



Kazimov M.S., Aliyev N.K.♦

DOI: 10.25108/2304-1730-1749.iolr.2019.60.334-364

**The development of legislation in the fight against
financial crimes in credit sector of Azerbaijan**

Abstract: One of the most important principles that form the basis of the methodology of scientific knowledge is historicism. Without studying the past, it becomes difficult to determine the essence of the processes taking place in reality, the right directions of development and have an accurate idea of the future. The prospect of development of any branch of science is unthinkable without studying its history, analyzing achievements and gaps, and without taking into account the accumulated practice.

Studying the past, conducting its comparative analysis with the current stage allows us to correctly assess the existing reality and make successful forecasts in connection with the development prospects of the event under study. The application of the historical method also allows us to identify stable trends in the development of legislation. Therefore, the study of the history of the fight against economic crime has not only scientific, but also practical significance.

Given that the historical approach to the study of phenomena and processes requires regularity, consistency and systemacy, the history of the fight against crimes committed in the economic sphere was examined in the context of the general history of the development of criminal law and the theory of criminal law. One of the important conditions for using the historicism method is to conduct research on historical stages (periods). The classification of historical periods is based on the political, social, economic and cultural criteria for the development of

♦ **Kazimov Mirali Sahib oglu** - Doctor of Law, deputy Head of Scientific Research Training Center of Ministry of Taxes of Azerbaijan (Azerbaijan). E-mail: vergi3m@gmail.com
Aliyev Nazim Kazim oglu - Doctor of Law, Head of Scientific Research Department of Training Center of Ministry of Taxes of Azerbaijan (Azerbaijan). E-mail: aliyev-1973@list.ru



the state and society.

Keywords: economics; financial system; credit system; criminal law; crimes; tax obligations.

Since 1878, almost the entire Caucasus was part of the Russian Empire and functioned as a single, integral socio-political and financial-institutional system - the Caucasian governorate. Capitalist relations in Azerbaijan have accelerated the pace of the establishment in 1860 of the Baku branch of the State Bank of the Russian Empire. Under these conditions, the commodity producer freed from feudal dependence fell under the power of capital. To meet the growing demand for cheap credit, it was necessary to create a network of credit institutions in Azerbaijan. The credit system of Azerbaijan has developed in two directions; it covered joint-stock (branches, agencies of commercial banks, mutual credit companies, pawnshops) and state-owned (branches of the State Bank, treasury, savings banks, small credit institutions) credit institutions [1].

In 1861, after the abolition of serfdom in the Russian Empire, the fast process of the formation and development of capitalist relations began. In the twentieth century, the Russian Empire entered with the "Code of Criminal and Correctional Sentences" (1845). Section VII of the code was called "On crimes and misconduct against property and treasury income" and consisted of two chapters: I - "On violation of monetary charters"; II - "On the fake of government credit securities." The Code also contained a number of rules providing for liability for financial crimes. So, in Art. 1149 Provisions stipulated liability for counterfeiting tickets of the debt repayment commission of a state bank and its branches and generally all state credit institutions, article 1150 stipulated responsibility for counterfeiting tickets of public and private banks, article 1160 stipulated responsibility for forgery of a bill, article 1194 stipulated responsibility for counterfeiting shares of a trading company, partnership or company. The criminal code on March 22, 1903



completes the development of the criminal legislation of Russia in the pre-revolutionary period. The 1903 Code provided for liability for counterfeiting foreign metal coins and credit marks. Securities and credit securities include securities issued by the state itself and other structures, but with the permission of the government [7].

It should be noted that the pre-revolutionary Russian criminal law was dominated by the provisions of the classical school of law. The last Criminal Code of 1903 was developed on the basis of these principles.

