Problems of Determination of the Concept of “Economic Criminality”

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Abstract: This article is the result of the authors’ complex investigation of such social and legal phenomenon as economic criminality. Economic crimes develop, their new types appear, methods of crimes are created on the modern stage of the world community development. These facts are alarming for us. The issue of effective struggle with crimes becomes more critical and actual, which in its turn is impossible without detailed and thorough investigation of the category of “economic criminality” itself. Opinions of different scientists-legislators concerning the issue of referring the certain crimes to the category of economic crimes are given in the present article. The authors made their own conclusions regarding the term of “economic criminality” on the basis of examination of these works.

Key words: Economic crime • Commercial criminality • Corporate criminality • Ownership and economic relations

INTRODUCTION

New kinds of crimes directly connected with activity in this sphere appear due to the transit to market economy. Disputes regarding determination of the category of these crimes still arise in science from the beginning of the last century and up to the present moment. A range of scientists consider them to be commercial crimes, some thinks they are corporate, the others believe them to be economic. We provide below the analysis of the existing points of view and form our own opinion referring the sense of these crimes.

Various Definitions of Economic Criminality Exist:
The author of special investigation of the problem of economic criminality in the countries with developed market economy E.E. Dementyeva noted that interest to this theme in the west criminology arose already in the beginning of the XX century. Criminality of the poor layers of the population including stealing and other offences against ownership, begging, vagrancy was considered as economic criminality during that period. Fundamentally, the other approach started to be formed only in the middle of the century, in compliance with which the crimes of so called “white collars” were regarded as economic crimes, then a number of economic crimes include a wider range of criminal actions connected with economic power abuse [1, page 12].

For the first time the public knew about it as the phenomenon of “white collar criminality” from the works of American criminologist E. Saterland. Thus, in 1940 Edwin Saterland proposed the concept of respectable “white-collar criminal” having higher social status. According to this concept, major of so named “white collars” are wealthy people: businessmen, politicians, clerks who execute illegal actions causing common nuisance, than usual criminals from lower society layers (“criminals”). Besides, crimes of this rarely judged part of public are often left unpunished [2, page 43].

E. Saterland proposed to include them in the subject of researches of criminologists and keep rather intensive struggle with them than with common crimes [2, page 46].

In 1940 aïäö criminologist G.Kaizer defined economic criminality as complex of legal violations executed by honorable persons with high social status within their professional liabilities and with breach of trust confided in them [3, page 243].

Marshall Klainard who worked in the Federal Department of the USA on Prices Supervision in Washington during the period from 1942 till 1945 studied the problems of black market in the USA during the Second World War. M. Klainard found the reasons of high commercial criminality in the following:
Three years passed when the Government of the USA decided to clarify whether the law of military economy are violated and in which shapes; thousands of new methods of violations of the provisions of corresponding laws were created during that time;

Less than 25% of violators of norms who became known were exposed to penalty; all the rest of violators make away with remarks or warnings on closure of enterprises;

Control of compliance with norms was non-effective since there was lack of people and even more well trained ones, moreover, they executed this work reluctantly. On an average less than three thousand officers who should control compliance with fixed norms worked during the period from 1942 till 1947 in the USA, nevertheless, too many test events were executed and they were not sufficiently subsequent and effective;

Public, members of parliament and judges expressed ambiguity in their approach to the compliance with norms and price fixing. Public persistently supported these norms. Probably, quite non-significant part of ordinary consumers used the services of “black market”. However, businessmen and enterpreneurs did it when it was possible. Members of parliament, though showed a united front for rating commodities in short supply and prevention of price increase, but they were not satisfied with quite strict control, since they did not want their acquainted “dealers” came before the court for violation of corresponding rules. Judges noted their own reluctance “to make criminals from honorable people” during court proceedings.

Concluding his research, Marshall Klainard estimated the nature of “black market” the following way: to his mind, it is the sign of social disorganization shown in the fact that society started to accept main values differently. Human relations are depersonalized, life targets and motivation are limited to financial benefit. “Black market dealers” justified and their actions are regarded as criminal ones [4, page 253].

On the basis of acts and reports of 25 National Department of the USA which control economic activity, Marshall Klainard and Peter Yiger analyzed commercial criminality on 582 large enterprises in 1980. 447 among them were large industrial enterprises and 105 wholesale and retail trade companies and enterprises of services field. Majority of them were monopolists in the manufacture of the certain type of products; they fixed prices with lack of competition. Victims of criminal activity of these organizations often did not even suspect they were victims. Unjustified financial losses, danger of injure and damage of health, environment pollution were the consequences. As the result of executed research, M. Klinik and P. Yiger found out that within the period from 1975 till 1976 more people died caused by criminal actions of enterprise owners than during life crimes caused by delinquents. Corporate criminality does no cause much fear of people [4, page 251].

