

Crime Standard Development Features in the Sphere of Economic Activity within the Modern Criminal Legislation of Russia

Ekaterina I. Gruzinskaya^a, Alexander A. Knyazkov^b, Oleg G. Solovyev^c,
^aNovorossiysk Institute (branch) Moscow humanitarian and economic university (Russian Federation, Novorossiysk), ^{b,c}Yaroslavl State University named after P.G. Demidov (Russian Federation, Yaroslavl). E-mail: romirka@list.ru, alknyazkov@mail.ru, olegso11961@yandex.ru

When creating a prohibiting criminal law rule, a contradiction always exists between the need for a complete description of offense in disposition and the requirement for presentation brevity, and the “economy” of law. A question of the extent to which elements of criminal law should be described thus presents itself, for example descriptions of disposition, sanction or stimulating prescriptions. Science and practice have developed two main techniques for criminal law norm development: abstract and casuistic. This study investigates the category of legal constructions in criminal law, primarily from theoretical and legal positions, including an examination of the conceptual apparatus. Chapter 22 of the Russian Federation (RF) Criminal Code considers criminal law mechanisms to ensure the harmony and consistency of lawful norms. According to the authors, the criminal law structure refers to legislative engineering, which is a structural model of a group of homogeneous legal phenomena. A certain combination of elements by which the legislator fills legally relevant information thereby regulates the corresponding types of these phenomena within criminal law.

Key words: *Legal construction, economic crimes, Corpus delicti*

Introduction

During the development of criminal law norms, various requirements must be implemented for the economy of legislative material, including the need for accurate and complete descriptions of crime elements. These requirements generate the following question: what level of detail should be used for the signs and descriptions of elements of criminal law norms? This study posits that a casuistic method can provide a complete list of possible criminal behaviour types or circumstances through identifying individually specific signs. An abstract method differs from casuistic and involves the legislator applying abstract and generalising formulas to describe all possible forms of criminal encroachment. This method allows for increased comprehensiveness of the law and reduces regulatory material. While these formal and abstract methods boast many positive aspects, each contains certain flaws that must be considered during criminal law development.

Methods

This study employed the dialectical method of scientific knowledge within the framework of philosophical understanding of criminal legal categories, including interrelating footnotes, structures and classifications of *corpus delicti* in the sphere of economic activity. The system method has allowed a comprehensive study of the economic crime composition system (as covered in Chapter 22 of the RF Criminal Code) in the totality and integrity of its elements. The functional method revealed workings of various approaches to criminal law development in order to ensure effective counteraction to economic crime in Russia.

The principal feature of the chosen methodology studied issues of property protection by legal means within the doctrine of criminal law. This implies that categories such as “*corpus delicti*” and “legislative technique” had progressive significance for the development of new approaches to legislative provision interpretation and enforcement.

Results and Discussion

As previously mentioned, legislative engineering of criminal law norms comprises of two methods: casuistic and abstract. An abstract technique briefly and succinctly sets out relevant legal norms and subsequently reduces the scope of the regulatory act, which ensures flexibility and mobility of the law. This method is also associated with subjective interpretation of the prescriptions, however, resulting in potential law distortion. Conversely, casuistic regulations are less comprehensive in covering all possible situations for which the relevant prescriptions are designed. This study aims to discover an optimal mechanism of regulatory design through a formal-evaluative technique, implying the complex use of both abstract and casuistic methods combined (Rassat, 1987).

In relation to the norms on crimes within economic activity, the use of a blanket statement of normative material is important in legal matter development. The overwhelming majority of “economic” articles of criminal law are associated with the legislation of other industries, such as tax, banking and customs. It is therefore necessary to appropriately determine the technical and legal designs of a particular rule for adequate reflection of relevant features in the criminal law.

Legal constructions as a means of legislative technology theoretically enables the formulation of legal norms, providing clarity and certainty to the normative regulation of public relations. According to A.V. Ivanchin, a criminal law structure can facilitate legislative technique, or the structural model of a group of homogeneous legal phenomena. This combination of elements is assigned legally relevant information by the legislator, thereby regulating the corresponding types of these phenomena in criminal law (Ivanchin, 2003).

Despite this construction functioning as a model, however, obligatory elements such as the rights, duties and responsibilities of relevant persons are lacking from the construct. This is due to the replacement of the legal structure with a legal relationship. S.S. Alekseev considered such legal constructions as “specific construction[s] of normative material corresponding to a certain type or species of established legal relations, legal facts, [and] their connection with each other” (Alekseev, 1981). Each branch of law composes of various constructions, including civil law contracts and crime composition in criminal law. As a rule, five basic types of criminal law structures are distinguished in the literature: 1) crimes; 2) acts committed under the circumstances precluding criminality; 3) punishments; 4) exemptions from criminal liability, and 5) exemptions from punishment (Ivanchin, 2003). This study maintains that constructions of complicity, guilt and multiplicity can be added to this list.

