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**OLIGARCH CRIME AND ILLEGAL SEIZURES AS
THE PERPETRATOR AND THE TOOL OF CRIMINAL
BANKRUPTCIES IN THE REPUBLIC OF KAZAKHSTAN**

Indira Mirzamukhamedova

Lawyer, Almaty City Bar Association

Doctoral student, Caspian University

Republic of Kazakhstan, Almaty

Abstract: The article analyses the influence of oligarch crime upon the economy of the Republic of Kazakhstan. It also looks in detail at such illegal and shadowy activity as illicit asset seizures in the context of criminal bankruptcy and the growing relevance of providing the long-term economic security of the Republic of Kazakhstan. The article uncovers some causes, which have an effect on detection and predictability of such illegal activities.

Key words: oligarch crime, criminal bankruptcy, illegal seizures, the perpetrator of criminal bankruptcy, economy, criminal business, economic crime, economic security.



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The phenomenon of bankruptcy in general and criminal bankruptcy in particular is hardly a novelty for the Republic of Kazakhstan and its legal system. This phenomenon relies on a mobile platform of a complex type consisting of such legal areas as civil, criminal, administrative, labour, corporate et al. Such complexity per se gives an idea as to the depth of the legal and public relations contained in this system. The same multi-layered system accounts for the dead-end situations, often incapable of resolution, which, one way or another, the law-enforcement bodies

come across in the process of their work on cases where the starting point is criminal bankruptcy [1, p.120].

Criminal entities engaged in the organised type of activities are zealous in using the situation where the re-distribution of property is aggressive in nature since for them it presents a fertile soil to steal this very property. At present in our country one cannot fail to note the upsurge of the mercenary activities aimed at turning the tool of bankruptcy, originally useful in fostering the financial recovery of the economy, into another tool, which

can be called nothing else but the financial tool of its corruption.

The long-term process of the development of our economy has been going on not without visible efforts and, what is most important, without sufficiently consistent and time-appropriate measures in the form of a checking and protecting mechanism against criminal encroachment upon its foundation. By the beginning of the third millennium, which was, perhaps, the most important and difficult period for the economy, suitable conditions were also created for the growth of the above-mentioned crime. Since the criminal economy has been given a certain push in development, which had a shadowy hue, it has also gained opportunities for both full and partial "symbiosis" with the State sector of the economy. The face of such economy with a criminal shade has become precisely the oligarch crime, with oligarchy being a particular social structure, where the quasi-legislative power of a few mercenary-minded entities is concentrated on illegal or partially illegal grounds, which is a salient feature of the so called "oligarchy" [2, p.90].

Understandably, one cannot describe oligarchy as a phenomenon only as "black" without considering "grey", which is somewhat removed from various extremes of this notion. Such an extreme could be illustrated by a distinctive example when entities possessing high-level quasi-legislative power, pass on their job/

position as inheritance from father to son, within their own circle, thereby bypassing prescribed legal procedures of electing to these positions other people, often some of the most worthy potential contenders. On the contrary, if the election instrument prescribes the so-called property qualification, with the letter of the law being strictly adhered to, the oligarchy in this case, although often not being considered legitimate, nevertheless can be considered closest to the bona fide and honest politics with regard to the economy of the State. The so-called "elected" entities simply do not allow any other people, apart from their close circle, to get the jobs/positions, which is what oligarchy is in the direct meaning of this phenomenon [3, p.111].

The oligarchs themselves, not only in the Republic of Kazakhstan, but also in Russia, as well as in other post-Soviet States, are divided into the so-called nation-wide clans and clans of lesser size. The power system of such clans is generally built according to the classic perception of oligarchy, specifically, according to Aristotle's system of oligarchy types, where it is viewed as classic. Classic oligarchy implies that only well-off entities can be allowed access to power, and this is the main axiom of this type, a certain "blood circulatory system" of the said phenomenon. Power is formed and serves itself in the closed "eco-space". The laws of this power completely and utterly work for the entity in

command; the entity also makes the laws [4, p.10].

The factor of "execution and pardoning" does not exist in the oligarchs' toolbox, nor does their own determination of tax liabilities or other competitively advantageous and objectively expressed actions for themselves. Thus, this situation forces oligarchs to use criminal tools to expand their authority and privileged actions.

One of the strongest tools in this scheme is illegal seizure, representing a certain chain of operations, which makes use of loopholes in the legislation and is used to gain authoritative powers over assets, as a rule the assets of a given enterprise. In this context, criminal bankruptcies become a convenient, simple and, most importantly, cheap tool of such shadowy privatisation, which eventually could not fail to turn into a flourishing business in the hands of a criminal privileged layer of society [6].

