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**CRIMINAL AND LEGAL COUNTERACTION TO CRIMES IN THE
ECONOMY**

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Abstract

Among the most critical legal issues is the criminal and legal counteraction to economic crimes. The development of new technologies and digitalization of economic relations bring the outlined in the article problem to a new level. The number of economic crimes in general is growing. Attention is drawn to the significant increase in the number of cybercrimes in the digital economy, which are not differentiated by the Prosecutor General's Office of the Russian Federation. The lack of measures and methods of punishing violations of legislation in the field of economic activity creates problems in the application of criminal legislation. The formation of an effective mechanism for legal regulation of the economy determines the need to improve criminal and legal counteraction measures. A variant of such measures is monitoring illegal actions and determining the elements of crimes that were not previously taken into account in the norms of Russian criminal legislation, but the damage from which is quite noticeable for bona fide subjects of economic relations. The legislation still has many outstanding issues. A country that claims to take a worthy place in the world economy faces the fact that more than half of its citizens do not believe in its justice system: the law is not fully observed in relation to citizens. The necessary legislation is defined, but the process is not observed.

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1. Introduction

The main elements of economic crimes cover the sphere of economic relations in the country by the norms of Chapter 22 of the Criminal code of the Russian Federation (ed. from 31.07.2020) (Criminal code of the Russian Federation from 13.06.1996 Federal Act No. 63). Recently, there have been continuous changes in the criminal and legal policy, in the norms of legislation: some elements of crime are excluded, while others are included. The purpose of the study is to analyze current trends in the field of criminal law counteraction to economic crimes.

Central to the study are the provisions set forth in the chapters 21 and 22 of the Criminal code of the Russian Federation, defining the elements of economic crimes, and allowing to track the decriminalization and criminalization of certain elements (Criminal code of the Russian Federation from 13.06.1996 Federal Act No. 63). For this purpose, the materials of the legal reference system "Consultant" were used. In addition, the analysis of modern points of view of legal scholars (Gracheva et al., 2020; Kosogorova & Poroyko, 2013; Tyunin & Radoshnova, 2019) and practicing lawyers (Solovyov, 2016) allowed us to systematize modern problems of criminal and legal counteraction to economic crimes.

In the context of the topic stated in the study, it should be emphasized that criminal and legal counteraction covers criminal and legal and criminal and procedural aspects. The main task of criminal law is to protect economic relations regulated by other branches of law. At the present stage, it can be stated that the norms of criminal law form barriers for established civil-law relations.

2. Problem Statement

A new group of economic crimes elements is introduced in the norms of Chapter 21 of the Criminal code of the Russian Federation. (Criminal code of the Russian Federation from 13.06.1996 Federal Act No. 63). Despite their general criminal nature, the legislator clarified the procedure for initiating criminal case, taking into account the fact that these crimes were committed by entrepreneurs in the course of business activities or property management for the purpose of business activities. If the subject of the crime is the property of municipalities and the state, then such cases are not subject to public-private prosecution (Criminal procedure code of the Russian Federation from 18.12.2001 Federal Act No. 174, Part 3, Article 20). At the same time, if we refer to article 159.4 of the Criminal code of the Russian Federation, the range of penalties for fraud in the business sphere is quite wide and blurred, and does not give a clear idea of how to apply the rules to a person who has committed an economic crime (the practice is selective) (Criminal code of the Russian Federation from 13.06.1996 Federal Act No. 63). Whether it is an administrative punishment, it will be the sanctions of a criminal nature. Paying attention to this, Kosogorova and Poroyko (2013) predict serious problems of legal precedents. The main explanation is that the same legislator qualifies business activities as legal and illegal (Criminal code of the Russian Federation from 13.06.1996 Federal Act No. 63, article 171).

3. Research Questions

It should be recognized that the frequent criminalization and decriminalization of economic crimes in the country is a belated reaction to negative trends and does not reflect the complex of legal relations

regulated by civil and other branches of Russian law. In addition, criminal legislation often creates problems for established civil-law relations based on a system of intra-industry and procedural guarantees. The weakening of criminal responsibility for certain types of economic crimes contradicts the provisions of the state's anti-corruption policy. Payments of fines in favor of the state are desirable by law.

The second group of problems of criminal and legal counteraction to economic crimes is a number of features of law enforcement practice. In particular, it has been established that persons subjected to criminal prosecution actually bear criminal responsibility until a court verdict is passed, because they are taken into custody, which is equivalent to deprivation of liberty. In the case of a conviction, the time spent in custody is considered in the total term of imprisonment. This measure restricts to the maximum extent the rights and freedoms of suspected citizens who have not yet been found guilty. Thus, there is a reason for human rights defenders to interfere in the criminal law system and court decisions.

Analysis of the results of Tyunin and Radoshnova's (2019) study allows us to state the problems of practical application of criminal and legal measures for economic crimes commission. The authors draw attention to the fact that the legislator himself violates the established principle of criminalization and point to a large number of "dead" articles of criminal law, on which almost no court decision has been made. A large number of criminal articles have blank dispositions, so no decisions were made on them. An excessively high level of blankness and evaluation features used in the process of describing the objective side of an economic crime is almost the main problem of criminal and legal counteraction. In order to solve this problem, the authors put forward a suggestion to introduce a special glossary of terms from the criminal law.