In Sweden a well-known criminologist B. Swensson proposed the definition of economic crimes as continuous, systematic, punishable offence of selfish nature executed within commercial activity which forms the basis of this offence [5, page 25].

Fundamental researches of the nature of economic criminality during socialism were carried out by well-known scientists-lawyers V.A.Obraztsov, V.G. Tanasevich [6], Á. Á. Bogdanov [7], A.N.Larkov [8], A.M.Yakovlev [9] in the USSR.

Economic crimes experienced significant qualitative and quantitative changes in 80s and 90s. Creation of new ownership forms, functioning of economics in market conditions, non-sufficient judicial regulatedness, integration in world economy was accompanied by complication of criminal situation in it. Economic crime increasingly acted as a direct manifestation and consequence of criminalization in the economic and in some cases in the political sphere of public life.

V.N. Burlakov noted that central problem is in the selection of criteria of crime qualification as economic one and, therefore, in the determination of the borders of social phenomenon of “economic crime”. It is a case of consideration of this phenomenon from criminological or more properly social and criminological positions. Regarding criminal and legal approach the borders of primary concept of “economic crime” in the opinion of a range of domestic specialists are hardly possible to determine [4, page 254].

Efforts to classify existing approaches to determine a crime range which falls into the concept of “economic crimes” could be found in special literature. For instance, G.K.Mishin emphasizes three groups of various approaches (positions). Followers of the first group refer all crimes committed with the purpose of gaining economic benefit (richness) to economic crimes and include crimes against ownership (property) in this group without any restrictions. Followers of the second group exclude crimes against ownership not connected with commercial activity from the group of economic crimes.
Representatives of the third group recognize economic crimes as crimes of legal persons (commercial subjects) [10, page 38]. Secondly, economic crimes committed in the sphere of economics can be regarded as economic ones. Therefore, the category of economic crimes will include criminal actions within direct execution of economic activity, not connected with it, but within functioning commercial system. In the last case we have to name crimes as economic, such as production stealing made by wage and salary workers.

Finally, the category of economic crimes can include the crimes committed only in key economy segment (system of management), connected with gaining income, that is in the sphere of economic activity = sphere of entrepreneurship, business. Only criminal actions of the subjects of this entrepreneurship (business) themselves committed by them directly during economic activity are reasonable to be considered with this approach.

Aimed at clarification of essential characteristics of economic criminality as social phenomenon and as criminological concept, brief analysis of main approaches existed in scientific literature should be provided. A.M.Yakovlev believed that “this concept with its content covers various types of harm infliction against economic concerns of social state and citizens protected by law” and that the basis to include crimes in the category of economic ones is “their connection with the certain peculiarities of economic and commercial mechanism”.

Economic crime, in the opinion of A.M.Yakovlev, “is expressed in the combination of selfish infringement against social ownership, national economy management order by persons executing certain functions in the system of economic relations” [9, page 57].

The last definition is often quoted in criminological literature or regarded as a kind of cliché, generally accepted approach. The position of authors of a range of textbooks on criminology published recently is the confirmation of this fact.

Thus, professor A.I.Dolgova provides the following concept: “...Economic crime is the combination of selfish infringement against property used during commercial activity, established order of economic process management and economic rights of citizens by persons executing certain functions in the system of economic relations” [11, page 268].

V.N.Kudryavtsev and V.E.Eminov do not fully use all definition algorithm provided by A.M.Yakovlev, but especially emphasize differential peculiarity of economic crimes which “are committed by special subject, not people strange for the subject, included in the system of economic relations they infringe against” [12, page 214].

I.I.Rogov specified that only “economic activity punished in criminal order is covered with the concept of economic criminality” [13, page 91]. Otherworldly, the author, firstly, limits the sphere of economic crimes with the actions connected only with commercial activity. Secondly, he limits his own research only with legal, criminal and judicial concept of economic criminality.

As it is seen from the definition of I.I.Rogov, firstly, the author limited the range of economic crimes with the actions stipulated in criminal code, secondly, committed by official of only state or public organizations and, thirdly, connected with infringement against state economic system.

Several significant conclusions interesting for criminological analysis of investigated problem should be noted.

Firstly, despite indistinctness of the author in his definition of criteria and little strength of the argument, an effort has been taken to limit the concept of economic criminality only with the sphere of commercial activity (punishable in criminal order), as well as to separate criminological concept of economic criminality from criminal and judicial ones.

