

Determining the Measure of Responsibility for Committing an Economic Crime

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ABSTRACT

This paper presents a comprehensive analysis of the quality of the criminal law on liability for certain crimes in the field of economic activity, as well as on the features of exemption from liability for the commission of these crimes. The study found that the public danger of many economic crimes remains unappreciated, and the increase in the number of encouraging criminal legal rules that establish special conditions (grounds) for release from liability for economic crimes negatively affects the economic crime prevention.

The ultimate goal of the study is to develop scientifically based proposals on the methodology for the formation of sanctions of criminal legal rules that determine the types of economic crimes, and to clarify the grounds and conditions that must be met to release from liability for a previously committed economic crime. The author's solutions to these goals formed the basis of the conclusions and suggestions based on the study results. They consist of the development of the formation methodology of criminal legal rule sanctions on economic crimes, as well as in the reasoned rejection of special conditions for the release from liability of persons who have committed crimes in economic activity.

Keywords: *criminal liability, crimes in economic activity, methodology of building criminal legal rule sanctions, encouraging rules of criminal law, basis, conditions for release from criminal liability*

1. INTRODUCTION

Formal verification can reveal the unexposed defects in a The current Russian Criminal Law defines a significant number of types of economic crimes (section VIII), including those directly committed in economic activity. However, the public danger of the extraordinary majority of crimes in economic activity remains unappreciated. This may be evidenced by the insignificant terms of penalties provided by sanctions of the relevant criminal legal rules, as well as the wide scope of exemption from liability for crimes in economic activity. Such legislative decisions can lead to the formation in the public creation of a mistaken opinion about the minor harm that is caused as a result of committing a crime in economic activity, and the penalty for their commission will be appropriate to compare with the measure of administrative influence.

In fact, the public danger of crimes committed in economic activity is quite high. The economy in any state determines the possibilities and pace of its development, including the possibilities of protecting its national interests from external aggressive encroachments. In this regard, crimes committed in economic activity and causing harm to private and public business entities constitute a significant threat to both society and the state. It is for this reason that the current criminal legislation of Russia needs a substantial re-examination of approaches to determining the penalization of economic crimes, as well as the

conditions under which a person can be discharged from committing an economic crime.

2. STUDY METHODOLOGY

In the research process, various methods used in the humanities (legal) sciences were applied. So, the dialectical method of scientific knowledge was used in the entire study: in determining development patterns of the criminal penalty system, their content and layout features within the framework of one sanction of criminal legal rule; when understanding the social usefulness or danger of including in the content of one sanction a significant number of penalty types that significantly differ from each other in the severity degree of legal impact; in the study of judicial practice on the discharge of persons who have committed crimes in economic activity; and etc.

Also, to obtain results on the possible consequences of expanding the practice of legislatively establishing special grounds and conditions for exemption from criminal liability for certain types of crimes, the formal-logical method and the method of social and legal modeling were used.

3. STUDY RESULTS

1. As a study result, we proposed a methodology for constructing a criminal law norm sanction, which establishes responsibility for committing crimes in economic activity. This technique includes a number of the following general and special rules:

- maximum number of penalties, the appointment of which is possible only as basic, should be no more than three;
- the scope of sanctions rules included in one article of the Special Part of the Criminal Law should not overlap in the amount or terms of corresponding penalties;
- crimes provided for by different parts of the same criminal law rule may belong to the same category, or differ from each other, but not by more than one category.

2. Based on a comprehensive study of the features of determining the grounds and conditions for discharge from criminal liability, it is concluded that it is inappropriate to establish special grounds and conditions for the exemption that apply only to a specific group of crimes – crimes in economic activity. It also proposes the exclusion of Article 761 from the Current Criminal Law, since the existence of this rule actually stimulates the growth of economic crime in Russia.

4. DISCUSSION OF RESULTS

1. The problems of the formation of criminal legal rule sanctions in modern legal science are of particular relevance. It is in this part of the rule that the final official assessment of the public danger of a particular socially dangerous act and the degree of its harmfulness to society is determined.

Particular attention should be paid to the sanctions of those rules that determine the measures of criminal law for crimes in economic activity since the public danger of this particular group of crimes remains unappreciated. Formally, for the commission of economic crimes, the current criminal law provides for five main types of penalties, of which the arrest has not yet been applied due to the lack of conditions for its execution. Also, criminal legal rules sanctions provide for three types of additional penalties for committing economic crimes. Therefore, only fines, compulsory labor, imprisonment for a certain period, as well as forced labor, which replaces the originally imposed penalty in the form of imprisonment, can really be applied to persons who have committed crimes in economic activity.

