

Artículo de investigación

An Economic Offence as A Conflict with Formal and Common Social Values of The Legal System

Экономическое Правонарушение как Конфликт с Формальными и Общесоциальными Ценностями Системы Права

Un delito económico como un conflicto con los valores formales y sociales comunes del sistema legal

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Abstract

Economic offences are studied with the application of the comparative legal method. The authors provide a classification of economic offences and analyze the related international legislation. They come to the conclusion that economic offences can be partly caused by the fact that the legal system contains false values. In the meantime, they represent an extreme, illegal and negative form of conflict resolution. To a large extent, economic offences result from a high level of conflict that the economic relations contain. The authors define the notion of an economic offence.

Keywords: social values; legal values; axiological approach; economic offence; legal conflict; legal responsibility.

Аннотация

Экономические правонарушения исследовались с применением сравнительно-правового метода. Авторы приводят классификацию экономических правонарушений и анализируют соответствующее международное законодательство. Они приходят к выводу, что экономические правонарушения могут быть отчасти вызваны тем, что правовая система содержит ложные ценности. Между тем, они представляют собой крайнюю, незаконную и негативную форму разрешения конфликтов. В значительной степени экономические правонарушения являются результатом конфликтности самих экономических отношений. Авторы определяют понятие экономического правонарушения.

Ключевые слова: социальные ценности; юридические ценности; аксиологический подход; экономическое преступление; правовой конфликт; юридическая ответственность.

Resumen

Los delitos económicos fueron investigados utilizando el método legal comparativo. Los autores clasifican los delitos económicos y analizan la legislación internacional relevante. Concluyen que los delitos económicos pueden deberse en parte al hecho de que el sistema legal contiene valores falsos. Mientras

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tanto, son una forma extrema, ilegal y negativa de resolución de conflictos. En gran medida, los delitos económicos son el resultado de las mismas relaciones económicas conflictivas. Los autores definen el concepto de delito económico.

Palabras clave: valores sociales; valores legales; enfoque axiológico; crimen económico conflicto legal responsabilidad legal.

Introduction

Economic relations make up a basis for any state and society along with the national, political, cultural, religious and other social ties. Their normal functioning provides for the development of small and middle-size business, the state's implementation of its functions and the replenishment of the budget. Instead of serving as a real tool for limiting the state power, human rights turn into benevolent intentions and declarations without a financial support. Therefore, the state safeguards economic relations in order to provide for the proper functioning of both the economy and the state mechanism. Small and middle-size business forms the basis of the civil society; it cannot function unless the protection of economic relations is ensured. Legal responsibility serves as an important tool for safeguarding economic relations because it sets different sanctions for violating prohibitions and nonfulfillment of obligations. Legal responsibility should certainly not be viewed as a panacea for ensuring the proper development of economic relations. However, without it, their appropriate functioning is quite problematic.

There are different systems of economy: the administrative command economy and the market one. The first type of economy existed in the USSR in its classic and toughest form apart from the period of the New Economic Policy (NEP) and Mikhail Gorbachev's reforms. It completely bans entrepreneurship and private ownership for the means of production and inhibits the subjects' initiative. This is one side of the "coin" of the administrative command economy. On the other hand, the density of economic offences is less in this type of economy due to the limited number of economic relations. The latter are also characterized by a lower degree of conflicts due to the state's direct involvement. It is practically impossible for the state to conflict with itself. For instance, such economic offence as tax evasion was impossible to commit in the administrative command economy of the soviet period as the system of taxation involved mostly moving money from one pocket to another due to an exclusively state and public character of the economy (i.e. state

and collective farms). Thus, corpus delicti of tax crimes appeared in the Criminal Code of the Russian Soviet Federative Socialist Republic (adopted in 1960) only after entrepreneurial activity had been partially legalized by Mikhail Gorbachev in 1986. Up until that time, the only article related to tax evasion was focused on the wartime offences. Moreover, this norm was not applied as there was no war when the Criminal Code of RSFSR was in effect.

