

Economization of the criminal law branch: problem formulation directions of optimization

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Abstract. The need for legislative clarification, and, in some cases, for the consolidation of those institutions of criminal law in conjunction with criminal executive legislation, which are aimed at optimizing the current financial costs in connection with the implementation of criminal law, becomes obvious against the background of the desire for a general humanization of criminal policy and the economic crisis observed not only in Russia, but at the international level. Currently, a theoretical and methodological substantiation of the economization of the criminal law branch including the development of methods, principles, tools for state costs reduction at all stages of criminal prosecution, including using the organizational and economic mechanism of the penal system is required. The cost of the criminal law mechanism is due to the need, on the one hand, to ensure the rights of persons who have committed a crime, on the other hand, to protect the victims and minimize the consequences of the harm caused. The purpose hereof is to identify the internal reserves of individual institutions of criminal and penal legislation to determine new areas of optimization of savings in the criminal law branch by reducing the costs of criminal prosecution, on the one hand, and increasing budgetary profitability in the implementation of criminal legal institutions of a property nature, on the other hand. The work uses general scientific, specific scientific and special methods traditional for theoretical and applied legal research – the method of comparative jurisprudence, law interpretation method, systemic-structural method, statistical method, correlation method, content analysis of scientific publications, various types of extrapolation, etc. The novelty of the scientific research lies in a fundamentally new approach to the assessment of criminal law in conjunction with criminal executive legislation to find optimal solutions aimed at increasing the profitability of criminal law institutions and finding mechanisms for material support for victims.

Keywords: penal system, exemption from criminal liability and punishment, incentives for convicts

1 Introduction

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The issue of economizing the criminal law branch in the presented aspect has not been theoretically developed.

The most researched is the issue associated with the study of economic crimes: in their unity [1, 2], the elements of crimes, united by a common feature [3-6] and certain types of economic crimes [7].

In this sense, the work of Esakov, who developed economic criminal law in the General Part of the Criminal Code of the Russian Federation, is of great interest [8]. For instance, the author rightly points out: “Economic criminal law is today a sub-branch of criminal law. It is meaningfully isolated from the point of view of the Special Part of the Criminal Code of the Russian Federation, covering in the very first approximation Section VIII “Crimes in the Sphere of Economics”, and in relation to the General Part of the Criminal Code of the Russian Federation, it finds its expression in the discussion of specific problems, namely and only economic criminal law, for example, signs and blanketness of dispositions of criminal law, formulas of guilt, relevance of a legal error, signs of a special subject, description of criminal consequences that are economic in nature, etc.” [8].

There are separate studies concerning, for example, the application of economic laws in criminal law and criminology [9]. For example, Professor Bibik proposes to apply economic laws to the criminal law branch [9].

A certain “profitability” of criminal law lies in the fact that through a criminal law prohibition, as well as certain rules-incentives, the legislator focuses on law-abiding behaviour associated with economic and financial activities (payment of mandatory payments, refraining from criminal bankruptcy, etc.). Works on this issue are predominantly in the nature of theoretical and applied research of subjective and objective signs of certain elements of crimes [10-12].

Another area of scientific research is the determination of the financial component of the penal system [13]. Thus, Bogdanov draws attention to the fact that “... in addition to funding from the federal budget, the system enjoys significant indirect support from state and local authorities in the form of tax incentives, free deliveries of products, and so on. At the same time, a significant share of GDP is produced within the framework of the PCS. Finally, the functioning of the system generates numerous positive and negative externalities”. [14].

Penitentiaries determine the socio-economic and political prerequisites for the emergence and formation of penal legislation and penitentiary systems [15]. There are economic and technical studies on the effectiveness of the activities of enterprises of the penal system [16, 17]. For instance, Shugai indicates, that “... the issues of decision support in terms of identifying the most attractive segments of the market for products manufactured by PCS enterprises, and allocating resources between manufacturing enterprises serving the selected market segments require scientific elaboration” [16].