The basic criminal law structure combines traditionally studied elements from the general doctrine on crime composition (Card et al., 1998). The construction of a *corpus delicti* consists of four elements, including object, objective aspect, subject and subjective aspect, and is traditional for domestic criminal law.

Chapter 22 of the RF Criminal Code identifies 58 basic structures, of which 35 are formally constructed: 15 are material constructs and 8 are formal-material. Economic crimes generate a degree of social danger and involve consequential economic damage, though signs of these crimes are absent from relevant legislative constructions. Alternative meanings of economic crime are seen in 8 cases and, as a rule, it is not claimed in practice. In the overwhelming majority of studied cases, the criminal cases under the articles 171 and 172 of the Criminal Code are therefore raised solely on the “formal” basis. This means that with extractions of high income, the law enforcement agent does not conduct investigations into the

circumstances surrounding inflicted damage (Kruglikov and Soloviev, 2003).

Formal compositions according to Chapter 22 of the Criminal Code can be divided into two groups: 1) classical “formal” (articles 170, 171.2, 174, 174.1 and 186), in which no quantitative signs exist of an act characterising crime-forming thresholds, and 2) indirectly formal, in which a criminal act is mediated by the required quantitative result (the scope of criminal activity) of the criminally formed threshold (articles 171.1, 191 and 192). The legislator uses the concepts of “large-scale income extraction” and “large-scale loss avoidance” to define such features. In other cases, such mediation may be associated with the specifics of the subject, which can be defined in quantitative terms like bribe size (note article 184 and part 2 of article 76.1).

Mediated-formal compositions by structure, in which cost features are used to characterise the scope of criminal activity, are to a certain extent demanded by law-enforcement practice (Gobert, 1994). Classical “formal” *corpus delicti*, however, are required in practice to a lesser degree. Exceptions to this principle are a number of common economic crimes that are often used in practice due to conjugation with other attacks or because of their low latency (articles 175, 179 and 186 of the Criminal Code). In such a situation, most classic “formal” economic encroachments that lack quantitative criminally formed thresholds (articles 169, 189, 190, 1931 and others) remain “dead”. This is due to the structures being “underloaded” and lacking all necessary attributes. This study suggests that a number of criminal offenses should be supplemented with relevant signs to characterise the scope of the criminal activity in question, including criminally forming and differentiating thresholds (articles 174, 174.1, 190 and 1931). Further, the acts enshrined in articles 169, 170 and 183 require rapid “materialisation”. Such legislative decisions will undoubtedly meet the requirements of legislative machinery, intersectoral differentiation and law enforcement practice. Should these requirements be left untreated, various conflicts and inconsistencies may arise in practice. In cases of deliberately lowering land tax payments, for example, issues arise regarding the distinction between tax (article 122 of the RF Tax Code) and criminal liability (article 170 of RF Criminal Code). Another problem is the competition of article 170 of the RF Criminal Code in relation to other tax compositions. The current version of illegal land transaction registration dictates criminal liability for understating land tax payments in any amount, whereas articles 198 and 199 stipulate liability only for certain amounts exceeding 600,000 and 2 million rubles respectively. The determination of a criminal threshold in article 170 is the correct regulatory decision and should thus be implemented equally throughout the Criminal Code for continuity purposes.

On the contrary, it is possible and necessary in some cases to exclude quantitative traits that generate criminally formed threshold, such as the transformation of mediated-formal into classical formal structures. Foreign experience in the regulation of classic “formal” *corpus*

delicti (without specifying harmful effects or criminally defined thresholds) can be partially claimed during the development of a number of norm dispositions on economic crimes in the RF Criminal Code. This concerns high-latency acts in which the economic scope of criminal activity like illegal organisations in gambling are difficult to identify and record (article 171²). Statistical data on the application of article 171² suggest that in 2011, 20 crimes were registered on the territory of the Russian Federation, though only one criminal case was sent to court and only one person was prosecuted. In 2012, only 33 of 96 registered crimes were sent to court with indictments (Afanasyev, 2016). However, in December 2014, the legislator removed a sign providing for the extraction of large-scale income from part 1 of article 171². Following this act, the number of registered cases under this article increased several times, resulting in 490 cases in 2015 (Crime, 2012). A small number of previously detected crimes clearly did not correspond to the actual criminal situation within the gambling business. In such cases, the complete “formalisation” of the construct concerning the offense under consideration and the exclusion of criminally forming features (thresholds) related to the extraction of income corresponds to the needs of law enforcement practice.