Most regrettably, this rather widespread stereotyped axiom happens to be reflected in objective reality, namely, in the criminal acquisition of all large assets in the sphere of business. As is well-known, conducting business is far from being the most straightforward thing, to put it mildly, starting from massive responsibility and finishing with various huge risks and problems. Kazakhstani businesspersons more often than not come across the insurmountably developed "wall" in

the form of illegal seizures, acting as a "parasite" for the target business in all meanings of this word. In such a case, transfer of assets from possession of owners on legal grounds is quite a normal occurrence. Illegal seizures are characterised by a range of procedures for all eventualities, starting with direct threats and use of violence and finishing with the bypassing of legal procedures using the most crafty and sly ways. In doing so they successfully put on the mask of "strictly abiding by the law", contradicting it at the same time.

As a phenomenon, illegal seizure undermines the respect to the rights of property in every possible way. It also has a damaging effect upon the image of the international aspect of business in the Republic of Kazakhstan, which cannot but obstruct such an important factor as long-term investments in the future [5, p.89].

The major reasons for the rampage of illegal seizures in the Republic of Kazakhstan are the weakness of courts and the law enforcement system, especially against the backdrop of the rise of uncontrolled corruption activities. It would be extremely difficult to carry out an illegal seizure of an enterprise on a certain territory without the support of the district or city administration, especially if an enterprise is big enough. In the vast majority of cases, it is the support of dishonest authorities that acts as a decisive factor of illegal seizures

and criminal bankruptcies. In its turn, the weakness of the legislative framework clearly and distinctly indicates that the registration laws are a far cry from perfection or any acceptable level at all. For example, how is it possible that in the absence of a certain legitimate entity all the documents pertaining to registration could be transferred to another entity of a dubious nature? Any grounds for that? They do not exist. Any questions? Nobody has any. The mere fact that the business owner can indeed confirm its legitimate rights by producing its passport or the power of attorney duly notarised, is not even taken into consideration.

For the past 10 years, assets in the Republic of Kazakhstan have tangibly expanded. Against this background, the rampage of illegal seizure as a phenomenon reflects the low level of entrepreneurship culture of business entities. Owners rarely even give a thought to the fact that they may become a direct target of illegal seizure. Indeed, they do think about pressing issues, such as priority and long-term business development, building relations with power structures, but absolutely do not attempt to forecast a potential illegal seizure. Unfortunately, this is human psychology, and the level of education or upbringing makes no difference what so ever. Such is life that people generally do not want to think about bad things, and this is understandable. Nevertheless, it is the entities who bear the brunt of

a certain responsibility on their shoulders that must eradicate this feature in themselves at all costs, because it is these entities that are the most important economic "bricks" in the foundation of a State. Apart from everything listed above the lack of entrepreneurship culture is also reflected in the deliberate breach of labour, tax and civil legislation. Everything listed above cannot fully reveal the decisive factors of criminal bankruptcy in our State [5].

It is also important to bring to light the weakness of market institutions, most evident recently, because in this way or the other they cease to be reliable regulators of the market environment. The State is gradually relinquishing the opportunity of the mutually beneficial adaptation of the legislative framework to market institutions, which, in their turn, would dictate the rules of behaviour to all entities engaged in market relations in the interests of both the State on the whole, and its people in particular, and not just in the interests of a group of privileged physical and legal power entities.

Illegal seizure, as a phenomenon, greatly impedes normal development of the real sector of economy of any State. Addressing the State tasks is not only last on the list; it is not even on the list. The reality is that this phenomenon aims only at redistribution of property, and this process can last not just for a long time but endlessly. One can describe the illegal seizure as a key aspect of

criminal bankruptcy, which slowly but surely is drying up economic resources. It is possible to record the massive outflow of capital abroad, also as a consequence of illegal seizures. For entrepreneurship, it is pretty much one of a few efficient ways out of a developed situation, since, in case of worsening of that very situation the entrepreneurship may try to survive in another place, more favourable for conducting business. This cannot but have an impact on the drain of a useful labour force, detrimental for our economy, on a nation-wide scale. Business development will not be on track while illegal seizure exists on the scale currently indicated by various experts [6, p.10].

Just as a person in a state of permanent fear cannot work properly, enterprises cannot function normally being constantly in a state of self-defence. It is rather difficult to fully evaluate the damage caused by illegal seizure, since by and large it takes place covertly, which does not allow for calculating the damage in monetary terms. Illegal seizure directly undermines the prestige of the Republic of Kazakhstan in the international economic arena. Most regrettably, it is common for our mentality to think that if something has been forcefully taken from somebody, or somebody was locked up, they have deserved it. This is becoming simply a statistic. In many civilised and developed countries, such circumstances are more likely to

cause a state of shock. What we consider normal circumstances are by no means the same for many countries. Precisely such image damage inflicts investment blows on our economy since many economic processes taking place in our country directly engage foreign owners. The expanding criminal bankruptcy resulting from similarly expanding oligarch crime by no means helps the formation of an advanced and technology-savvy economy of the Republic of Kazakhstan. Matters are made worse by the fact that, as a rule, bankruptcy cases have been brought specifically against companies attractive from the investment point of view, while the economically hopeless companies have continued their activities in the same way as before. This points to the unwholesome selectiveness of the bankruptcy procedure because as a result quite a viable branch of business is affected. In its turn, the mechanisms of rehabilitation character, with very rare exceptions, have not been working at all.