Secondly, an effort has been taken to differentiate the concepts of “economic crime” and “ghost economy”. The author understands “production, distribution, exchange and consumption of commodities and materials and services uncontrollable by state” under the last concept, also “all types of economic activity not-registered, not specified by adequate normative documents and rules of management”. Economic crime is called as the most dangerous kind of “ghost economy” being independent to some extent as any criminal and judicial phenomenon.

The category of “economic crime” was further developed in program article on this theme published in 1992 by A.M.Medvedev. Economic crimes were defined by this author as “in the broadest form”, as well as “socially-dangerous acts infringed against economy as the combination of industrial (economic) relations and causing material loss of it”. In this regard, A.M.Medvedev fairly noted that with traditional approach to the definition of the subject of crimes (including economic crime) as public relations, participants themselves do not draw their attention to the last. “Meanwhile, the author continues, participants of economic relations are certain people
acting as product manufacturers and product consumers, owners having certain economic rights and freedom, demands and concerns infringed by economic crimes”. “Thus, — the conclusion was made in the article, — it can be said, that economic crimes infringe against economy, right, demands and concerns of the participants of economic relations, violate the functioning of economic (commercial) mechanism, cause material loss to these social values” [14, page 81].

This definition would significantly win in theoretical, as well as applied nature in case the author clarified which rights, freedom, demands and interests are infringed by economic crimes. Otherworldly, crimes having no relation to the category of economic crimes can be referred to them: for instance, attempt against liberty of speech, meetings, confession or, suppose, spiritual needs and interests of citizens.

Together with concepts of economic criminality and economic crimes on post-soviet legal literature the concept of “commercial crimes” was widely used not so long ago. Major variant readings were in the definition of this concept. Some authors considered this kind of crime to be independent based on ideology of soviet criminal law which contained separate chapter “Commercial crime”. Others, on the contrary, believed that commercial crimes were a variety of economic crimes. For instance, B.V. Volzhenkin [15] shared the position of this group of authors, N.F.Kuznetsova thought that economic crime includes infringement against ownership and business crimes (implying all commercial crimes committed as in state, so in private sector of economy) [16, page 12], L.D.Gaukhman and S.V.Maximov refer commercial crimes to the crimes in the sphere of economy, together with more two categories – “other state crimes infringed against economic interests of the nation” and “crimes against ownership” [17, page 12].

The last two researchers refer criminally punishable act directly infringing against the fundamentals of the national economy, relations of ownership, using and disposal of property, also relations concerning production, distribution and consumption of products and services on the whole to the crimes in the sphere of economy.

They include acts which infringed against public relations which provide management concerns to the range of commercial crimes.

In connection with principal changes in economical and political management and the system of social and economic relations taken place in our country in 90s, the system of legal regulation of economic activity suffered some certain modifications. New Kazakhstan criminal law (CC of RK 1997) cardinally reformed the crime system in the sphere of economy, separating the crimes in the sphere of economic activity in the certain chapter.

These changes declare closed the dispute between specialists concerning determination of crimes as commercial or economic, transferring the first category (“commercial”) into the definitions which are to be used predominantly by historians of criminological science.

The fifth Congress of UNO on prevention of criminality and treatment of delinquents (1975) defined criminality of “white collars” in the number of the most dangerous ones showing peculiar “form of business”. Its main features were formed: execution of criminal activity aimed at gaining economic benefit; connection with certain forms of organization; using professional or official activity; high social position of the subjects of this criminality; possessing political power [18, page 18].

Absence of unified criteria in the establishment of crime classification as white-collar or economic crimes results in quite spontaneous attitude toward these concepts of various authors, including often non-comparable kinds of breaches of law in the composition of this criminality classified on different generic indicators and referring to commercial sphere, direct or indirect relation to the sphere of economic activity and occasionally extremely not much relation to it.

Efforts to clarify and extend the concept of white-collar criminality were caused, in the opinion of some criminologists, as faults of traditional interpretations — they did not cover and did not consider crimes committed outside the sphere of permanent activity of criminals and connected, for instance, with tax evasion by falsification of income declaration, fraud at purchase and sale of land plots, property and etc. As the result, American criminologist G. Edelkherts proposed the following clarification of white-collar crimes referred to the category of economic crimes: “Illegal action or series of illegal actions executed without using physical factors, by concealment or deception, aimed at gaining money or property for business or personal benefits” [19, page 56].

