice. However, a number of researchers classify crimes in the credit sphere on different grounds depending on the purpose of studying this phenomenon.

Based on the economic activity of banking and credit institutions, enshrined in the [Law of Ukraine \(2000\)](#) “on Banks and Banking”, Ukrainian scholars classify such crimes as follows:

1. Crimes in the field of bank lending;
2. crimes in the field of settlement operations of banks;
3. crimes in the field of deposit operations of banks;
4. other crimes related to the activities of banking institutions (securities transactions, foreign economic activity, trust transactions, etc.).

Another important criterion for classifying crimes in the banking sector is the subject of criminal encroachment. In this case, crimes in this area are divided into:

1. Crimes committed by managers and other officials of employees of banking institutions;
2. crimes committed by bank employees in collusion with representatives of business structures or other institutions and organizations;
3. crimes that encroach on the financial resources of banks to other persons without the participation of representatives of these financial institutions ([Davydenko & Gerasimov, 2013](#)).

Crimes in the field of lending are divided into stages, subjects of lending, form of credit, quantitative composition, stage of commission, etc.

Thus, [Starostenko \(2013\)](#) distributes crimes in the credit sphere by quantitative composition —committed individually and collectively (by a group of persons), and by subject composition on:

1. Crimes committed by officials of banks and other credit institutions;
2. crimes committed by borrowers;
3. crimes committed by officials of bodies that control and regulate lending activities and other officials ([Starostenko, 2013](#)).

However, the most appropriate, in our opinion, is the classification of crimes in the field of lending given by professor [Chernyavsky \(2003\)](#), who identifies four main groups of these crimes:

1. The main crimes —those that are directly aimed at illegally obtaining bank loans. They are mentioned in the next Articles of the [Criminal Code of Ukraine \(2001\)](#): Article 190 (Fraud), Article 191 (Appropriation, misappropriation of property or taking it by abuse of office), Article 192 (Causing property damage by deception or abuse of trust), Article 222 (Fraud with financial resources);
2. Economic crimes that involve liability for causing indirect harm to creditors or act as methods of preparation, commission and concealment of the former. These are mentioned in the next Articles of the [Criminal Code of Ukraine \(2001\)](#): Article 202 (Violation of the order of economic and banking activities), Article 205 (Fictitious business), Article 207 (Evasion of return of revenue in foreign currency), Article 208 (Illegal opening or use of foreign currency accounts outside of Ukraine), Article 209 (Legalization (laundering) of proceeds from crime), Article 218 (Fictitious bankruptcy), Article 219 (Bankruptcy), Article 220 (Concealment of persistent financial insolvency), Article 221 (Illegal actions in case of bankruptcy);
3. Other crimes that contribute to the achievement of the main criminal result. They are mentioned in the next Articles of the [Criminal Code of Ukraine \(2001\)](#): Article 200 (Illegal actions with documents for transfer, payment cards and other means of access to bank accounts, equipment for their manufacture), Article 357 (Theft, misappropriation, extortion of documents, stamps, seals, taking them by fraud or abuse of office or their damage), Article 358 (Forgery of documents, seals, stamps and forms, their sale, use of forged documents), Article 361 (Illegal interference in the work of electronic computers, systems and computer networks), Article 362 (Theft, misappropriation, extortion of computer information or its acquisition by fraud or abuse of office), Article 363 (Violation of the rules of operation of automated electronic computer systems);

4. Crimes related to the illegal activities of officials. They are mentioned in the next Articles of the [Criminal Code of Ukraine \(2001\)](#): Article 365 (Excess of power or official authority), Article 366 (Forgery), Article 367 (Official negligence), Articles 368-369 (Bribery), Article 370 (Bribery provocation) ([Chernyavsky, 2013](#)).

*Characteristics of the identity of the offender who commits crimes in the field of credit relations*

The question of the criminological characteristics of a criminal who has committed a crime in the field of credit relations is not sufficiently developed in science. It should be noted that the individual is the most complex object of study for any field of knowledge. Each science has its own “image” and in accordance with it gives its own definition of personality. The concepts of personality in sociology, psychology, ethics and other sciences differ significantly from each other. Moreover, even within one science, a person is sometimes studied in different theoretical aspects.