As it is known, the market economy is characterized by the freedom of entrepreneurial activity, while the latter is based on private ownership, free and bona fide competition. The state's role is to provide formal and actual opportunities to take the economic initiative, as well as to stimulate the development of certain branches of manufacturing through direct and indirect participation. Furthermore, the state's activity is aimed at fighting with economic offences, setting prohibitions and the "rules of the game" for the subjects of economic activity. However, the other side of the "coin" is that market relations are characterized by a high level of conflicts resulting from competition, diverging interests of participants, and the urge to make profit. From a Marxist point of view, which is also shared by some non-Marxist researchers, social conflicts penetrate the economy and represent a way of its existence. The main market mechanism – competition – is a form of conflict, and all spheres of economic relations make up an arena where open and hidden confrontations occur.

Methods

Design (idea) of the research is to analyze different economic values provided for in the legal norms in order to identify true and false values, as the latter ones can artificially act as a cause of offence. A number of methods were used to achieve the research aim. The formal legal method was applied to reveal the logical structures typical of the legislative structures of economic offences. Different methods of interpretation of the legal norms that provide for economic offences were used. The dynamics,

structure and types of economic offences that existed at different stages of the state's development were explained from the position of the historical legal method. The dialectical method was used to study economic offences and social values in their dynamics, development, contradictions, and unity. The deduction and induction methods, the decomposition of the whole into parts were used. The comparative legal method was implemented to compare different types of economic offences that are provided for in the criminal codes of some countries in order to reveal the values characteristic of all the states. Due to the fact that the notion of "conflict" is not exclusively legal, the analysis of this category in philosophical, social, and economic perspective was carried out to choose the optimal notion used in the legal science. The axiological (value-based) approach was applied to justify the need for fixing in the legal norms the humanistic and general social values that are not exclusively caused by class interests and political motivation. The system of value reference points and their influence on economic offences as one of the forms of the economic conflict were explored from the position of the axiological approach. Structural, functional and other methods of scientific knowledge were used as additional ones.

Analysis and Discussion

The notion of offence can be considered in two ways. First, it is a formal phenomenon set as a legislative definition in a normative act. Secondly, it is a legal fact, an offence committed in real life.

The current Russian legislation does not provide a legal definition of an "economic offence". This is a scientific notion and, to a large extent, has a generalizing character. There should be a common "denominator" that allows, with some conditionality, to state the existence of economic offences. It appears that the object of offence (economic relations) serves as such a denominator. By encroaching upon economic relations, the offender enters into a legal conflict with the established legal order and the values set in legal norms. We emphasize legal norms and economic values because not all economic relations fall within the legal sphere and represent legal relations. Therefore, economic offences should be studied as a total of certain characteristics and as a type of a legal conflict. The first approach represents a formal point of view, whereas the second one focuses on its social aspects. The urgency of studying an offence from the perspective of a legal conflict is

caused by the fact that economic relations themselves are conflict-related by their nature: they involve a collision of interests of different subjects that pursue profit in the conditions of tough competition. However, there is a question whether the subjects opt for civilized and legal ways to solve the contradictions they face or choose to break the law.

Another factor that makes the problem of economic offences complicated is the existence of the "shadow" or illegal economic relations that undermine the world economy. They include such dangerous phenomena as illegal trade of arms, narcotic drugs, human trafficking, laundering of money obtained through crime, using economic deals as a cover for the bribery given to both international and national officials. Thus, economic offences have gone far beyond the national borders and represent a threat at the international level. Unfortunately, globalization and internalization have the "reverse side of the coin": globalization and internationalization of crime, including the economic one.

As it was mentioned earlier, the current Russian and international legislation does not contain the notion of an economic offence. To a large extent, it has a generic character. Therefore, an offence can be qualified as an economic one based on the analysis of the current legislation and by revealing the object of offence: real social relations filled with economic content. Being clad in a legal shell, they get the form of legal relations.