The present period of economic development of the Republic of Kazakhstan is witnessing a peak of criminal bankruptcies. It has become especially clear after there has been formed a segment of corporate raider companies directly specialising in arranged illegal bankruptcies. It follows from this that successful counteraction to such a phenomenon is almost impossible without the engagement of the relevant level

experts, including appraisers and auditors. However, there appears to be one more problem in this area, namely, the problem of interaction between the expert community and the law enforcement bodies, which regulate this area. Such interaction is extremely weakly developed, and no steps have been taken that could bring it closer to being efficient and effective in the future. The problem of such expert activities and experts' interaction with the State comes exclusively from the mistrust of the law enforcement bodies towards experts' competence because their impartiality and professional level are put to doubt since they work directly for private companies whose qualification is difficult to check and sometimes impossible to check in a proper way. In addition, the budget does not provide for preparation of expert opinions regarding the availability of the signs of criminal bankruptcy. As a result, case law on the issue of criminal bankruptcies is in legal limbo, and malpractice in the area of bankruptcy has been left without due punishment. That is why it is so important to consider criminal bankruptcy without separating it from oligarch crime, which represents a great danger for the development of a viable and competitive economy.

In practice, it is rather difficult to prosecute the perpetrators for criminal activities in the sphere of bankruptcy, including bankruptcy as a method of illegal seizures, especially when these activities are

masterminded behind the scenes by oligarchic cells [7].

Subjective causes affecting detecting and resolving illegal bankruptcies committed by oligarch criminality are acquiring an increasingly relevant meaning. Such causes could and should include the symbiosis of the State economic sector and criminal business sector, due to which the latter can use the valuable complex of the administrative resources of the State on the most advantageous terms for itself. In their turn, the investigative bodies often decline to prosecute citing the smallest doubts in favour of the alleged perpetrator. Investigators and junior detectives generally have insufficient knowledge of the main provisions of the tax and civil legislation, which cannot but tell on the effectiveness of their professional activities.

The lack of finely tuned judicial practice in criminal bankruptcy cases accounts for the fact that in recent years the actual level of overall economic crime has, on the whole, increased.

Uneven periods of development of economic criminality have led in the long-term to changes in conditions and causes of the development of a criminal personality on a scale more dangerous for the economy, of a certain "fast-track and better quality" course of development of the economic criminal mind.

Based on the afore-said, it is possible to make a conclusion that prosecuting a perpetrator for

criminal actions related to bankruptcy in reality is rather complicated. When carrying out illegal bankruptcy the oligarch criminality possesses sophisticated methods and ways of distorting the accounting information, which, as a consequence, requires conducting a most vigorous analytical study as well as additional checking measures. This shows that detecting the signs of such a type of bankruptcy requires a thorough analysis of the financial schemes of the debtor as well as the ways of their implementation. The intellectual level of such a type of economic crime should not be underestimated. Overall the level of protection of economic relations is far from the mark, and the extreme latent character pertaining to economic crime, the inadequate legislation in the sphere of bankruptcy as well as the crime-driving "symbiosis" of criminal and State economic structures do not help to achieve any significant improvement of the situation.

There should not be any discrepancy between the letter of the law and the direct implementation of this letter. The State should not, at the same time, declare war on illegal seizures on the one hand, protecting the owner and adopting for that purpose various economic leverage, and, on the other hand, come to agreements with corporate raiders, using for that methods of an extra-legal nature.

Oligarch crime and, going hand-in-hand with it, criminal bankruptcy most directly constitute strategic, often uncontrolled, destabilisation of the economic sector of any developed or developing State. Since ancient times humankind has not existed without criminal activities of various types, and therefore it would be naive to believe that crime can completely be eradicated. Nobody sets him/herself such a task. However, the State and society must exert all tangible efforts of both an academic/intellectual and a practically applicable level, to a realistic degree and without harm to other sectors of economy. It is important to take into consideration the best practices of other developed countries, and build on the basis of these practices the most suitable system of methods combating the economic outrage of criminal entities, taking into account the peculiarities of the Republic of Kazakhstan and its economy [7].

Thus, premeditated illegal bankruptcy, especially on the part of the developed network of oligarch structures, creates a threat to economic security not only of the State but also of every individual, impacting him/her in a direct and long-term way. Bankruptcy is causing damage to the property interests of State and non-State business entities. Social consequences of oligarch crime and expanding criminal bankruptcy are not just negative, they are catastrophic, especially if due attention is not paid to them.

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