A similar situation is observed in criminology. The study of the identity of the offender was conducted at different theoretical and methodological levels: philosophical, socio-specific, socio-psychological, medical and biological. All these levels are fundamentally different from each other (each has its own concepts, methods, explanations). Therefore, it is difficult to determine the boundaries of different scientific approaches to the study of the identity of the offender to avoid methodologically unfounded complaints about the incompleteness of the study of the object.

It is known that the individuality is a social quality of a person, formed in the process of his or her socialization. Therefore, a person who has committed a crime against the credit system has a system of properties that define him or her as a person who has committed a crime. That is, the identity of the offender has common features (gender, age, profession, education, status, etc.), as well as features that are unique to him or her and express the nature and degree of his or her social danger. It should be borne in mind that the vast

majority of the characteristics of the offender are part of a crime committed in the field of credit. Information about the identity of the offender plays an important role in establishing the causes and conditions of these crimes and finding measures to prevent them (Torfing, Krogh & Ejrnaes, 2020).

Traditionally, the characteristics of the offender are divided into the following groups:

1. Socio-demographic,
2. Socio-role,
3. Moral and psychological;
4. Criminal-legal.

The first group of characteristics includes age, sex, education, place of birth and residence, citizenship and other demographic information. Undoubtedly, all these features are inherent in any person and in themselves do not have a decisive criminological significance. However, since certain types of crimes are in most cases committed by certain categories of persons, socio-demographic characteristics provide important information, without which a complete criminological characterization of the offender's identity is impossible. Thus, in the structure of economic crime (including in the credit sphere) among the perpetrators of these crimes, the share of women is quite high.

Regarding the age, the vast majority of criminals at the time of its commission are aged 30 to 49 years. One of the special socio-demographic characteristics of a criminal in the credit sphere is education. A significant part of the subjects of these crimes are persons with higher (including economic) education, who have experience in credit and financial institutions, including management positions. Such persons have knowledge of modern (disguised) ways of committing crimes and their further concealment, which is carried out through various financial transactions.

For some employees of banking institutions, the field of lending, along with the performance of official duties, has become a real criminal business. The credit operation is accompanied by certain

services or actions by officials, whose competence includes issues of granting, amount, interest and prolongation of loans. According to the available information, the heads of credit, legal, operational departments, foreign exchange departments, chief accountants, their deputies, accountants, economists, cashiers and other employees of credit and financial institutions become involved in the commission of crimes of this nature (Gromko, 2015).

The next group of characteristics of the offender in the field of credit relations is socio-role. These features reveal the functions of the offender, due to his or her position in the system of social relations, belonging to the relevant social group. The vast majority of offenders in the field of credit relations have prestige work in one of the leading areas of economic activity, hold managerial or financial positions in this area. However, under the influence of certain factors, such persons have inflated needs (attempts to obtain significant material benefits in a short period of time), which are the reason to commit such crimes (Reeves-Latour, 2016).

Moral and psychological characteristics of the identity of the offender in the credit sphere must be investigated separately in terms of moral and psychological data about the identity of the offender. Moral signs reveal the views, beliefs, spirituality, values of individuals. Each person who has committed a crime against credit relations has their own individual qualities, as each person is endowed with unique traits that reflect his or her moral views. In turn, the views are determined by the specific content of the environment in which the formation of the individual took place. Therefore, consideration, analysis or generalization of these features in this case is not objective.

Regarding the psychological characteristics of the offender, it is necessary to focus primarily on the features of intellectual qualities, which include the level of mental development, the amount of knowledge, breadth or narrowness of views, the content of interests and so on. Criminological research indicates that a significant part of these subjects have a high intellectual potential.

In addition, the study of criminal cases of crimes in the credit and financial system shows that in the vast majority of cases (over 90%) the perpetrators are positively characterized, do not suffer from alcoholism and drug addiction, mental anomalies, etc. (Klochko, 2014).

