

Some Problems of the Criminal Law Regulation of Economic Relations in the Russian Federation

*¹Sergey A. Baleev, ²Ramil R. Gayfutdinov

^{1,2} Kazan Federal University, Law Faculty, Criminal Law Department,

E-mail: sabaleev@gmail.com, gayfutdinov.r@yandex.ru, *Contact:* +78432337103, +78432337103

Received: 21st October 2017 Accepted: 16th November 2017, Published: 31st December 2017

Abstract

The paper is devoted to the problem of criminal responsibility regulation for crimes in the sphere of economy. The latest novelties of the criminal law in terms of criminalizing a number of acts that encroach on property and economic relations in general were subjected to critical analysis. Based on the analysis of the provisions of the current criminal legislation regulating the responsibility of accomplices in group and organized crimes, the authors noted the imperfection of designing a whole series of aggravated (especially aggravated) crimes in the economic sphere, which is caused by the smoothing significant differences in the degree of public danger of joint execution in the form of a group of persons in collusion and organized forms of complicity in the form of an organized crime group. The issues of implementation of the fairness principle both in relation to persons released from criminal liability as a result of their positive post-criminal behavior, and in relation to victims of crimes are investigated. Proposals were made to improve the legislation and practice of its application.

Keywords: Crime, Differentiation of Criminal Responsibility, Economic Relations, A Form of Complicity in a Crime, A Group of Persons in Collusion, An Organized Crime Group, A Crime-Forming Feature, An Aggravating Feature, Commercial Bribery, Positive Post-criminal Behavior.

Introduction

Economic relations are regulated by the multiple norms of branches of law. However, there should not be underestimated the role of criminal law in this area of public relations, which are subject to criminal law protection, since the criminal law provides protection of property, legal rights and freedoms of consumers, economic entities and the interests of the state itself in the sphere of the economy as a whole, business and others types of economic activity, in particular, from such most dangerous offenses as crimes.

Modern Russian criminal law includes a group of norms systematized under the section "Crimes in the economic sphere" (section VIII of the Criminal Code of the Russian Federation) [1] which

regulate responsibility for crimes against property (Ch.21 of the Criminal Code of the Russian Federation), in the sphere of economic activity (Ch. 22 of the Criminal Code of the Russian Federation), against the interests of service in commercial and other

organizations (Ch. 23 of the Criminal Code of the Russian Federation).

Some aspects of the problems on improving criminal responsibility for crimes in the sphere of economics have been studied both in the works of Russian scientists B.V. Volzhenkin [2], N.A. Lopashenko [3], I.A. Tarkhanov [4], M.V. Talan [5], as well as in the works of foreign researchers M.D. Dubber [6], and E. Sootak [7].

The last changes in Section VIII of the Criminal Code of the Russian Federation were introduced by the Federal Law dated July 3, 2016 No. 325-FZ [8]. On the whole, positively evaluating the Criminal Law in the part of protecting economic relations, taking into account its recent changes and additions, we consider it possible to make some critical remarks in order to improve criminal legislation.

The work proves the necessity of supplementing the norms regulating criminal responsibility in the sphere of the economy with the aggravating features "the commission of a crime by a group of persons in collusion" and "the commission of a crime by an organized crime group" and argues the importance of improving the institution of compensation for harm caused by economic crimes.

Methods

The dialectical methods of scientific cognition used in the work, general scientific (analysis, synthesis, system-structural) and specific scientific methods (formal legal method and method of comparative legal analysis) have made it possible to draw the conclusions made.

Results and Discussion

1. The degree of public danger of a crime is significantly increased if it is committed in a crime group, and this requires legislative accounting when designing criminal law norms.

The legislative basis for combating group and organized crime in the domestic criminal law within the framework of the institution of complicity is the following: referring to forms of complicity not only co-participation in the form of a criminal group (parts 1 and 2, Article 35 of the Criminal Code of the Russian Federation), but also complicity of a special kind: complicity of criminal activity within the organized crime group (part 3 of Article 35 of the Criminal Code of the Russian Federation) [9, p.147-149].

The majority of aggravated (especially aggravated) crimes in the Special Part of the Criminal Code of the Russian Federation include the feature of the commission of a crime by a group of persons in collusion and by an organized crime group. This rule is mainly observed in the designand component elements of a crime of crimes in the economy: in 46 articles of the eighth section of the Criminal Code of the Russian Federation, a group of one or another modification acts as a circumstance differentiating responsibility towards its strengthening.