In the criminal law literature, the opinion is expressed that a significant number of the main types of penalties provided for in one criminal legal rule sanction is an indicator of a high degree of criminal liability differentiation. The law enforcer has enough wide range of

options for choosing both the type and term of liability, which ensures the fairness of sentence [1, p. 375-382].

We have some objections to this approach, since the possibility of assigning different penalties in the process of individualizing criminal responsibility is quite different in nature: from fine to long terms of imprisonment, does not allow the law enforcer to accurately assess the public danger of the crime committed. Moreover, the use of harsh criminal penalties for most economic crimes becomes possible only hypothetically. This is due to the presence of legislatively established principles for penalty imposition: more severe penalty can only be imposed if a less severe punishment is not able to meet the goals stated in the criminal law (Article 60 of the Criminal Code). Hence, when imposing a criminal penalty, for example, imprisonment for a determined period, the court must meticulously substantiate the socio-legal need for the appointment of more severe punishment if there is the possibility of sentencing and other milder types of punishments provided for by the sanction of the relevant article. The imposition of a lenient penalty also carried out within the framework of the incriminated rule sanction, excludes the indicated necessity for the court. However, the imposition of penalty in this way, as a rule, creates the danger of unappreciating the actual social harmfulness of committed act in economic activity [2].

Until today, the modern scientific community has not provided a generally accepted justified opinion regarding the optimal number of penalties, the imposition of which is possible, including for the economic crime commission [3, p. 575-581]. At the same time, with a few exceptions, all sanctions of the norms establishing responsibility for infringement of economic relations impose a penalty in the form of imprisonment, which, in our opinion, is justified in view of significant public danger of these criminal acts.

But, despite the legislatively fixed possibilities for a strict response to the facts of committed crimes in economic activity, Russian judicial practice provides evidence of the excessive liberalism of the sentences imposed in the relevant criminal cases. As a rule, the courts prefer to impose imprisonment, which is decided to be considered conditional. In fact, this person carries incomparably smaller deprivations and legal restrictions, and the appointed imprisonment goes into the legal fiction category. This observation is confirmed by official statistics of the Judicial Department of the Supreme Court of Russia on bringing to justice persons found guilty of committing economic crimes (see Reports on the number of prosecuted and types of criminal penalty 12 months of 2015, 12 months of 2016, 12 months of 2017, 12 months of 2018, the first half of 2019 Form No. 10.1 // Official website of the Judicial Department under the Supreme Court of the Russian Federation / Judicial statistics // URL: www.cdep.ru (date of the application: January 30, 2020)).

Another penalty, which is relatively often imposed for an economic crime, is a fine. We believe that this option of implementing criminal liability is more consistent with the justice principle, since the convicted person already incurs those deprivations and legal restrictions, which, despite their minimization, already constitute the essence of one of

the criminal penalties. However, in this case, judicial practice cannot be considered satisfactory. In most cases, the amount of the fine imposed is substantially less than the amount of money received by the convicted person as a result of an economic crime [4, p. 347-348]. It follows that the commission of crime implies the existence of real economic benefits even after an official conviction recorded in a guilty verdict. On this basis, we can state the complete absence of the possibility of achieving all declared in Part 2 of Article 43 of the Criminal Code of the criminal penalty purpose.

Given this circumstance, we believe that in order to effectively counteract these negative trends that occur when criminal penalties are imposed, it is necessary to revise the structure of sanctions for the rules on liability for economic crimes with the purpose to increase its severity. This problem can be successfully solved by using the proposed methodology for constructing the sanction of the criminal legal rule. The essence of the proposed methodology is reduced to the following rules, compliance with which is necessary when forming the criminal legal rules sanction:

- maximum number of penalties, the appointment of which is possible only as basic, should be no more than three;
- the scope of sanctions rules included in one article of the Special Part of the Criminal Law should not overlap in the amount or terms of corresponding penalties;
- a crime, which is an act that contains signs of aggravation, may fall into the same category as an act containing signs of the main corpus delicti, or differ from it only by one-degree category.

2. The increased danger of many crimes in economic activity is due to the duality of the criminal law protection object. When committing the corresponding criminal offense, not only economic relations in the field of production, distribution, and consumption of material goods (resources) are affected, but also damage, for example, to the security of the state and the interests of state power. This statement is absolute, for example, in relation to financial crimes, since when they are committed, damage to the economic interests of the state as a public entity and to the authorized party of the financial legal relationship is caused [5, p. 595-610; 6, p. 721-739]. Under certain conditions, financial crimes can pose a threat to national security in general [4, p. 3-4; 7, p. 351-371].