To a greater extent, the issue of the economy of criminal prosecution has been developed in the science of criminal procedure. This is an abbreviated form of litigation, optimization of legal costs, and a number of other issues [18-21].

2 Methods

In general, the term “economization” is not very applicable in criminal law science. The reason lies in a certain dogmatism of the criminal law doctrine, certain isolation of criminal law, criminology and criminal executive law within the framework of scientific knowledge, and as justly noted by Bibik, interdisciplinary ties between the sciences of the criminal cycle are rather poorly developed. One example is their interaction with economic science, which today has generally been reduced to the use of actual data on economic indicators [9].

Thus, the search for ways to increase the revenue side and reduce the expenditure side in criminal law by improving the quality of both the normative material itself and the practice

of its application is the first attempt at the doctrinal level to determine the range of institutions and (or) norms of criminal and penal legislation that allow realizing the economy of the criminal law industry as a whole.

In general, the authors hereof attempt to identify those areas that can optimize the economic component of the industry.

3 Results and discussion

The revision of the criminal law provisions containing the prerequisites for economization showed that the “profitable” institutions of the industry are fines, court fines, confiscation of property, and exemption from criminal liability in connection with damages. Saving costs for the criminal law industry is possible through the use of institutions of exemption from criminal liability and punishment. The indirectly effective application of measures of punishment and encouragement to convicts serving sentences both related to isolation from society and not related, also gives a positive result: the number of convicts is reduced, harm to the victim is voluntarily compensated for, and recidivism is reduced. It is hardly possible to talk about efficiency when the result of the work of the mechanism of criminal legal protection is unserved punishment or unfulfilled measures of a criminal legal nature.

Thus, statistical data record an extremely low percentage of execution of a fine as a type of criminal punishment and a court fine as another measure of a criminal-legal nature. According to the Judicial Department under the Supreme Court of the Russian Federation, in 2018 the total amount of the fine imposed as the main punishment amounted to 8.211 million rubles, a little more than 668 million rubles were voluntarily paid, which is 8.14%. Writs of execution were forcibly executed for the amount of more than 744 million rubles, which is 9%. Thus, in 2018 alone, the state received less than 6.799 million rubles on fines assigned as the main punishment. The situation has improved in 2020. So, according to official statistics for 6 months of 2020, more than 2,228 million rubles were assigned as a fine as a primary or additional type of punishment. More than 585 million rubles were paid as a court fine. Only a little more than 206 million rubles were voluntarily paid for a fine and more than 136 million for a court fine, more than 423 million were forcibly collected for a fine, and over 75 thousand rubles for a court fine [22]. In just 6 months of 2020, it was paid (voluntarily or compulsorily) for a fine of 28%, for a court fine – 23%. However, these figures cannot be considered at least somewhat satisfactory.

The data on the confiscation of property are not reflected in the official statistics. Considering that confiscation of property is a conventional measure of criminal law, therefore, it is provided for in various normative interpretations of all European states, the experience of the Republic of Belarus is interesting. So, in Belarus, from July 19, 2019, only a special confiscation of property obtained as a result of a crime or related to the commission of a crime, which was previously an additional punishment, has been provided for. Special confiscation is defined as a criminal law measure that is not a criminal liability measure. In Russia, confiscation of property, similar in content, of a criminal-legal nature, has been in effect since 2006. These institutions must be considered through their dual nature, being provided for by the norms of the Criminal Code and the Criminal Procedure Code of both states, which indicates their legal uncertainty. Analysis of the legal positions of the Constitutional Courts of Russia and Belarus on the problem of competition between criminal law and criminal procedural norms on confiscation, the judicial practice of their application allows us to highlight the positive and negative aspects in the normative material of both states, and the possibility of borrowing positive experience by both Russia and the Republic of Belarus: a positive assessment can be given to the absence in the Belarusian legislation of linking a special confiscation of property to specific articles of the Special Part of the Criminal Law, a clear definition of the issue of the possibility of applying the measure in

question in cases of exemption from criminal liability on non-rehabilitating grounds; in Russia, the possibility of seizing not only property subject to confiscation, but also money or other property commensurate with the value of the confiscated property in the absence of such property, has been successfully regulated. The authors believe that only the norms of the criminal law can serve as the basis for the confiscation of property in the Russian Federation (special confiscation in the Republic of Belarus). Criminal procedural norms should only regulate the procedure for applying the norms of the criminal law on confiscation of property (special confiscation).