In chapter 21 "Crimes against property" of the VIII section of the Criminal Code of the Russian Federation, the feature "the commission of a crime by an organized crime group" is present in 12 articles as an independent especially aggravating one. Committing a crime by a group of persons in collusion with all these component elements of a crimes (all forms of theft)(Article 158-162 of the Criminal Code of the Russian Federation), extortion (Article 163 the Criminal Code of the Russian Federation) and unlawful possession of a car or other vehicle without the purpose of theft (Article 166 the Criminal Code of the Russian Federation)) are provided as an aggravating feature. This legislative approach seems to be fundamentally correct, since it is obvious that the degree (level) of public danger of the above modifications of the criminal group is different, what is reflected in the sanctions of the listed criminal law norms.

At the same time, responsibility is not differentiated in two articles of this chapter (articles 164 and 165 of the Criminal Code of the Russian Federation), since the commission of a crime by a group of persons in collusion and an organized crime group is combined by the legislator into one aggravating feature of the component elements of a crime.

In Chapter 22 of the Criminal Code of the Russian Federation "Crimes in the Sphere of Economic Activity", a differentiated legislative approach is seen in the designs of aggravated and highly aggravated component elements of a crime in 13 articles. An organized crime group in the capacity of an independent group aggravating feature of the crime, being single in an article, is provided in 7 articles, and in the capacity of especially aggravating feature is provided in one article (part 3, Article 186 of the Criminal Code of the Russian Federation) of this chapter. Equal severity is punished by three articles (item "a" part 4 of Article 171.1, item "a" part 6 of Article 171.1, Article 185.2, Article 185.4, and Article 191 of the Criminal Code of the Russian Federation), where the commission of a crime by a group of persons in collusion and by an organized crime group is one aggravating feature.

The federal Law dated July 3, 2016 in articles 171.1 and 193 of the Criminal Code of the Russian Federation, includes an aggravating feature "the commission of a crime by a group of persons in collusion" in the capacity of a circumstance which

strengthens liability. This decision of the legislator should be welcomed. However, we believe that other articles of Chapter 22 of the Criminal Code of the Russian Federation should be supplemented in a similar manner. At the same time, the commission of these crimes by an organized crime group should be considered as a specially aggravating feature of the component elements of a crime.

Two of the six articles united under Chapter 23 of the Criminal Code of the Russian Federation, "Crimes against the interests of service in commercial and other organizations" (Articles 204 and 204.1) do not differentiate criminal responsibility, like in the examples above, since a group of persons in collusion and an organized crime group are listed in the same paragraph of the article as having the aggravating (Article 204.1 the Criminal Code of the Russian Federation) and especially aggravating (Article 204 of the Criminal Code of the Russian Federation) features. An organized crime group is the most dangerous form of complicity in a specific crime, which is due to the presence of features that are not characteristic of other forms of group participation [10, p. 19].

The stability of the composition of members in an organized crime group, the persistence of forms and methods of criminal activity, the systematic nature of the commission of crimes objectively raise the public danger of such association in comparison with a group of persons in collusion.

The leveling by the legislator of the differences between these varieties of the group form of complicity and, thereby, the equalization of the criminal associations that differ radically in terms of the degree of public danger can hardly be recognized as a correct and consistent approach to determining the limits of punishability of participants in joint organized criminal activity. We propose the commission of the crime by an organized crime group to be regarded as an independent criterion for differentiating criminal responsibility.

2. The criminal legislation includes not only the norms-prohibitions and norms-prescriptions, of which the sanction is an obligatory element, but also incentive norms [11, p. 19].

Positive post-criminal behavior of a guilty manifested in the form of active repentance and involving a compensation of the damage caused, active contributing to the disclosure and investigation of the crime, entails exemption from criminal liability. It seems that in modern economic conditions such a decision of the legislator is fundamentally true. This rule is provided for in the footnotes to the six articles of Chapter 22 of the Criminal Code of the Russian Federation (Article 178, 184, 198, 199, 200.1, 200.3) and in three articles of Chapter 23 of the Criminal Code of the Russian Federation providing for liability for commercial bribery (204-204.2). For example, a person who first committed a crime consisting of evasion of taxes and fees (articles 198 and 199 of the Criminal

Code of the Russian Federation), but completely paid the amount of arrears and corresponding penalties, as well as the amount of a fine in the amount determined in accordance with the Tax Code of the Russian Federation[12], is subject to exemption from criminal liability.

In our opinion, such balanced and rational approach in the sphere of regulation of economic relations should also be used in the design of other criminal law norms that provide liability for crimes in the economic sphere. The application of incentive rules, provided full compensation for the harm done in these cases will have a much greater economic and socially significant effect than the measures of the criminal-legal effect envisaged by the sanctions of the said articles of the Criminal Law.