Given these circumstances, it is theoretically unreasonable to put the question of the possibility of including additional rules in the Criminal Code that establish legal benefits for those guilty of economic crimes. However, the Russian legislator, on the contrary, introduces into the content of the institution of exemption from criminal liability additional rules defining special more favorable conditions for exemption from liability in the event of a crime in economic activity: Subclause 2 of notes to Article

198-1991, 1993 and 1994 of the Criminal Code (tax crimes), as well as Art. 761 of the Criminal Code. The theoretical validity of such a legislative decision is hardly airtight, as evidenced by the analysis of general and special standards, that determine the basis and conditions of exemption from criminal liability.

So, the only basis for exempting a person from criminal liability for a crime committed by him is the loss of public danger by that person, which makes it inappropriate to apply to him criminal law deprivations and legal restrictions. In case of any doubt in the validity of this fact, exemption from criminal liability is excluded. In view of the rather high abstractness of the essence of the category of "social danger", conditions are normatively provided for, in the presence of totality of which (Articles 75, 76 of the Criminal Code and others), the fact of public danger loss can be recognized, as a result of which a person can be exempted from criminal liability [8, p. 696-718; 9, p. 50-66].

Relatively recently, the Russian Criminal Law was supplemented by Article 761, which also provides special conditions for exemption from criminal liability of persons who have committed crimes in economic activity. Such selectivity by type of crime already casts doubt on the fairness of the existence and application of this type of liability release. An analysis of this rule confirms this doubtfulness. As a general rule, after the commission of a crime, there must be some socially significant (useful) fact that indicates significant positive changes in the offender's identity: effective regret, settlement with injured party, etc. Article 761 of the Criminal Code does not contain such an indication, as a result of which the type of crime committed – a crime in economic activity – apparently by itself, according to the legislator, can be considered as a specified socially significant fact.

The content of the rule in question is reduced to the fact that the main, if not the only, condition for exemption from criminal liability is compensation for material damage or the payment of material compensation, which are transferred to the state's income. Other fundamental conditions for release: voluntary surrender, active assistance in the crime discovery, exposure of accomplices, etc., in Article 761 of the Criminal Code is not contained.

In fairness, it should be noted that another condition for relieving a person of responsibility for a crime in the field of economic activity is the commission of this criminal offense for the first time. However, the legal significance of this condition is minimal, since in accordance with the prevailing judicial practice of interpreting a "first committed crime", this is recognized not as actually the first crime committed in life, but as a crime of a person who does not have a criminal record for a previously committed crime. In other words, the "first committed crime" in reality may not be such. But this will not create any obstacles for a positive resolution of the issue of exemption from liability under the conditions provided for in Article 761 of the Criminal Code.

In this regard, the payment of all compensations for the harm caused as a result of an economic crime obliges the

investigating and judicial authorities to exempt a person from criminal liability. The doubtfulness of such a decision, even in the context of the current policy of humanizing criminal legislation, seems to us extremely doubtful. When committing an economic crime, a person is reliably aware of the possibility of avoiding responsibility for its commission, having actually paid off the state with appropriate compensation and material compensation. This circumstance stimulates the commission of crimes in economic activity since their identification is a rather complex and time-consuming task, which minimizes the chances of solving the crime and identifying the person who committed it.

In modern literature, however, there is an opposite opinion. So, N.A. Lopashenko believes that it is economically more profitable for a person to be prosecuted for “not too terrible” criminal liability since the amount of a possible penalty in the form of a fine is much less than the amount that must be paid to implement the provisions of Article 761 of the Criminal Code [10, p. 322, 324].

Indeed, the amount of the fine imposed as a penalty for an economic crime is relatively small in comparison with the amount of compensation and refund, which, in accordance with Article 761 of the Criminal Code must be transferred to the budget for criminal liability release. However, we

should not forget that in addition to the fine, the court can impose other more severe types of criminal penalty, and the consequences of criminal prosecution in the form of a criminal record actually have a negative legal restrictive effect not only on the criminal, but also on his close relatives: prevention of public service, additional difficulties in lending, etc. In this regard, the presented argumentation regarding the “enslavement” of the offender, as we see it, is very controversial.

Given the above circumstances, we believe that the inclusion in the criminal law of special conditions for release from liability, which apply exclusively to crimes in economic activity, is contrary to the principles of criminal law (legality, equality of citizens before the law, justice), and the institution content of criminal liability release. The legislator’s desire to humanize the Criminal Code in terms of expanding the possibilities of special release from liability actually has a stimulating effect on the growth of economic crime and significantly complicates the implementation of the preventive function of criminal legislation.

5. CONCLUSION

Taking into account the formulated proposals will provide recognition of the real danger posed to the Russian society by crimes in economic activity. In turn, this will positively affect the results of lawmaking and law enforcement. Firstly, the need to include Article 761, which determines the special grounds and conditions for criminal liability release, and, secondly, the penalties imposed on persons found guilty of economic crimes will differ in the actual severity of the legal effect. Together, all of these measures will contribute to the effective protection of both private and public interests in economic activity.

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