Another area of economizing the industry can be the development of mechanisms to stimulate the law-abiding behavior of convicts. Today, the effectiveness of punishments not related to isolation from society is at an extremely low level due to the lack of economic incentives for potential employers who are ready to accept such convicts into their production. At the same time, in the case of evasion from serving these types of punishment, the proportion of substitution for a more severe punishment is so low that it predetermines the choice of the convicted person in favor of serving a more severe punishment, indicating not only that the goals of punishment have not been achieved, but also, in general, discrediting the criminal legal mechanisms of protection.

At the same time, incentive measures applied to convicts as effective incentives associated with the formation of their law-abiding behavior are reflected in the legislation of the criminal cycle in fragments: for a number of punishments, incentive measures are not provided, for other punishments they are either formalized or clearly insufficient. Which, in general, leads to a decrease in the effectiveness of corrective action on the perpetrators. The need to successfully solve the problems of full-fledged correction of persons serving various types of criminal sentences, as well as their subsequent social adaptation, through the development of incentive measures applied to convicts in criminal and penal legislation that can qualitatively affect their motivation, provide an opportunity for socially active activities for resocialization and rehabilitation after release, it can significantly reduce the cost of maintaining the penal system.

Another institution that allows you to reduce costs for the industry is the institution of exemption from criminal liability and punishment. Exemption from criminal liability or punishment is one of the most important legal instruments for achieving the goal of reducing the “prison population”, as well as a real alternative. At the same time, along with others, it is also the most important means of criminal law protection. However, insufficiently substantiated application of these institutions can lead to the opposite result. For example, with parole from punishment, there is a significant percentage of relapse, certain types of exemption from criminal liability exist almost nominally (exemption from criminal liability in connection with compensation for damage). Traditional grounds for exemption from criminal liability or punishment require their rethinking, and as a result of changes in approaches in law enforcement practice, in view of the ongoing socio-economic changes and a change in the vector of criminal policy. At the same time, the effectiveness of the application of exemption from criminal liability and punishment depends to a large extent on the harmony of its relationship with other criminal law norms.

4 Conclusion

Within the framework of this study, an attempt was made to determine the contours for finding optimal solutions aimed at increasing the profitability of the work of criminal law institutions and finding mechanisms for material support for victims.