By the first half of 1917, the political crisis in Azerbaijan became acute, and the second bourgeois-democratic revolution was inevitable. At that time, in the implementation of financial control, the issues of regulating money circulation were rather difficult, and the presence of functioning banknotes in circulation at that time exacerbated this task. Along with the banknotes used in Azerbaijan at the beginning of 1918 - rubles ("Nikolaev" and "kerenki"), from January 1918 the "Baku bonds" (mainly trading operations) were issued, the issue of which was engaged in urban economy of the Baku Council and the Baku city government. The newly created State Bank was important in regulating the country's monetary and credit systems, however, having repeated the fate of ADRs, it soon ceased to exist. According to M.E. Rasulzade, "during the Bolshevik occupation of Baku, they organized a grab week and exported to Astrakhan the entire supply of gold, silver and other valuables" [1]. On April 28, 1920, with the creation of the Azerbaijan Soviet Socialist Republic, the traditional monetary system of our country was finally destroyed.

On December 9, 1922, at the II session of the Central Executive Committee of Azerbaijan, the first Criminal Code (hereinafter, the CC) of the Azerbaijan Soviet Socialist Republic was adopted. The special part of the Criminal Code of 1922 consisted of 8 chapters: the first chapter was called "State crimes", the second chapter was called "official crimes", the third chapter was "Violation of the rules



on separating the church from the state”, the fourth chapter was called “Economic crimes”, and the fifth chapter was “Crimes against the life, health and dignity of an individual”, Chapter VI - “Property crimes”, Chapter VII - “War crimes”, Chapter VIII - “Violations of the rules protecting public health, public safety and public order”.

In the legislative history of the Soviet period, all criminal codes highlighted chapters entitled “Economic crimes”, which contained articles describing the elements of crimes in the field of economic activity [3, p. 20]. The following crimes were provided for in Chapter III of the Criminal Code of 1922: labor desertion - Art. 126; mismanagement of the head of the institution or the manager of a state-owned enterprise of labor provided to the institution or enterprise on the basis of labor service - Art. 127; mismanagement by persons at the head of state institutions or enterprises of the business entrusted to them, as a result of which the production plan was not fulfilled or the quality of manufactured products worsened, or the property of enterprises was squandered - Art. 128; squandering by the lessee of the property of means of production provided to him under a public domain contract - Art. 129; failure to fulfill an obligation under a contract concluded with a state institution or enterprise, if the knowingly malicious nature of failure to fulfill the contract is proved - Art. 130; misappropriation of products and consumer goods to the head of an institution or enterprise for the wrong purpose - Art. 131; violation by the employer of the rules established by the Labor Code and the general tariff regulation governing overtime, night work, work of women and adolescents, wages, admission and dismissal, as well as violation of special rules on labor protection - Art. 132; violation by employers of collective agreements concluded by them with trade unions - Art. 133; obstruction of the legitimate activities of factory committees (local committees), trade unions and their representatives - art. 134; collection of rent for housing, as well as eviction of workers and public servants from their homes, other than by court verdict - Art.



135; violation of the provisions governing the implementation of state monopolies - Art. 136; Artificially raising the price of goods by conspiracy or strike of merchants among themselves, or by maliciously not releasing goods to the market - Art. 137; speculation with foreign currency in exchange for Soviet banknotes or vice versa - Art. 138; purchase and sale in the form of fishing of products, materials and products with respect to which there are special prohibitions or restrictions - Art. 139; preparation for the sale of wines, vodka and, in general, alcoholic drinks and alcohol-containing substances, without proper permission or in excess of the fortress established by law - Art. 140; violation of the rules of trade - Art. 141 [8].

Under Soviet rule, banking turned into an exclusive monopoly of the state. The process of nationalization and liquidation of banks was predetermined by the following steps, namely, at first all banks were declared branches of the Azerbaijan People's Bank and, uniting, temporarily formed four branches of the People's Bank, all the same employees of nationalized banks, as well as their management, temporarily staying in place, simultaneously compiled a separate report for each bank. Then, in order to enforce the decree on the nationalization of banks and other documents related to banking (decrees, regulations, instructions and orders) of the highest authorities throughout Azerbaijan, where there were such institutions, a Committee on Nationalization was organized under the credit department of the People's Commissariat of Finance liquidation of banks. Providing for appropriate amendments to the provisions on nationalization and liquidation of banks, Az.rev.kom adopts another decree of August 21, 1920, which determines the liquidation of all existing private credit institutions [1].

