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Economic crime penalty

Penalidad económica

DRUZHININ, Stanislav V. [1](#) & OSTROUSHKO, Alexander V. [2](#)

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[Bibliographic references](#)**ABSTRACT:**

The current criminal policy pursued in the Russian Federation is aimed at significantly reducing the criminal liability of those guilty of economic crimes. On the basis of the results of the conducted research the conclusion is made about excessive softness and therefore inefficiency of the applied types of punishments in respect of those convicted for economic crimes. The implemented criminal liability measures are not an effective means of preventing economic crime, since they do not comply with the principles of justice and equality of citizens before the law.

Keywords: economic crime, criminal punishment, proportionality criminal liability measures, penal system

RESUMEN:

La política penal actual aplicada en la Federación de Rusia tiene como objetivo reducir significativamente la responsabilidad penal de los culpables de delitos económicos. Sobre la base de los resultados de la investigación realizada, se llega a la conclusión sobre la excesiva suavidad y, por lo tanto, la ineficiencia de los tipos de castigos aplicados con respecto a los condenados por delitos económicos. Las medidas de responsabilidad penal implementadas no son un medio eficaz para prevenir la delincuencia económica, ya que no cumplen con los principios de justicia e igualdad de los ciudadanos ante la ley.

Palabras clave: delito económico, castigo penal, proporcionalidad medidas de responsabilidad penal, sistema penal

1. Introduction

In modern Russia, a criminal policy is being implemented to mitigate criminal repression, especially against those who have committed economic crimes. On this basis, criminal penalties for economic crimes are mitigated, the possibilities of mandatory release of persons found guilty of committing these acts are expanded and a scientific substantiation of a new form of execution of deprivation of liberty imposed on a convicted person for an economic crime is proposed. All legislative measures taken should ensure the effectiveness of economic crime prevention but without the application of traditional criminal penalties for economic crime.

The problem of countering economic crime is relevant for any country the economic basis of which is made up of market relations. Ensuring national security, the activities of state and public institutions, the implementation of social, political, cultural and other programs is possible only with adequate funding. The profitable part of the public education budget is formed from various sources, tax and other contributions made by business and other economic entities are the main of them. Various types of violations of the rules of economic activity, committed by representatives of "white collar" crime (Sutherland, 1940), entail material losses for the state. This reduces the capacity of the state to implement projects in domestic and foreign policy and has a negative impact on the welfare of the majority of the population.

The key to the successful counteraction of economic crime is the application of a complex of prevention and suppression of this socially negative phenomenon. Legal measures of a preventive nature include criminal punishment, the degree of severity of which depends on the severity of the crime committed. Therefore, deprivation of liberty for various periods can be considered as one of the most effective measures to perform both punitive and preventive functions.

For this reason, criminal policy measures aimed at reducing the criminal liability for economic crimes require in-depth scientific analysis and justification. There is also a need to study public opinion on the effectiveness and fairness of the State's forms of criminal liability for those found guilty of an economic crime.

2. Methodology

The methodological basis of the research presented is the dialectical method of scientific cognition. This method was used to study and describe trends in modern Russian criminal policy in terms of establishing and implementing responsibility for economic crime. Processing the results of a survey of law enforcement officials and judicial officials, other practicing lawyers, researchers, teachers as well as students of higher educational institutions of Russia was carried out using classical sociological methods. In the course of the study, the formal and logical method of scientific knowledge was used to study the arguments for the need to create a specialized penitentiary institution to serve a prison sentence for economic crime as well as to analyze statistical data on the number of convicted persons in the Russian Federation for the period 2014-2018.