The next group of characteristics of the offender in the field of credit relations are criminal-legal. These features include not only data on the composition of the crime, but also on the direction and motivation of criminal behavior, individual or group nature of criminal activity, types of complicity, the presence of convictions, type and term of punishment, and so on. This information provides an idea of the identity of the offender in the field of lending from a criminal law standpoint. First of all, it is necessary to consider the motivation of criminal behavior of such a criminal. If we take as a basis a model of personal qualities of the offender, manifested in the crime, we can consider in the framework of the types of criminals in the field of credit, based on the types of motivation. The fact that the vast majority of crimes in the field of credit relations are committed for selfish motives is undeniable. After all, any such crime is committed out of selfish motives for the sake of the end result, which is the illegal receipt of certain material goods, services and so on. However, one of the main features of such crimes is that in many cases, in addition to selfish motivation, the criminal is also driven by political motivation. All criminal manifestations in the field of lending are characterized by a high level of organization, planning, high qualification of executors and, most dangerously, they are covered-up by officials and representatives of all branches of government, who often achieve their own results, mostly political, by committing crimes in the credit sphere (Mudryak, 2014).

The studied features that characterize the identity of the offender in the field of credit activities allow us to draw the following conclusions.

Among those who commit crimes in the field of lending, there is a high proportion of women, due to the large number of female employees in the credit and financial institutions. The vast majority

of criminals are mature - from 30 to 49 years. One of the important features is that the subjects of crimes in the credit sphere in the vast majority have higher education and experience in credit and financial institutions, a large number of people belong to the category of heads of credit, legal departments, chief accountants, economists, financiers. The vast majority of crimes in this area are committed for selfish motives. Political motivation is also not excluded (La Torre, 2015).

Crimes in the field of lending are characterized by a high level of organization, planning, high qualification of executors with cover from representatives of all branches of government. In addition, such crimes are characterized by a high degree of organization and latency.

Based on this, it should be noted that the vast majority of criminals in this area are characterized by sufficient material security, high social status, high intellectual level (perfect computer skills), lack of mental anomalies and bad habits (alcoholism, drug addiction).

#### *Qualifying features of crimes that encroach on credit relations*

In the science of criminal law, the composition of crimes is traditionally divided into basic (simple), composition with mitigating circumstances (so-called privileged structures), and composition with circumstances that aggravate liability (so-called compositional characteristics).

In logic, the word “sign” refers to any features, aspects, states of an object or phenomenon, which in one way or another characterize this object or phenomenon, help to recognize them among other objects or phenomena (Voldimarova, 2019).

The term “qualification” comes from the Latin “qualis”, which means “what kind of”. Under the qualification in general is understood the assignment of a particular phenomenon, things by their properties (quality) to a particular class or category. Legal qualification is the search, selection and application to a particular event, case of a specific legal norm (Wikstrom, Ceccato, Hardie & Treiber, 2010).

The main components of crimes contain the main features of specific crimes and are reflected in the dispositions of the relevant articles of the Special Part of the Criminal Code of Ukraine. Being signs of a crime, qualified circumstances affect the qualification, change the criminal law assessment of behavior in the direction of its strengthening or mitigation. This attribute is expressed in a different qualification from that which would be used in the absence of this attribute. Under the qualified is understood the *corpus delicti*, which are endowed with features that increase the responsibility, i.e. in addition to the features of the main composition, they also contain features that characterize the increased social danger of the act compared to the main composition. Thus, a qualified composition is a composition of a crime with aggravating circumstances (qualifying features).

Crimes with qualified components are criminally punishable acts with a sharply increased or decreased degree of public danger compared to the fixed main component of the crime, which determines the separation of this type in the law as relatively independent, with another increased or decreased sanction (Gromko, 2015).

The deep essence of the qualification of crimes is to establish all the features of certain crimes, as well as to establish another feature of this specific act and the composition of the crime that involves it. It follows that the necessary and uniform norm for qualification differs from other similar by the majority of signs, it more completely describes signs of a certain crime. Thus, for the correct qualification of the crime it is necessary to choose and reasonably apply the rule that most fully describes the signs of the act. This is the legal essence of the qualification of crimes. In accordance with the above, it should be noted that in criminal law, qualification is understood as a legal assessment of a crime and the application (establishment) of the criminal law that most fully describes the features of this crime.

Thus, the qualifying features of crimes are those components of crimes that are endowed with features that enhance responsibility, i.e., in addition to the features of the main composition, they also

contain features that characterize the increased social danger of the act compared to the main composition.