3. One of the conditions for exempting from criminal liability under the law is to compensate for the damage caused or to repair the harm caused by the crime. Such a legislative decision is quite equitable not only in relation to a perpetrator, but first of all, to a victim. This rule contains not only the provisions of the Special, but also of the General Part of the Criminal Code of the Russian Federation (Article 75, 76, 76.1, 76.2).

Article 76.1 included by the legislator in the Criminal Code of the Russian Federation, contains special rules reflecting the specifics of exemption from criminal liability in connection with active repentance in cases of crimes in the sphere of economic activity. According to part one of this article, the person who first committed a crime under Articles 198-199.1 of the Criminal Code of the Russian Federation (tax crimes) is exempted from criminal liability if the damage caused to the budgetary system of the Russian Federation as a result of the crime is fully reimbursed. The said position, as noted, is duplicated by the legislator in the notes to these articles. This is by no means an accident, since the aggravated offenses provided for in Part 2 of Article 199 and Part 2 of Article 199.1 of the Criminal Code of the Russian Federation, are classified as serious. Thus, the general rule of exemption from criminal liability formulated in Part 2 of Article 75 of the Criminal Code of the Russian Federation is observed; according to the rule, release from criminal liability of a person who committed a serious crime is possible only in cases specifically provided for in the relevant articles of the Special Part of the Criminal Code of the Russian Federation.

Compensation for harm in criminal law is not only one of the conditions for exemption from liability, but also a condition for the application of a whole series of incentive measures of a criminal-legal nature. Compensation for harm is taken into account by the court when deciding to abolish conditional conviction and to remove conviction from a convicted person (Part 1, Article 74 of the Criminal Code of the Russian Federation), on conditional early release (Part 1 of Article 79 of the Criminal Code of the Russian Federation), replacing the part of the sentence that has

not been served with a milder punishment (Part 1, Article 80 of the Criminal Code of the Russian Federation). All these norms, as a condition for the application of the appropriate measure, provide for full or *partial* (our italics-authors) compensation for harm. To what extent does this formulation correspond to the interests of the injured owner or other legal owner of the property or other victims of economic crime? The amount of such compensation should depend not on the discretion of the court, as follows from the legislative formulas, but only on the will of the victim himself/herself.

4. The compositions of destruction or damage to someone else's property is recognized as completed crimes when a criminal result, the existence of property damage, occurs. In particular, Part 1 of Article 167 of the Criminal Code of the Russian Federation indicates the cause of significant damage to the victim as a necessary condition for bringing to criminal responsibility. However, the concept of significant damage for crimes against property is determined in the law only in relation to a citizen. Given its property status, such damage cannot be less than five thousand rubles (paragraph 2 of Article 158 of the Criminal Code of the Russian Federation). Such a legislative decision causes difficulties in judicial practice when it specifies the significant damage to legal entities, as well as individual entrepreneurs. The question of the possibility of imputation of this aggravating attribute in relation to an individual entrepreneur is more than reasonably considered in the work of P.S. Yani [13, p. 43-44]. As to the issue of damage caused by the deliberate destruction or damage to someone else's property, in our opinion, it should be significant not only for the citizen, but also for the legal entity.

Summary

1. In order to improve criminal responsibility for economic crimes, we propose to supplement with the aggravating feature "the commission of a crime by a group of persons in collusion" and "the commission of a crime by an organized crime group" in order to differentiate criminal responsibility concerning Article 172 (Illegal banking activities), Article 172.2 (Organization of activities to attract funds and (or) other property), Article 178 (Restriction of competition), 179 (Coercion to commit a transaction or to refuse to commit it), Article 186 (Manufacturing, storage, transportation or sale of counterfeit money or securities), Article 187 (Illegal turnover of payment means) and a number of other articles of Chapter 22 of the Criminal Code of the Russian Federation. At the same time, the commission of these crimes by an organized crime group should be considered as a specifically aggravating feature of the component elements of a crime.

As to the component elements of crimes in the economic sphere (as in most other chapters and sections of the Criminal Code of the Russian

Federation), the commission of a crime by a group of persons in collusion should be envisaged as a aggravating, and as a specifically aggravating feature in the case of commission of a crime by an organized crime group.

2. It is necessary to supplement the component elements of crimes that provide for liability for evading fulfillment of obligations for the repatriation of funds in foreign currency or in the currency of the Russian Federation (Article 193 of the Criminal Code of the Russian Federation), with the performance of currency transactions for the transfer of funds in foreign currency or in the currency of the Russian Federation to accounts of non-residents using forged documents (Article 193.1 of the Criminal Code of the Russian Federation), evasion from payment of customs fees levied from the organization or individuals (Article 194 the Criminal Code of the Russian Federation) encouraging positive post-crime behavior by legal norms.