It’s quite difficult to agree with the opinion of American specialists that the definition formulated by Edelkherts is more complete and exactly shows the nature of economic criminality. This interpretation, on the contrary, makes the border lines of this phenomenon rather ambiguous. Following this definition, the composition of economic criminality can include breaches of law not related to economy and economic activity. For instance, household fraud connected with deception of
Impressive list of elements (features) of white-collar criminality allowing referring it to the category of economic crimes, in the opinion of American specialists, was formulated on special hearing in the law committee of the House of Representatives of the USA (1979); they are non-forced crimes connected with fraud, corruption or breach of faith; committed in the field of economy; committed by professionals who used shrewd trick to disguise their actions as legal one [20, page 63].

By the middle of 80s the West criminological literature, as G.I.Shnaider noted, started to use more often terms of “official crimes” and “corporate criminality” instead of using the concept of “white-collar criminality. It is demonstrative that the part of specialists tends to understand economic criminality mainly as criminality of corporations [21, page 42].

It should be noted that the fact of separation of three groups of so called official crimes in the composition of economic criminality, with inclusion of mass of small and non-significant breaches of law, is the effort to take researches of criminal phenomenon in economy away to the analysis of less socially important types of deviant behaviour of non-management employees.

Separation and inclusion of so named “corporate criminality” or, in other transcription, criminality of corporations in the composition of economic criminality reduce the tension of the situation.

E. E. Dementyeva, summarizing the results of own research of corporate crimes which form the basis of economic criminality in the countries with developed market economy, provides somewhat different classification of these types:

- Crimes including misuse of capital investments and causing damage to partners, shareholders and etc.;
- Crimes including misuse of deposit capital and causing damage to creditors, guarantors (false bankruptcy causing damage to creditors, fraud in insurance sphere);
- Crimes connected with violation of the rules of free competitiveness (industrial spying, artificial increase or decrease of prices);
- Crimes including violation of the consumer’s rights (production of non-qualitative products resulted in physical damage to consumers);
- Crimes infringed on the state financial system (income concealing, tax evasion);
- Crimes connected with illegal nature use and causing damage to environment (environment pollution);
- Crimes including contrivance in the sphere of social insurance and pension provision, also crimes connected with deliberate violation of safety rules causing material and physical damage to employees;
- Commercial bribes;
- Computer crimes [1, page 43].

The concept of “commercial criminality” is also widely used in west criminology together with considered categories. The last, in its turn, is often a part of white-collar criminality or the form of its appearance.

It should be noted that in German criminological literature the special phenomenon existed in the field of economic crimes is emphasized (so named victim-paradox) – “some victims are actually potential criminals who were prevented to commit a crime”.

Definitions of economic (understood by different authors on their own way) criminality considered above and which contain the certain range of features, list of components and signs, suffer one disadvantage, they do not allow to set precise, clear and understandable criteria of referring some or other criminals to the category of economic and, consequently, make it difficult to define clear border lines of this phenomenon.

Non-significant achievements in the sphere of legal regulation of struggle with this phenomenon are explained by major range of interpretation of the concept of economic criminality, complexity and multiple layer of the research subject and other reasons. Harmonic concept of criminal law regarding settlement of the issues of regulation and legitimization of the sphere of economic activity and business was not developed yet.

In this regard, using narrow interpretation of the concept of economic criminality as criminality in the field of business and entrepreneurship can turn to be the most productive. This disaggregate restrictive approach is more preferable and perspective in the sense of establishing effective social control as well.

Making conclusions, the following features of economic criminality which determine the specific nature of this phenomenon of delinquent behavior predominantly in the sphere of entrepreneurship and business can be emphasized:

- Performance in the sphere of entrepreneurship, business undercovered by legal economic activity.
- Performance directly during economic (entrepreneurship) activity, within its border lines and competence.
Execution of entrepreneurship (business) by the subjects.

Using criminal methods of acquiring economic benefits during legal economic activity, parasitizing on economic and legal conditions in the official (permitted) market economic medium.

High social status of businessmen and high credit of trust to it by public, prostituted by businessmen delinquents, which serve as undercover to carry out their criminal activity.

Anonymity, absence of victim personification.

Lack of direct contact with victim.

Peculiarity and majority of offence subjects.

Peculiarity of the subjects of economic criminality.

Mass and generic nature of crimes.

Crimes secrecy.

Selfish nature of crimes.

Reference to the category of nonviolent crimes.

Availability of phenomenon of insensible, indifferent attitude of public to economic criminality.

Thus, complex analysis of the subject matter of economic criminality, various approaches to its definition in the scientific society was carried out in this scientific article, own conclusions were also made concerning the nature of economic crimes, as well as its main characteristics.

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