Such compositions are usually formulated in the second parts of the relevant articles of the Special Part of the Criminal Code of Ukraine. Varieties of qualified composition are especially qualified composition and exclusively qualified composition of the crime. These are compositions with so-called especially aggravating circumstances (especially qualifying signs) which are provided in the corresponding parts of these articles.

To qualify a crime means to establish full compliance of its features with the signs of the norm of the criminal law, which provides for liability for the commission of a certain crime. It should be noted that the qualifying features, along with other criminal remedies, perform the so-called function of differentiation of criminal liability, setting new, increased compared to the envisaged sanctions for crimes with the main composition, the limits of the standard punishment. Thus, qualifying features are used in criminal law as means of differentiating criminal liability to construct a more dangerous type of action and, accordingly, to determine in the law new measures of punishment in comparison with those provided for the commission of the main crime.

The nature of qualifying features is twofold. On the one hand, they are part of a set of features of the crime and in this regard should be endowed with features that are characteristic of the features of this or that composition. Due to these features, they acquire the ability to influence the qualification of the perpetrator, to cause the emergence of a new sanction that reflects the specifics of the disposition. Since the circumstances in question are signs of a crime, their establishment is the exclusive prerogative of the legislator. Accordingly, the types, as well as the boundaries of each of the types of qualifying features, must be defined clearly and unambiguously by the legislator in the criminal law. On the other hand, qualifying features do not belong to the only possible set of features of a socially dangerous act, which defines it, according to the criminal law, as criminal and criminally punishable. These features are used by the legislator to

construct a more dangerous type of action, to establish in the law new limits of punishment, increased sanction compared to that combined with the main component of the crime (Friedrichs, 2016).

Qualifying features of crimes that encroach on credit relations are contained in the relevant parts of the articles of the [Criminal Code of Ukraine \(2001\)](#), among which are the following:

- In Part 2 of Art. 190 of the Criminal Code of Ukraine —fraud committed repeatedly, or by prior conspiracy by a group of persons, or one that caused significant harm to the victim;
- In Part 3 of Art. 190 of the Criminal Code of Ukraine —fraud committed on a large scale or by illegal transactions using electronic computers;
- In Part 4 of Art. 190 of the Criminal Code of Ukraine —fraud committed on a particularly large scale or by an organized group;
- In Part 3 of Art. 191 of the Criminal Code of Ukraine —actions provided for in parts one or two of this article, committed repeatedly or by prior conspiracy by a group of persons;
- In Part 4 of Art. 191 of the Criminal Code of Ukraine —actions provided for in parts one, two or three of this article, if they are committed on a large scale;
- In Part 5 of Art. 191 of the Criminal Code of Ukraine —actions provided for in parts one, two, three or four of this article, if they are committed on a particularly large scale or by an organized group;
- In Part 2 of Art. 192 of the Criminal Code of Ukraine —the same acts committed by a group of persons with prior conspiracy, or those that caused property damage on a large scale;
- In Part 2 of Art. 200 of the Criminal Code of Ukraine —the same actions committed repeatedly or by prior conspiracy by a group of persons;
- In Part 2 of Art. 205 of the Criminal Code of Ukraine —the same actions, if they are committed repeatedly or have caused great material damage to the state, banking, credit institutions, other legal entities or citizens;

- In Part 2 of Art. 209 of the Criminal Code of Ukraine —actions provided for in part one of this article, committed repeatedly or by prior conspiracy by a group of persons, or on a large scale;
- In Part 3 of Art. 209 of the Criminal Code of Ukraine —actions provided for in parts one or two of this article, committed by an organized group or in a particularly large amount;
- In Part 2 of Art. 210 of the Criminal Code of Ukraine —the same acts, the subject of which were budget funds in particularly large amounts or committed repeatedly, or by prior agreement of a group of persons;
- In Part 2 of Art. 220-1 of the Criminal Code of Ukraine —the same act committed repeatedly or by prior conspiracy by a group of persons;
- In Part 2 of Art. 222 of Ukraine —the same actions, if they are committed repeatedly or caused great material damage.

The Special Part of the [Criminal Code of Ukraine \(2001\)](#) contains articles providing for liability for crimes in the field of credit relations, which do not provide for any qualifiers (Article 218; Article 219; Article 220-2).