On December 30, 1922, the Union of Soviet Socialist Republics (USSR) was created, and on January 31, 1924, the First Constitution of the country was adopted by the II All-Union Congress of Soviets. The Constitution granted the highest authorities of the USSR the power to determine the foundations of civil and



criminal law, as well as legal proceedings. On October 31, 1924, the Central Executive Committee of the USSR adopted “The Basic Principles of the Criminal Legislation of the Union of Soviet Socialist Republics and Union Republics”. In accordance with the basic principles, in 1926-1940 new criminal codes of the Union republics were adopted. The second Criminal Code of the Republic of Azerbaijan was adopted on December 3, 1927 and entered into force on January 15, 1928. The system and signs of economic crimes in the Criminal Code of 1927 did not differ significantly from the Criminal Code of 1922.

The special part of the Criminal Code consisted of 9 chapters: the first chapter was called “State crimes”, the second chapter was “Other crimes against the management order”, the third chapter was “Official (official) crimes”, the fourth chapter was “Violation of the rules on separation of the church from the state”, V chapter - “Economic crimes”, VI chapter - “Crimes against the life, health, freedom and dignity of an individual”, VII chapter - “Property crimes”, VIII chapter - “Violations of the rules protecting public health, public safety and order”, Chapter IX - “Crime military men ”[9].

The content of the articles included in Chapter V of the Criminal Code of Azerbaijan Republic of 1927 and chapter III of the Criminal Code of Azerbaijan of 1922 was almost the same. In the early 30s, the basic prerequisites for conducting credit reform were created. One of them was the transfer to self-financing of all industrial enterprises. This beginning formed the circumstance for establishing straightforward credit relations between the bank and the enterprise.

In the second half of 1940, the country accumulated significant foreign exchange reserves, and the purchasing power of the ruble increased. At the stage of the post-war years (1945 - 1952), the work of the credit system and its main link of the State Bank of the Azerbaijan SSR were directly soldered to the further formation of the national economy in the circumstances of a peaceful economy, and also provided the need for economic opportunities, preparation of conditions



for the expanded reproduction of fixed and circulating production assets , contributed to an increase in production of leading industries that generate material income.

In 1955-56 the role of the Soviet Union as a power with the ability to provide loans to other states, mainly to social countries, increased. Loans were issued on favorable terms at low interest rates. All calculations on external loans were reflected in the statements of the State Bank of the Azerbaijan SSR. Since 1960, the State Bank of the Azerbaijan SSR has begun compiling annual plans for lending to long-term investments [11].

On December 25, 1958, the new “Fundamentals of the Criminal Law of the Union of Soviet Socialist Republics and Union Republics” (hereinafter referred to as the “Fundamentals”) were adopted. The 1958 Fundamentals made major changes to strengthen the rule of law, humanism, and justice in criminal law. This law for the first time in Soviet criminal law eliminated the institution of analogy. The fundamentals, on the one hand, provided for mitigation of criminal liability for acts that do not represent a great public danger, and on the other hand, a certain increase in liability for crimes directed against the economic system of the state [2]. In 1959-1961, in accordance with the Fundamentals, new criminal codes of the Union republics were adopted.

According to the sequence, the third Criminal Code of the Republic of Azerbaijan was adopted on December 8, 1960, entered into force on March 1, 1961, and was valid until September 1, 2000. A special part of the Criminal Code of 1960 consisted of 11 chapters: the first chapter was called “State crimes”, the second chapter was called “Crimes against socialist property”, the third chapter was called “Crimes against the person”, the fourth chapter was called “Crimes against the political and labor rights of citizens,” Chapter V - “Crimes against the personal property of citizens”, VI chapter - “Economic crimes”, VII chapter - “Crimes of duty”, VIII chapter - “Crimes against justice”, IX chapter - “Crimes



against the order of administration”, X chapter - “ Crime against public safety and public order”, the head of the XI – “War crimes”.