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References

1. B.V. Volzhenkin, *Prestupleniya v sfere ekonomicheskoi deyatel'nosti po ugovolnomu pravu Rossii* [Crimes in the field of economic activity under the criminal law of Russia] (Saint Petersburg, 2007)
2. I.V. Shishko, *Ekonomicheskie pravonarusheniya. Voprosy yuridicheskoi otsenki i otvetstvennosti* [Economic offenses. Legal assessment and liability issues] (Saint Petersburg, 2004)
3. V.V. Khilyuta, *Prestupleniya protiv sobstvennosti i poryadka osushchestvleniya ekonomicheskoi deyatel'nosti: kontseptualnye osnovy modelirovaniya obekta i sistemy* [Crimes against property and the procedure for carrying out economic activities: conceptual foundations for modeling an object and system] (Moscow, 2012)
4. V.V. Khilyuta, *Prestupleniya protiv oborota obektov grazhdanskikh prav* [Crimes against trafficking in objects of civil rights] (Moscow, 2017)
5. Z.M. Chelyabova, *Nasilie v posyagatel'stvakh na sobstvennost: ponyatie, vidy, problemy zakonodatel'noi reglamentatsii, kvalifikatsii i nakazaniya* [Violence in encroachment on property: concept, types, problems of legislative regulation, qualifications and punishment], PhD thesis (Saratov, 2020)
6. I.V. Osipov, *Osobennosti kvalifikatsii prestuplenii v sfere ekonomicheskoi deyatel'nosti* [Features of the qualification of crimes in the field of economic activity], PhD thesis (Moscow, 2019)
7. I.V. Grigorieva, *Ugolovno-pravovye mery protivodeistviya khishcheniyam byudzhetykh sredstv* [Criminal law measures to counter the embezzlement of budget funds], PhD thesis (Moscow, 2019)
8. G.A. Esakov, *Ekonomicheskoe ugovolnoe pravo: Obshchaya chast* [Economic criminal law: General part] (Publishing House of the Higher School of Economics, Moscow, 2019)
9. O.N. Bibik, *Lex Russica*, **1(134)** (2018)
10. A. Sidebottom, A. Thornton, L. Tompson, J. Belur, N. Tilley, K. Bowers, *Crime Sci.* **6**, 7 (2017)
11. M.W. Kranenbarg, T.J. Holt, J. van der Ham, *Crime Sci.* **7**, 16 (2018)
12. B.K. Payne, L. Hadzhidimova, *Int. J. of Cyber Crim.* **14**, 1 (2020)
13. J. Quilter, R. Hogg, *Int. J. for Crime, Justice and Soc. Democ.* **7(3)** (2018).
<https://doi.org/10.5204/ijcjsd.v7i3.512>
14. L. Bogdanov, *Domestic Notes*, **2(11)**, 32 (2003)
15. L.B. Smirnov, *Ugolovno-ispolnitelnaya politika v sfere sovershenstvovaniya pravovogo regulirovaniya ispolneniya ugovolnykh nakazanii* [Criminal executive policy in the field of improving the legal regulation of the execution of criminal sentences], Doctoral thesis (Moscow, 2003)
16. O.E. Shugai, *Podderzhka prinyatiya reshenii pri upravlenii proizvodstvennoi deyatel'nostyu predpriyatii ugovolno-ispolnitel'noi sistemy* [Decision support in the management of production activities of enterprises of the penal system], PhD thesis (Voronezh, 2003)
17. N. Tiwana, G. Bass, and G. Farrell, *Crime Sci.* **4**, 1 (2015)
18. V.E. Romanova, *Pravovoe regulirovanie vzyiskaniya i vozmeshcheniya sudebnykh rashodov na okazanie kvalifitsirovannoi yuridicheskoi pomoshchi advokatom* [Legal

- regulation of the collection and reimbursement of court costs for the provision of qualified legal assistance by a lawyer], PhD thesis (Moscow, 2017)
19. V.N. Demidov, *Ugolovnoe sudoproizvodstvo i materialnye zatraty* [Criminal proceedings and material costs], PhD thesis (Moscow, 1995)
 20. M. Nagrecha, Sh. Bret,t & C.D. Court, *Duke Law J.* **70(3)** (2020)
 21. P.B. Edelman, *Duke Law J.* **69** (2020)
 22. *Svodnye statisticheskie svedeniya o deyatelnosti federalnykh sudov obshchei yurisdiksii i mirovykh sudei za 1 polugodie 2020 god. № 4* “Otchet o summakh ushcherba ot prestuplenii, summakh materialnykh vzyskanii v dokhod gosudarstva, kolichestve vynesennykh postanovlenii ob uplate protsessualnykh izderzhok za schet sredstv federalnogo byudzheta i naznachenii ekspertiz” [Summary statistical information on the activities of federal courts of general jurisdiction and justices of the peace for the 1st half of 2020. No. 4 “Report on the amount of damage from crimes, the amount of material penalties to the state revenue, the number of decisions issued on the payment of procedural costs at the expense of the federal budget and the appointment of expert examinations”] Accessed on: March 29, 2021. [Online]. Available: <http://www.cdep.ru/index.php?id = 79 & item = 5461>