It is important to note the fact that the same aggravating circumstances (qualifying features) in different articles may belong to different qualified compositions, i.e. identical qualifying features may be given different degrees of qualification ([Emelyanov, 2012](#)).

Thus, most often in the articles establishing liability for committing crimes in the field of credit, such qualifiers as committing a crime repeatedly or by prior conspiracy by a group of persons are mentioned, which are provided as ordinary qualifiers. Large-scale material damage is also envisaged as a common qualifying feature. While actions committed on a large scale in some cases are provided as an ordinary qualifier ([Criminal Code of Ukraine, 2001](#), art. 209, Part 2), and in another —as a special qualifier ([Criminal Code of Ukraine, 2001](#), art. 191, Part 3), and the task of harm in especially large in some cases provided as a particularly qualifying feature ([Criminal Code of Ukraine, 2001](#), art. 209, Part 3), and in others

—as an exclusively qualifying feature ([Criminal Code of Ukraine, 2001](#), art. 190, Part 4; art. 191, Part 5). Also, the commission of crimes in the field of credit relations by an organized group in some cases is provided as a particularly qualifying feature ([Criminal Code of Ukraine, 2001](#), art. 209, Part 3), and in others —as an exclusively qualifying feature ([Criminal Code of Ukraine, 2001](#), art. 190, Part 4; art. 191, Part 5).

Moreover, if, for example, in the relevant parts of the [Criminal Code of Ukraine \(2001\)](#), art. 190) is a fraud that caused significant material damage or committed in large or particularly large amounts, in Article 192 and Article 210 of the [Criminal Code of Ukraine \(2001\)](#) there are no qualifiers that would indicate the amount of damage.

This diversity and inconsistency in approaches to the provision of the same qualifiers in the composition of crimes involving liability for crimes in the field of credit, indicates imperfection and inconsistency of the provisions of these articles and requires improvement of the law on criminal liability in this area. In addition, the law on criminal liability also needs some improvement and unification in terms of defining and enshrining in law the content of specific qualifiers contained in the articles mentioned. First of all, such qualifying features as committing a crime repeatedly and causing certain material damage are meant.

## CONCLUSIONS

The peculiarities of credit and financial relations in Ukraine include: the formation of civilized market monetary relations; improvement of the monetary and banking systems; development of legislation on support of market transformations in the credit and financial sphere; scientific substantiation of market transformations in the field of crediting; creation of an effective system to prevent the criminalization of credit relations.

In Ukraine, credit relations are an important object of criminal law protection, as they are the main link in the financial sector, a defining segment of the market economy, which affects all life processes of citizens, society and state development.

The main grounds for the classification of crimes in the field of credit relations are: the type of object of encroachment; independent type of credit and financial activity; financial services system; subject of encroachment; common object of encroachment; subject of encroachment, etc.

Among those who commit crimes in the field of lending, there is a high proportion of women, due to the large number of female employees in the credit and financial institutions. The vast majority of criminals are mature—from 30 to 49 years. One of the important features is that the subjects of crimes in the credit sphere in the vast majority have higher education and experience in credit and financial institutions, a large number of people belong to the category of heads of credit, legal departments, chief accountants, economists, financiers. The vast majority of crimes in this area are committed for selfish motives. Political motivation is also not excluded.

Qualifying features of crimes in the field of credit activity are the commission of such actions repeatedly, by prior conspiracy by a group of persons, in large and especially large amounts, by an organized group and others. The establishment of qualifiers in the composition of crimes involving liability for crimes in the field of credit relations, in many cases is characterized by inconsistencies in the provisions of the law, and therefore such provisions need to be improved and unified by introducing scientifically sound changes and additions to the Criminal Code of Ukraine.

It is expedient to single out such a qualification feature as the commission of a crime by an official, as most often crimes in the field of credit activity are committed by employees of banks and other financial institutions. Among the considered crimes, such qualification sign contains part 2 of Art. 191 of the [Criminal Code of Ukraine \(2001\)](#). Possession of another's property by abuse of office by an official occurs when an official illegally trades another's property for his or her own benefit or for the benefit of third parties, using his or her official position. Only an official may be the subject of appropriation, misappropriation or seizure of another's property by abuse of office by an official.

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