In chapter VI of the Criminal Code of the Republic of Azerbaijan in 1960 (with subsequent amendments and additions) the following crimes were provided for: the production of substandard, non-standard or incomplete products - Art. 151; private entrepreneurial activity - Art. 152; speculation - 153; deception of buyers and customers - Art. 154; production, storage and marketing of home-made strong liquor - Art. 155; sale of environmentally polluted and harmful products - Art. 155-1; falsification of signs of postage, tickets and other documents for the passage of passengers or transportation of goods; the use of motor vehicles for profit - Art. 156; the use of vehicles for profit - Art. 157; Evasion of the presentation of a declaration of income - Art. 157-1; concealment of profit or non-registration of objects of taxation - Art. 157-2; violation of state pricing rules - Art. 157-3; violation of foreign exchange transactions - Art. 157-4; engaging in prohibited fishing - Art. 158; illegal fishing or other aquatic mining activities - Art. 159; water and air pollution - Art. 160; illegal hunting - Art. 161; violation of the right of state ownership of land and unauthorized construction, violation of the rules of water use in areas of irrigated agriculture - Art. 163; illegal logging - Art. 164; causing a forest fire - Art. 165; illegal transfer by a private person for a fee of living space - Art. 166 [10].

It should be noted that some of the rules governing liability for economic crimes in the current Criminal Code of the Republic of Azerbaijan were placed among state crimes or crimes against the management order in the Criminal Codes of 1922, 1927, 1960.

In the early 80's for a number of reasons, banks did not actively fulfill the role of stimulators for the development of social production, weakened their impact on the efficiency of the economy, strengthening cost accounting, and observing the resource-saving regime. Credit in many sectors of the economy and certain areas of



economic turnover has lost its true meaning. Serious shortcomings were made in money management; payment discipline worsened.

Concepts of Soviet-era laws were mainly built on the worldview of the US Federal Reserve. All the Central banks of the Union republics formed an integrated banking network, the coordination of which was built by the Central Council of the USSR State Bank, the supreme governing body of all central banks, including the State Bank. The Council fully controlled and regulated the activities of the State Bank of the USSR, approved its charter and cost estimates, appointed board members, with the exception of the chairman and his first deputy.

With the collapse of the former USSR in 1991 and the formation of new independent states, the unified political, economic and social space of the union republics collapsed. In the first years of the sovereign development of Azerbaijan, it was accompanied by a sharp decline in production, investment passivity, the destruction of the financial and credit system and production relations, currency instability, etc.

By presidential decree of January 10, 1992, the International Bank of the Azerbaijan Republic was established on the basis of the branch of the Azerbaijan Republican Bank of the former Vnesheconombank of the USSR. Following this presidential decree of February 11, 1992, the following institutions were established: the National Bank of the Republic of Azerbaijan on the basis of local banks, the former State Bank, Agroprombank, Promstroibank of the USSR with the transfer of their assets and liabilities to him as of January 1, 1992 and the Savings Bank of the Republic of Azerbaijan on base of the Azerbaijan Republican Bank of the former Sberbank of the USSR.

On August 7, 1992, the laws On the National Bank of the Republic of Azerbaijan and On Banks and Banking Activities in the Republic of Azerbaijan were adopted. Since August 15, 1992, the national currency, the Azerbaijani manat, was issued.



On February 28, 1995, a decree of the President of the Republic of Azerbaijan “On liberalization of currency regulation in the Republic of Azerbaijan” was issued. On December 14, 1994, the National Bank of Azerbaijan switched to the practice of determining the official exchange rate of the national currency according to the results of foreign exchange trading on the Baku Interbank Currency Exchange [6, p. 84]. On February 28, 1995, a decree of the President of the Republic of Azerbaijan “On liberalization of currency regulation in the Republic of Azerbaijan” was issued. According to the decree of March 10, 1995, the country's Unified Monetary Fund is liquidated.

After steady growth in 1995-98 the current account deficit in 1999 decreased by 2.5 times and amounted to 15% of GDP compared to 32.6% of GDP in 1998. This was largely the result of an increase in oil export revenues, caused by an increase in production within oil contracts, and more than double the increase in oil prices on world markets in the second half of 1999. From 1994 to 2000 Azerbaijan's foreign exchange reserves increased 23.9 times [4].