When describing an act in the construction of crimes, three options are employed in Chapter 22 of the RF Criminal Code: 1) the construction of “active behavior” (only action), as seen in articles 170¹, 171, 171², 172 and 174; 2) the construction of “action-inaction”, as seen in articles 169, 178, 185¹, 185⁴ and 195, and 3) the construction of “inaction”, as seen in articles 177, 190, 192, 193, 194 and others.

When characterising active behavior, two options are used to describe criminal actions: first are traditional “criminal” terms such as acquisition; sale (article 175); coercion (article 179); bribery (article 184); storage; transportation; processing for marketing purposes (Art. 191¹), and illegal transfer (Art. 200¹). Second are special actions involving fixed characteristics of various economic elements, including business activity (article 171); the establishment; creation or reorganisation of a legal entity (article 173¹); making financial transactions (articles 174 and 174¹); illegal exports (article 189), and the commission of currency transactions (article 193¹).

The legislator applies several options for the regulation of “action-inaction” constructions. First, the disposition of a norm directly indicates the possibility of an action by “committing actions (inaction)” (article 196). Second, when describing the objective aspect of an encroachment, signs are used that are characteristic of both inaction and action, for example, “malicious evasion from disclosing or provision of information” and “provision of knowingly incomplete or false information” (article 185¹), or “unlawful refusal of state registration,” and “unlawful interference with activities” (Art. 169). In this case, the legislator discusses violation of any rules, and the possible forms of the act are established by interpreting the blanket sectoral legislation: “violation of the established procedure concerning the record of

rights to securities” (article 185²). Other cases use the externally neutral term “concealment” in norm disposition (articles 195 and 199²). In addition to active forms of concealment, this term may encompass passive behaviours, for example restricting information when a duty to disclose necessary information exists.

The construction of inaction crimes provide two types of regulation: simple and complex. Simple regulation is associated with terminology and a set of signs that clearly indicate the criminal inaction of a subject. These include malicious evasion of repayments for accounts payable (article 176), non-return of cultural property to the Russian Federation within the prescribed period (article 190) and failure to fulfill tax agent duties (article 199¹). A more complex structure is provided when the legislator simultaneously indicates a) the evasion of assigned duties, and b) certain ways, or actions, with which to evade, such as “evasion from paying taxes or fees...by deliberate inclusion of false information in the tax declaration or similar documents” (articles 198 and 199). Such a revision allows some legal scholars to erroneously assert that these offenses can be committed by both inaction and action (Kolokolov, 2009). The resolution of this discussion question is proposed in clause 1 of the Resolution No. 64 by the Plenum of the Russian Federation Supreme Council, which states that “the public danger of evading taxes and fees, that is, the deliberate failure to comply with the constitutional obligation of everyone to pay legally established taxes and fees, means the absence of funds for the budget system of the Russian Federation” (The Resolution of the Russian Federation Supreme Court Plenum, 2006). This position clearly focuses on the assessment of prior actions as well as of inactions. This study maintains that the replacement of the term “evasion” with the more comprehensive sign of “non-payment” will better correspond to the criminological characteristics of a tax crime and will be widely accepted by scientists and scholars.

The most important method of the legislative technique employed in norm regulation of economic crimes is the use of footnotes. In a number of cases, notes in criminal law are not only effective, but can also act as the most optimal and even sometimes the only option for a technical and legal solution (Council of Europe, 1981). For example, it is advisable to fix special types of exemption from criminal liability via footnotes of Special Part articles. Exemption from liability in such circumstances refers to removal from the main provisions of the article. This exemption must simultaneously be precisely identified in the article as it concerns acts specific only to that article, though this is not possible without violating the rules of legislative engineering and legislative traditions. As A.V. Ivanchin notes, the best solution to the problem is to therefore fix such an exception in a document’s note or footnote (Ivanchin, 2003; Gál-Szabó and Bede-Fazekas, 2020).

Domestic legislator approaches are more accurately represented in the notes of Chapter 22 of the RF Criminal Code as these contain the norm-definitions and special exemptions from



criminal liability. The use of foreign experience in actively saturating criminal and economic legislation with legal definitions is recommended (Mestre, 1999; Vahedi and Arvand, 2019; Talebi and Nejad, 2019; Kiseleva et al., 2018). This will greatly simplify the processes of interpretation and law enforcement, making better use of abstract concepts and relieving the disposition of norms from a significant number of special terms in sectoral legislation.

This analysis of special types of exemption from criminal liability for the commission of economic crimes concludes that, by the virtue of criminal law protection of economic relations, it is necessary to unify the conditions and grounds for exemption from criminal liability in this category of cases. While such a preliminary recommendation can be made from this study, further in-depth analysis is required to form a comprehensive consideration of all issues involved. Future examinations may include criminological and forensic analyses (Martins et al., 2019; Pakdel and Ashrafi, 2019).