3. It seems to be important to introduce in the Criminal Code of the Russian Federation the changes that provide for the dependence of the amount of compensation for harm caused by a crime only on the will of a victim himself/herself in deciding questions about the cancellation of conditional conviction, lifting a conviction, parole, replacing a part of punishment that has not been served with a milder punishment. In our view, it is this legislative decision that was required by the implementation of the principle of justice in criminal law.

4. Of particular importance is the issue of establishing the significance of damage in cases of destruction or damage to someone else's property of a legal entity. In such cases, the significance should be determined not only based on the value of the destroyed property or the cost of restoring the damaged property, but also the significance of this property for the injured party, depending on the nature of its activities, financial situation and financial and economic condition. In all cases, it cannot be less than 10 thousand rubles, the amount of the authorized capital established by the legislation for the most common legal form of the legal entity, a Limited Liability Company.

Conclusions

The criminal legal policy of the state in counteracting corruption both in the sphere of economy and in the sphere of public administration, as a whole, is shown to be true by establishing criminal liability for mediation in rendering unlawful influence on the result of an official sports competition or a spectacular commercial competition (Article 184 of the Criminal Code of the Russian Federation), in commercial bribery (Article 204.1 of the Criminal Code of the Russian Federation), for small commercial bribery (Article 204.2 the

Criminal Code of the Russian Federation) and petty bribery (Article 290.2 of the Criminal Code of the Russian Federation).

However, the results of the research allow us to state the absence of a certain system in the amendments and additions introduced by the legislator into the criminal law. This fully applies to issues of criminal law regulation of economic relations.

Acknowledgements

The work is carried out according to the Russian Government Program of Competitive Growth of Kazan Federal University.

References

- [1] The Criminal Code of the Russian Federation dated June 13, 1996. No. 63-FZ. - Collection of legislation of the Russian Federation. - 1996. - No. 25. - Article 2954. (Revised of 07/06/2017) - URL: <http://www.consultant.ru>, free.
- [2] B.V. Volzhenkin, "Crimes in the sphere of economic activity in the criminal Law dated Russia", Law Center Press, St. Petersburg, 765 pp., 2007.
- [3] N.A. Lopashenko, "Russian criminal police on economic crimes", *Criminology Journal of Baikal National University of Economics and Law*, No. 4, pp. 36-44, 2010.
- [4] M.V. Talan, J.I. Selivanovskaya, I.M. Sboeva, "Economic crimes related to oil production, transport and refining", *Journal of Economics and Economic Education Research*, vol. 17, № 4, pp. 157-162, 2016.
- [5] T.I. Abdulhakovich, C.M. Jur'evich, H.R. Auhatobich, "Civil legal constructions in crime classification mechanism", *Criminology Journal of Baikal National University of Economics and Law*, № 4, pp. 72-80, 2013.
- [6] M.D. Dubber, "Reforming American penal law", *Journal of Criminal Law and Criminology*, 90 (1), p. 49-107.
- [7] E. Sootak, "Theories of Punishment and Reform of Criminal Law (Reforms as a Change of Mentality)", *Juridica International*, 1, pp. 178-183.
- [8] Federal Law dated July 3, 2016 № 325-FZ. - Collection of legislation of the Russian Federation. - 2016. - No. 27. - Article 4258. - URL: <http://www.consultant.ru>, free access.
- [9] S.A. Baleev. "The concept of complicity in the Russian criminal law: legislative regulation and doctrinal interpretation", *Proceedings of Kazan University. Series: The humanities*, vol. 151, No. 4, pp. 147-152, 2009.
- [10] S.A. Baleev, I.V. Zhukovskaya, "Regulation of responsibility for commission of economic crimes by the organized group", *Bulletin of Economics, Law and Sociology*, No. 1, pp. 116-119, 2016.
- [11] M.V. Voronin, "The law rules structure as the manifestation of the law systemacity", *Bulletin of Perm*

University, Juridical Sciences, No. 4 (18), pp.14-23, 2012.

[12]The Tax Code of the Russian Federation dd. July 31,

1998. № 146-FZ. - Collection of legislation of the Russian Federation. - 1998. - No. 31. - Article 3824.

(Revised as of December 28, 2016) - URL: <http://www.consultant.ru>, free access.

[13]P.S. Yani, “Serious damage as an element of theft”, *Course of law*, № 4 (978), pp. 43-48, 2016.