Under such conditions, it became necessary to update the criminal legislation of the Azerbaijan Republic with new approaches to realities, taking into account the peculiarities of crimes in the economic sphere. The special part of the Criminal Code of the Republic of Azerbaijan in 1999 consists of 17 chapters. Chapter twenty-four of the Criminal Code is called “Crimes in the Sphere of Economic Activity”. It should be noted that since the introduction of the Criminal Code into force, that is, since September 2000, changes and additions have been made to this chapter, the most recent of which were introduced by the Law of the Milli Majlis of the Republic of Azerbaijan dated November 17, 2017 and the following crimes are provided for here: obstruction of legitimate business activities (v. 190); registration of illegal transactions with land (Article 191); illegal business (Article 192); illegal organization or holding of lotteries and sports sweepstakes (Articles 192-1); sports manipulation (Art. 192-2); false business (art. 193); legalization of



money or other property obtained by criminal means (Art. 193-1); the acquisition of money or other property known to have been obtained by criminal means, the possession, use and disposal of them (Article 194); illegal obtaining of a loan or its use for other purposes (Article 195); violation of the rules for using public debt or debt received under a state guarantee (Articles 195-1); violation of the rules for obtaining internal or external debt (Articles 195-2); deliberate evasion of repayment of accounts payable (Article 196); illegal use of a trademark (Article 197); knowingly false advertising (Article 198); monopolistic actions and restriction of competition (Article 199); consumer fraud or the production and marketing of low-quality products (Article 200); drug trafficking (Art. 200-1); coercion to conclude a transaction or to refuse to conclude it (Article 201); illegal receipt and disclosure of information constituting a commercial or banking secret (Article 202); distribution of documents and information on export control (Article 202-1); illegal use of official information by an insider (Art. 202-2); violation of the rules for the issuance of securities (issue) (Article 203); price manipulation in the securities market (Art. 203-1); the manufacture, purchase or sale of counterfeit money or securities (Article 204); production, purchase or sale of fake credit or payment cards and other payment documents (Article 205); manufacture, purchase or sale of fake excise stamps (Art. 205-1); intentional destruction, counterfeiting, illegal manufacturing, use and sale of control marks (Articles 205-2); smuggling (Article 206); non-return to the territory of the Azerbaijan Republic of objects of art, historical and archaeological heritage of the Azerbaijan Republic and foreign countries (Article 207); non-return of funds in foreign currency from abroad (Article 208); evasion of customs payments (Article 209); unlawful actions in bankruptcy (Article 210); deliberate bankruptcy (Article 211); fictitious bankruptcy (Article 212); tax evasion (Article 213); sale, storage for the purpose of sale, export outside the industrial building or import of products (goods) subject to excise marking without such marking (Article 213-1); evasion of the sale of



precious metals and precious stones to the state (Art. 213-2); falsification of state assay marks (Art. 213-3).

In subsequent years, the need for systemic modernization of the banking system of the Republic of Azerbaijan became apparent. As a result, Azerbaijan passed laws on banks (January 16, 2004), on the National Bank (December 10, 2004), on a mortgage (January 15, 2005) on bank deposit insurance (December 3, 2007). In addition, amendments were made to the law on foreign exchange regulation with the aim of further liberalizing it, in particular, to ease restrictions on the export of foreign currency. Since January 1, 2006, the national currency was denominated: 5,000 old manats were equated to one new manat. During these years, work continued on improving the legal framework for banking activities, improving the efficiency of banking regulation and supervision, as well as the competitiveness of domestic banks. In particular, the rules for conducting external audits at banks were prepared, the consultative stage on the implementation of Basel II standards continued and the introduction of its individual elements (in terms of market discipline) began [5].

A historical analysis of the financial and credit system of Azerbaijan made it possible to formulate three main stages of such development:

- I. monetary system in the period from the last quarter of the XIX century to 1920;
- II. monetary system in the period from 1920 to 1991;
- III. independent (modern) monetary system - from 1991 to the present.

Modernization of Azerbaijani banks, taking into account international experience, is an urgent problem of improving their development strategy in three main areas:

- firstly, expanding the range of banking services - payment, commercial, investment and others, based on the principle of “everything for the client” accepted in world practice.



- secondly, the introduction of high-tech modern equipment, which is available only to large banks.

- thirdly, improving the professional level of bank managers, eliminating functional illiteracy.