Over the last decade, economic offences and economic crime have become especially actual not only in Russia but also in other countries of the world. Their inter-state character is supported by international normative legal acts related to this sphere. The major ones are the "Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, adopted in Warsaw on May 16, 2005" (Collection of Legislation, 2018. No 8. Art. 1091) and the "Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime adopted in Strasbourg on January 8, 1990" (Collection of Legislation, 2003. No 3. Art. 203). The universal conventions that cover the issues of fighting against the shadow (criminal) economy include the "UN Convention against Corruption adopted at the United Nations General Assembly on October 31, 2013", ratified by the Russian Federation on March 8, 2006 (Collection of Legislation, 2006. No 31. Art. 3424) and the UN Convention against

Transnational Organized Crime dated November 15, 2000” (Collection of Legislation, 2004. No 40. Art. 3882). In addition to universal international agreements, there is a number of regional ones, including the Civil Law Convention on Corruption of the Council of Europe, adopted 4 November 1999 (entered into force on November 1, 2003). Russia is not a member state of this Convention and has not ratified it, whereas the Republic of Belarus ratified the Convention on December 26, 2005. Some other countries of the Union of Independent States (Kazakhstan, Kyrgyzstan, and Uzbekistan) have also ratified it.

The analysis of international normative legal acts was focused on fighting against corruption, organized crime and economic offences and revealed the fact that these phenomena are closely interconnected. Thus, organized crime cannot exist without a corresponding economic base, whereas corruption often serves as a means of committing economic offences. One phenomenon causes the other. It is a sort of a vicious circle where the subjects’ conflict with the existing system of values, including the formal ones, lies in its basis.

As it was mentioned earlier, collective economic offence is a rather abstract notion. It is composed of a combination of offences fixed in the Criminal Code, the Code of Administrative Offences, and the Civil Code of the Russian Federation. Moreover, tax and budget offences fixed in the Tax Code and the Budget Code of the Russian Federation can also be included in economic offences as financial relations are economic in their nature. There are special sections devoted to economy-related crimes that are subdivided into the following chapters of the Criminal Code of the Russian Federation: crimes against property; crimes in the sphere of economic activity; crimes against the interests of service in profit-making and other organizations. All these groups of crimes have a common object of infringement: economic relations. The analysis of the criminal legislation of other countries shows that economic relations are a universal object of criminal defense, which can be explained by its basic character. Thus, it is fixed as the object of offence in the criminal codes of France (the Criminal Code of France, 2002), Sweden (the Criminal Code of Sweden), Germany, (the Criminal Code of the Federative Republic of Germany), Bulgaria (the Criminal Code of the Republic of Bulgaria, 2002), Lithuania (the Criminal Code of the Republic of Lithuania), Moldova (the Criminal Code of the Republic of Moldova), Poland (the Criminal

Code of the Republic of Poland, 2001). Furthermore, a major part of property relations also belongs to economic relations, which make the object of civil defense. Thus, a broad range of civil offences can be defined as economic offences.

The following should be mentioned regarding economic administrative offences: they are not divided into a specific category and administrative responsibility is not considered a separate type of legal responsibility in all countries of the global community. For instance, the acts that do not represent a big danger to society are included into a separate section of the Criminal Code of France. Furthermore, economic offences themselves are not homogeneous regarding their danger to society, economy, and the state.

While reviewing the preliminary results, several groups of economic offences can be distinguished. Firstly, there are economic offences that represent a threat to the global economy and international security. They contradict fundamental human values, and therefore come into conflict with them. Secondly, we can distinguish national economic crimes that also contradict common values. However, this division is quite relative as the same crime can be both international and national by character. Thirdly, there are economic crimes of administrative character that come into conflict with a certain group of values inherent to a particular social and economic formation. Fourthly, there is a group of economic offences of a civil character that are caused by unfairness of civil prohibitions. In this case, we consider the latter group of offences (the civil ones) from a broad perspective including the violation of antimonopoly legislation and different licensing rules. By doing so, we actually combine the subject of civil and entrepreneurship laws and indicate that there is a public section of legal regulation in civil law.

Going back to the issue of civil offences as a type of economic offences, we inevitably encounter the question of the civil responsibility fairness. Unlike the other types of economic offences that are usually committed by people with sharply negative social attitude, civil offences are committed by those who predominantly do not have such attitudes. The commitment of civil offences is often caused by unfairness of the civil prohibitions themselves. Therefore, it is necessary to consider the notion of civil responsibility, which is closely associated with a more general idea of just or fair organization of

social life. Different concepts of social justice and conflict resolution are reflected in the current legislation. Legal norms and legislation are derived from the ideas about justice and the ways of conflict resolution that exist in society. Thus, it is necessary to review the existing concepts of justice.