Summary

In the conditions of a significant number of blanket elements of crimes in Chapter 22 of the Criminal Code of the Russian Federation, the issues of criminal law norm development require further scientific development. Two types of formal crime composition structures in the field of economic activity were presented in this study. In investigating the compositions of actions and inactions as identified in Chapter 22 of the RF Criminal Code, the research demonstrated the feasibility and effectiveness of notes used in criminal law texts. Examples of such notes include norm definitions and incentive rules surrounding liability exemption.

Conclusions

This article attempted an integrated legal study of economic criminal law structures used by the legislator in the presentation of regulatory material under Chapter 22 of the RF Criminal Code. Results were conditioned by the outlined methodological approaches and presented new and original findings which can therefore be used to conduct further research on the issues identified in this article.

Acknowledgements

The team of authors is grateful to the Kazan (Volga Region) Federal University for its assistance in publishing the article.



REFERENCES

- Afanasyev, L.D. (2016). The crimes in the sphere of organization and conduct of gambling: new possibilities of law-enforcement practice // Improvement of legislative and law-enforcement practice at the present stage: materials of the regional scientific-practical conference on February 25-26, 2016, Irkutsk. p. 56.
- Alekseev, S.S. (1981). The general theory of law. In 2 volumes. V. 2. M., p. 275.
- Card, R., Cross, (Sir) R. & Jones, P.H. (1998). Criminal Law. – London: Butterworths, P. 310.
- Council of Europe, (1981). Legal Affairs. Economic Crime. – Strasbourg, P. 29.
- Crime, (2012). National security, business / ed. by A.I. Dolgovaya. M., p. 63.
- Gál-Szabó, Z. & Bede-Fazekas, Á. (2020). Formalization of Odometer Thinking and Indices for the Classification of Combinatorial Strategies. International Electronic Journal of Mathematics Education, 15(1):1-6.
- Gobert, J. (1994). Corporate Criminality: New Crimes for the Times. –Crim. L. Rev. 722. P. 101.
- Ivanchin, A.V. (2003). Criminal law structures and their role in criminal law development: dis. by the Cand. of legal sciences. Yaroslavl, p. 88.
- Ivanchin, A.V. (2003). Criminal law structures and their role in criminal law development: dis. by the Cand. of legal sciences. Yaroslavl, p. 8.
- Ivanchin, A.V. (2003). Criminal law structures and their role in criminal law development: dis. by the Cand. of legal sciences. Yaroslavl, p. 167.
- Kiseleva, NN., Bozieva, IA., Lyapunsova, EV., Klimova, NV. & Grigorieva, LV. (2018). Organizational tools for overcoming the systemic contradictions of innovative development. Opción, 34(16): 20-31.
- Kolokolov, N.A. (2009). Stages of tax evasion: the application of criminal liability. Taxes. № 1. p. 13.
- Kruglikov, L.L. & Soloviev, O.G. (2003). Crimes in the sphere of economic activity and taxation (The issues of responsibility composition design and differentiation). Yaroslavl, p. 78.



Lenski, G. (1999). Status Consistency and Inconsistency/C. S. Heller (ed.). Structured Social Inequality. - New York: Macmillan, P. 78.

Martins, D., Assis, R., Coelho, R. & Almeida, F. (2019). Decision Support System for Business Ideas Competitions. Journal of Information Systems Engineering & Management, 4(3):em0093.

Mestre, A. (1999). Les personnes morales et le problème de leur responsabilité pénale: thèse de doctorat. – Paris, P. 150.

Pakdel, M. & Ashrafi, M. (2019). Relationship between Working Capital Management and the Performance of Firm in Different Business Cycles. Dutch Journal of Finance and Management, 3(1): em0057.

Rassat, M.-L. (1987). Droit penal. Presses Universitaires de France. – Paris: Presses Universitaires De France, p. 201.

Talebi, S. & Nejad, PI. (2019). Comparing the Descriptive Assessment in terms of Critical and Creative Thinking among the Sixth Grade Students in the Public and Private Schools. UCT Journal of Social Sciences and Humanities Research, 7(02): 6-14.

The Resolution of the Russian Federation Supreme Court Plenum, (2006). N 64 "On the court practice of criminal law concerning the liability for tax crimes" // Bulletin of the Supreme Court of the Russian Federation. № 3. 2007.

Vahedi, M. & Arvand, H. (2019). The Role of Information Systems in Decision-making and Public Policy Making. UCT Journal of Management and Accounting Studies, 7(02):11-4.