3. Results

In modern Russia, there is an official recognition of the need to review the fundamental approaches to the execution of criminal sentences and the purposes for which they are to be implemented. This is confirmed by the adoption of Government Order №1772-r «On the approval of the Concept for the development of the penal enforcement system until 2020» from the 14th of October 2010. This document oriented the government agencies and institutions of the penal and correctional system towards achieving the goal of reducing the indicators of recidivism through the use in the process of execution of criminal punishment, mainly of individual educational means of correction and subsequent re-socialization. For this purpose, it was planned to abandon the detachment of convicted persons in favor of a phased transition to imprisonment for the entire duration of the sentence. A significant decrease in the concentration of convicted persons within one closed room, differentiation of the content of convicted persons depending on the type and severity of the crime committed, the degree of "criminal contamination", ensuring individual security and other innovations. All these should have led to positive results of the reform of the penal and correctional system and a natural decrease in the number of persons serving their sentences in prisons (Malinin & Trapaidze, 2014).

However, significant positive results of implementation of the provisions in this area were not achieved due to the lack of material support and financing of the planned reform. In this connection, many provisions of this concept were revised in 2015 (Seliverstov, 2016) and on the 23rd of December 2016 the Government of the Russian Federation adopted another decree extending the period of reforming the penal and correctional system until 2025. It has not yet been possible to achieve a natural reduction in the number of convicts serving real deprivation of liberty, as most of the penal and correctional measures have proved impossible to implement in the context of modern penitentiary institutions.

This direction of the criminal policy deserves special attention, because there is a proposal to further differentiate the execution of criminal punishment in the form of imprisonment in the scientific environment which is applied to persons found guilty of committing economic crimes. It is possible that in the foreseeable future another normative act of declarative nature will be adopted which will determine the stages of implementation of the "doctrinal model" of detention in various correctional institutions of persons who have committed common criminal and economic crimes.

Supporters of the idea of creating specialized correctional institutions or special conditions of imprisonment for those convicted of economic crimes provide the following arguments: a) representatives of this category of prisoners have stable social and useful connections and characteristics (marital status, high level of intellectual development, categorical rejection of criminal subculture and other characteristics not inherent to classical criminals); b) the impossibility to guarantee the safety of persons serving a prison sentence for an economic or

official crime in a modern correctional facility; c) harming the economic interests of the state by refusing to use the intellectual and organizational abilities of persons isolated from society in places of deprivation of liberty (Seliverstov, 2018).

Despite the objective rationality of the most proposed arguments, the proposal to establish specialized correctional facilities for persons who have committed economic crimes should be viewed critically. It seems that this idea is extremely vulnerable from both legal and organizational points of view. Firstly, at present the differentiation of the types of correctional facilities that make up the Russian penal and correctional system is carried out on the basis of sex and age: correctional facilities for men and women as well as educational colonies for minors. In addition, there are colonies for the detention of persons who, prior to their conviction, held public service posts in law enforcement and judicial bodies but who do not have any specific regime requirements or conditions for serving prison sentences as compared to other correctional institutions. The creation of specialized penitentiary institutions for economic criminals is a violation of the principle of equality of citizens before the law because of unequal (preferential, privileged) conditions will be created from the outset to serve the same criminal sentence for persons who have committed different types of crimes. At the same time, the category of severity of criminal acts (common and economic) may be the same.

Secondly, there is currently no objective need for such a specialized prison. The number of persons sentenced to imprisonment for economic or official crimes is insignificant in comparison with those convicted of other crimes. According to statistics provided by the Judicial Department of the Supreme Court of Russia, during 2014-2018 the total number of those convicted of economic crimes did not exceed 1.2% (from 3842 people in 2014 to 7717 people in 2018) of the total number of those convicted (Form № 10a).

Thirdly, the establishment of the proposed type of correctional facility is currently not possible for material reasons. The recent history of the development of the penal and correctional system in Russia shows that the state is unable to ensure the enactment of criminal punishment in the form of arrest because the conditions for serving this sentence have not been created yet. There are no arrest houses which are specialized types of penitentiary institutions. The above Concept for the development of the penal and correctional system in Russia has also been largely unfulfilled due to the lack of sufficient funding for the modernization of correctional and educational facilities. All this suggests that the idea of creating a specialized institution will not be implemented due to the lack of adequate material support and the goals of punishment will have to be achieved by other less costly means.