“Justice is the first virtue of social institutions, as truth is of systems of thought... Being first virtues of human activities, truth and justice are uncompromising” (Rawls, 2010). Peter A. Corning gives a metaphoric and beautiful definition of justice: “justice is a kind of treasured thread that binds society together” (Corning, 2007).

There are different concepts of social justice in the global science. The liberal concept of social justice is based on “Locke’s demand for rights to life, liberty and property that till today forms the political creed of liberalism” (Kanarsh, 2011). Locke’s liberalism got its development in the works of a radical liberal scientist Robert Nozick, whose idea of justice lies in the attitude towards the state: “The minimal state is the most extensive state than can be justified (Nozick, 2008). According to Robert Nozick, the concept of just ownership is rather simple and comes down to a distributive aspect of justice: ownership of a property title that the subject possesses based on distribution. The property title is acquired in accordance with the principle of justice in acquisition. Such statements are akin to Friedrich von Hayek’s idea that the conception of social justice is empty. According to his opinion, the origins of totalitarianism lie in social justice because the society cannot be just or unjust (Hayek, 2003). The core of such ideas is paradoxically based on human rights raised to the power of Absolute and extreme egoism, which denies the social origins of justice. It is worth mentioning John Rawls’s understanding of justice that is based not only on formal equality but also on a distributive aspect of social justice, which spreads its effect on the results of social interactions (cited by Kanarsh, 2011). However, it also belongs to the category of the liberal concepts that will inevitably cause conflicts between society and the individual.

Researchers of the Chicago School see the subject as a maximizer of his own goals and ideas but not the public ones. Therefore, the subject defines the least demanding and burdensome way for him to achieve those goals (Mattei & Pardolesi, 1991). Such understanding of social justice represents an attempt to combine extreme economic pragmatism with the legal one based

on recognizing the human rights to be the top value and the priority of personal benefit over public good. The economic and legal approach at its core (Kaplow & Shavell, 2001) excludes the normative and social meaning of justice by giving top priority to improving well-being and increasing efficiency. Louis Kaplow and Steven Shavell make contradictory conclusions that justice-based legal policy eventually harms society by putting its members in an equal position, whereas the mere goal of policy, including the legal and economic ones, must be based solely on the criteria of efficiency. Thus, they deny the distributive element of justice (Kaplow & Shavell, 2001).

At first, one may think that the concepts of researchers are not of importance for the problem of legal conflict and economic offences. However, they can be implemented in the state’s policy and legal policy. The means of implementing such policies include the introduction of various efficiency indicators aimed at achieving short-term goals, a lack of consideration of national traditions as well as “fine-tuning” the law to the policy of “efficiency”. The imposed from the outside standards and philosophy of “justice” are alien to the Russian society. Therefore, they fail and cause conflicts, including those in the civil legal and economic spheres.

Russia has always been searching for the “golden mean”. Sharp shifts do not bring about positive results but, on the contrary, cause harm and conflicts. It is not a secret that numerous civil constructs embodied in different parts of the Civil Code of the Russian Federation and other normative legal acts were borrowed from civil codes of the European countries, where market relations were designed for a different general and legal culture and have been functioning for several centuries. Therefore, it does not come as a surprise that they do not work and continuous changes and amendments are being made to the Civil Code. The norms imposed from above will not be implemented. Moreover, numerous economic conflicts and offences result from such artificial importation of an alien theory into a real social practice. It is worth emphasizing that the offences of economic nature that infringe the universal human values are outside the scope of this work. They include robbery, theft, fraud, legalization of property obtained by crimes, currency counterfeiting, etc.

Ryzhenkov writes about the understanding of justice that corresponds to the Russian mindset. He points out that “equality is not self-sufficient

and comprehensive in civil law; it gets along and closely interacts with totally opposite principles that, although not included in the fundamental principles of the civil legislation, are getting wider recognition and consolidation. Equality is opposed by inequality and differentiation of rights and obligations, with hierarchy being the most vivid and radical form of differentiation. According to this approach, the restriction of rights of some civil law subjects for the benefit of others (those who are weaker and more vulnerable from social and economic point of view) is deemed possible (Ryzhenkov, 2012).