In order to move to a qualitatively new level of development, among the main macroeconomic tasks facing the national banking system, the following should be distinguished:

- approval of the national banking sector as an effective mechanism for maintaining economic growth through long-term lending and investment support for enterprises in the real sector of the economy;

- maintaining control of national capital over the banking sector;

- development and improvement of banking infrastructure;

- toughening the levers of supervision, regulation and stimulation of banks;

- development of new and improvement of existing legislative and regulatory acts in the field of banking activities;

- liberalization and tightening of control of currency legislation, strengthening the fight against money laundering and the abolition of borders for the movement of “clean” money;

- approval of manat as a convertible currency (for starters at the regional level);

- continuing the restructuring of the banking system at an accelerated pace.

The current Criminal Code pays considerable attention to the regulation of financial and credit crimes, their differentiation of responsibility according to qualifying criteria. And this should be regarded as a step forward in the history of legislation to combat marked crimes.

So, the materials examined by us allow us to come to the following conclusions:

1) each period of development of the financial and credit system determines



the corresponding changes or reforms of the current criminal law of the state;
2) every change in criminal law affects the corresponding type of crime.

References

1. Abdullayev Sh.E. Problemy formirovaniya i ispol'zovaniya kreditnykh resursov v Azerbayjanskoyi Respublike [Problems of formation and use of credit resources in the Azerbaijan Republic]. Dis. ... kand. yurid. nauk [Diss... of PhD in Law]. Baku, 1999, 147 p.
2. Kurs ugolovnogo prava. Obshchaya chast'. Tom 1. Uchebnik dlya vuzov [The course of criminal law. A common part. Volume 1. Textbook for universities]. Pod red. N.F. Kuznetsovoyi i I.M. Tyazhkovoyi [Ed. by N.F. Kuznetsova and I.M. Tyazhkova]. Moscow, 2002, 624 p.
3. Kurs ugolovnogo prava. Osobennaya chast'. Tom 4 [The course of criminal law. The special part. Volume 4]. Pod red. Prof. G.N. Borzenkova i V.S. Komissarova [Ed. by Prof. G.N. Borzenkov and V.S. Komissarov]. Moscow, 2002, 672 p.
4. Mammadov Z.F. Denezhno-kreditnaya sistema Azerbayijana [The monetary system of Azerbaijan]. Obshchestvo i ekonomika [Society and Economics], 2009, No. 3, pp. 82-106.
5. Mammadov Z.F. Den'gi, kredit, banki [Money, credit, banks]. Baku, 2008, 400 p.
6. Mammadov Z.F., Zeynalov V.Z. Antikrizisnaya politika v bankovskoyi sfere: Turtsiya, Rosiyiskaya Federatsiya i Azerbayijan (sravnitel'nyyi analiz) [Anti-crisis policy in the banking sector: Turkey, Russian Federation and Azerbaijan (comparative analysis)]. [Internet resource]. Available at: <http://econorus.org/onim/upload/dpon.doc>
7. Otvetstvennost' za izgotovlenie ili sbyt poddel'nykh deneg ili tsennykh



bumag v period do oktyabrya 1917 goda [Responsibility for the manufacture or sale of counterfeit money or securities until October 1917]. [Internet resource]. Available at: <http://center-yf.ru/data/Yuristu/otvetstvennost-za-izgotovlenie-ili-sbyt-poddelnyh-deneg-ili-cennyh-bumag-v-period-do-oktyabrya-1917-goda.php>

8. Ugolovnyyi Kodeks Azerbayijanskoyi SSR 1922 g. [The Criminal Code of the Azerbaijan SSR 1922].

9. Ugolovnyyi Kodeks Azerbayijanskoyi SSR 1927 g. [The Criminal Code of the Azerbaijan SSR 1927].

10. Ugolovnyyi Kodeks Azerbayijanskoyi SSR 1960 g. [The Criminal Code of the Azerbaijan SSR 1960]. Baku, SSR, 1961, 151 p.

11. Tsentarl'nyyi bank i ego funktsii. Kommercheskie banki [The central bank and its functions. Commercial banks]. [Internet resources]. Available at: <http://modern-econ.ru/makro/dengi-kredit/banki/cb.html>