Fourthly, there is the problem of defining economic crime definitions. The Russian Criminal Code does not contain an official definition of the category "economic crime". The creation of specialized correctional institutions for "economic" criminals will lead to the problem of determining the status of a convicted person who has the right (or obligation) to serve a term of imprisonment in this very institution. Representatives of the criminal law science have not formulated the ideas generally recognized in society about the legal content of economic crime yet (Lopashenko, 2015) as well as the list of types of crimes that should be recognized as economic crimes (Larichev, 2010). Therefore, even those convicted of violent crimes committed out of vested interests and for the purpose of illicit enrichment can claim to serve a prison sentence in such a penitentiary institution. In this case, the difference between the traditional and "economic" colonies becomes nominal.

All the above arguments prove that the problem of determination and execution of punishment for economic crimes should be solved by a combination of means which have already been provided for by the current legislation and available in the arsenal of subjects of penal and correctional activity. The development of new models of correctional institutions only distracts attention and resources from the solution of the problem and does not lead to the desired result as practice shows.

Adoption of a number of program normative acts makes it possible to draw a conclusion about official recognition of the problem of inefficiency of criminal punishment application. As a result, the number of convicts serving real deprivation of liberty is increasing which is one of the conditions for the growth of recidivism in modern Russia. The desire of the state to soften the criminal-legal impact with regard to persons who have committed an economic crime is so far limited only to the establishment in the current criminal legislation of special conditions for their exemption from criminal liability which are payment of fines and compensations for the commission of an offence. As a rule, the amount of fines and compensations is much less than the amount of money received as a result of committing an economic crime.

The results of the survey conducted in the course of this study on the correctness of the Russian policy of humanization of criminal legislation indicate the disapproval of the majority of respondents to the decisions taken by the authorities' crimes (see Annexes question I.). Approximately 93% of respondents deny the need to create specialized correctional institutions for persons found guilty of economic crimes (see Annexes question II.) . Assessing the practice of establishing special conditions for exemption from criminal liability for economic crimes, 84% of respondents consider the application of penalties, the amounts of which do not exceed the amount of income received as a result of committing an economic crime, to be unfair crimes (see Annexes question III.). For the vast majority of respondents, it is clear that the excessively lenient application of criminal sanctions for economic crimes encourages new crimes as it is perceived by the perpetrators as impunity for their offense.

4. Conclusions

Implementation of the policy aimed at easing the Russian criminal legislation should be ensured by removing from the Russian Criminal Code the norms on crimes that do not represent a significant public danger. The introduction of special conditions for exemption from liability for those who have committed economic crimes may lead to a violation of the principles of equality of citizens before the law and the subsequent growth of economic crime. The inclusion in the structure of the Russian penal and correctional system of specialized correctional institutions for those convicted of economic crime will require significant material investments by the state but will not lead to the desired results of the prevention of economic crime.

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Annexes

№ / answer	Content of the question	quantity	%
I.	How do you assess the public danger of economic crime?		
a	High	121	86
b	Average	16	11
c	Negligible	0	0
d	Other	3	3
II.	Is there a need to establish specialized correctional facilities for those convicted of economic crime?		

a	Yes	10	7
b	No	130	93
c	I'm having trouble answering	0	0
III.	Will social justice be restored, in your opinion, if for the commission of an economic crime and receipt of criminal income exceeding 10 million rubles, the convicted person will be fined up to 1 million rubles or for some time it will be deprived of the right to engage in economic activity?		
a	Justice will be restored, as the fact of bringing a person to criminal responsibility and conviction for a crime has taken place	23	16
b	Justice is not restored because of the excessive leniency of the criminal penalty	117	84
c	Something else	0	0

1. RUDN University. Department of Criminal Law, Criminal Procedure and Criminalistics. Russia, Moscow. Contact e-mail: law@rudn.university

2. Financial University under the Government of the Russian Federation. Department of Legal Regulation of Economic Activities. Russia, Moscow. Contact e-mail: ostroushko@mail.ru

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