Economic offences of a legal character will be minimized if justice in the norms of civil law corresponds to the "historically established conception of social ideals regarding compensation and distribution of losses and other negative effects resulting from wrongdoing, causing of harm, a breach of contract between the participants of legal relations" (Boganov, 2014). It might seem surprising, but the theory of justice that takes into account the principles of distribution and equalization (not in its extreme socialistic understanding) has not lost its importance as it contains a common sense and considers the public mindset of the Russian society.

The reader might have the false impression that we are against the existence of human rights because we criticize their certain provisions. But it is actually not so. We recognize that human rights have a major social value. However, there must be a reasonable balance between the individual and public interest, as well as a high level of legal culture when the subject does not violate the rights of others while implementing his subjective right nor does he oppose them to the genuine social values that exist in the society.

Conclusions

1. Economic relations as a type of legal conflict are caused by several factors, each of which has a prevailing significance for a particular group of economic offences. The opposition of subjects and (or) criminal communities to the existing global legal order and fundamental universal human values makes the basis for international economic crimes. Most national economic crimes that infringe the relations of property have similar reasons. Many civil and administrative offences result from false values and guidelines enshrined in the norms and their non-compliance with the principle of justice

and not from a low level of legal awareness.

2. An economic offence is the collective notion that includes all unlawful and wrongful acts that encroach on economic relations. The latter are initially conflict-related in their nature due to the subjects' conflicting interests, competition, and striving for profit. An economic offence is an extreme and illegal form of conflict resolution that causes the application of legal responsibility measures.
3. The implementation of those values and ideals of justice that are inherent to a particular state and society at a certain stage of its development will facilitate neutralizing the causes of economic offences. They should result from historical, spiritual, cultural and legal traditions. Everything artificially (mechanically) imposed from the outside is destined to be rejected and will bring about new conflicts, including economic offences.

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References

- Boganov, D.E. (2014). Justice as Basic Principle of Legal Responsibility in Russian and International Law. Thesis for the Doctor of Legal Science. Moscow, 539.
- Collection of Legislation of the Russian Federation. (2003). No 3. Art. 203.
- Collection of Legislation of the Russian Federation. (2004). No 40. Art. 3882
- Collection of Legislation of the Russian Federation. (2006). No 31. Art. 3424.
- Collection of Legislation of the Russian Federation. (2018). No 8. Art. 1091.
- Corning, P. (2007). Fair Shares: On the Other Side of Capitalism and Socialism, the Biological Basis of Social Justice in N.K. Udumyan (ed.) Edges of Cognition: Science, Philosophy, Culture in the Twenty-First Century: Book 1. Moscow: Nauka, 308.
- Criminal Code of France. (2002). Saint Petersburg: Juridichesky Center Press.
- Criminal Code of Sweden. (2002). Saint Petersburg: Juridichesky Center Press.

- Criminal Code of the Federative Republic of Germany. (2002). Saint Petersburg: Juridichesky Center Press.
- Criminal Code of the Republic of Bulgaria. (2002). Saint Petersburg: Juridichesky Center Press.
- Criminal Code of the Republic of Lithuania. (2003). Saint Petersburg: Juridichesky Center Press.
- Criminal Code of the Republic of Moldova. (2003). Saint Petersburg: Juridichesky Center Press.
- Criminal Code of the Republic of Poland. (2001). Saint Petersburg: Juridichesky Center Press.
- Hayek, F.A. (2003). Law, Legislation and Liberty; A New Statement of the Liberal Principles and Political Economy. Volume II: The Mirage of Social Justice. London & New York: Routledge, 67-69.
- Kanarsh, G.Ju. (2011). Social Justice: Philosophic Concept and Russia's Situation. Moscow: Moscow University of Humanities Publ., 236.
- Kaplow, L., Shavell, S. (2001). Fairness versus Welfare. *Harvard Law Review*. 114: 961-966.
- Mattei, U., Pardolesi, R. (1991). Law and Economics in civil law countries: A comparative approach. *Hastings Intellectual Review of Law and Economics*, 11, 271-272.
- Nozick, R. (2008). Anarchy, State, and Utopia. Moscow: IRISEN, 429.
- Rawls, J. (2010). A Theory of Justice. Moscow: URSS Publishing Group, 536.
- Ryzhenkov, A. Ja. (2012). Equality and Hierarchy in Modern Civil Law. *Modern Law*, 9, 52-55.