4. Purpose of the Study

The formation and development of digital economic relations in Russia does not have the best effect on the subjective assessment of the quality of legal norms and the practice of countering economic crimes in the digital environment (industry 4.0, e-commerce, the sharing economy, social networks, etc.). The growth in the number of citizens infected with the COVID-19 coronavirus pandemic gave impetus to the development of digital commerce services.

The pandemic in 2020 had a strong impact on the use of Internet communication technologies. The high risk of coronavirus infection has changed the structure of consumption: consumer habits, leisure, lifestyle and work habits of customers changed. The number of online sales increased. Contactless delivery of goods is actively developing. Border closure and logistical disruptions determine the shortage of certain goods and the purchase of large stocks of goods by consumers. In many ways, these trends are due to the fact that in most cases, stores have become an ideal environment for the transmission of coronavirus. Therefore, approaches to advertising and e-commerce have changed a lot.

The main feature of such digital platforms and business models based on them is the decentralization of the exchange of goods and services, as well as the development of market self-government mechanisms, which are practically not covered by state regulation. Unfortunately, the formation of a new model of communication through digital technologies does not allow avoiding illegal actions in the sphere of economic activity. Moreover, the use of new technologies makes this type of relationships even more latent, which makes this problem one of the most acute socio-economic and legal issues facing scientists who are

specialists in the field of legal science and practitioners (representatives of law enforcement agencies). Such economic deviations, especially at the moment when the system of digitalization of communication processes is being formed, not only undermine the authority of state authorities and the business community, but also have an objective impact on slowing down the pace of social development of the state, hinder the implementation of economic reforms, lead to a decrease in the profitability of the main activities of enterprises of all forms of ownership and, ultimately, interfere with the normal work of government bodies and civil society structures.

To build a reliable and secure order for the implementation of business processes, it is necessary to develop strategic legal and economic mechanisms, which will be based not only on domestic scientific and practical research, but also on the experience of anti-corruption activities of developed countries. This will not only help to reduce transaction (in form) and illegal (in content) costs in the course of business activities, but will also lead to real savings in terms of improving the quality of provided goods and services.

5. Research Methods

The growth of economic turnover in the digital economy can destroy traditional business models without proper regulation from the state. Norms do not keep up with the needs of the digital economy. Criminal and legal legislation does not cover new threats and risks of the digital economy. For example, e-commerce involves the illegal sale of a large number of goods. This is why the shadow turnover of virtual currencies is growing, money obtained by criminal means is being laundered, and the risk of user security violations is growing (hacking users' personal accounts to obtain bank card data, copying electronic signature certificates using virus programs, blackmailing customers with purchases, etc.) (Gracheva et al., 2020). A higher level of economic damage is possible from cyber attacks on the digital equipment of companies that run customer-oriented processes. Thus, cybercrime in the economic sphere is actively developing with the use of artificial intelligence and other advanced technologies.

In the context of countering fraud in the field of computer information, modern studies point to the fact that the appearance of article 159.6 in the criminal legislation of the Russian Federation determines a significant number of applied problems in the qualification of actions, as there is a competition of legal norms (Criminal code of the Russian Federation from 13.06.1996 Federal Act No. 63). Therefore, the further solution of the problem is seen as possible through the use of uniform formulations of dispositions and qualifying features of articles of the Russian criminal legislation that establish responsibility for illegal actions through the use of information and telecommunication networks. For example, you can suggest the phrase "committing a crime using the media or telecommunication networks". Detection of such socially dangerous acts requires regular criminological monitoring.

At the same time, foreign research on this issue is actively conducted. In particular, in the Whitty study, Internet fraud is usually observed in the financial and non-financial spheres (Whitty, 2014). The researcher found an interesting fact: almost half of the fraud cases are unauthorized debiting of funds from the card. Analysis of this process allows us to conclude that the implementation of such fraudulent actions does not require direct social interaction between the fraudster and the victim.

6. Findings

Analysis of the practice of investigating such crimes shows that the interaction of the fraudster and the victim in 60% of cases occurs by placing advertisement in social networks that offer goods and services. In fact, there is a "virtual commodity exchange", which fraudsters usually undertake in response to advertisements placed by victims.

In addition, users recording their activity in social networks and posting personal information are associated with a number of risks. In particular, the inability to use privacy settings often leads to the public availability and disclosure of information about what places and favourite routes a particular user visits. This careless attitude in the information space has intensified the persecution of victims by obsessive stalkers, who, thanks to social networks, can easier pursue their victims. Criticism of social networks for these facts does not particularly affect their security policy and the placement of open data, and the legislator does not yet have much influence on these processes. However, the first progressive steps are still being taken: it is forbidden to have an open profile for minors in certain social networks. Such measures allow avoiding anonymous communication of persons with mental disabilities with children and adolescents. Moreover, fraudster can see if the estate holder home or not using the identification of location and photographs. It is a cause for theft and burglary. These and other forms of illegal behavior in social networks are only gaining momentum, while the practice of solving such crimes needs to be further improved.

Special attention should be paid to the problem of fraudulent actions in the field of digital medicine. Despite the relatively good development of the legal framework in this area, the development of new medical technologies and methods of interaction (telemedicine) determines the possibilities for committing crimes and medical errors by medical professionals (fraud, distortion of digital diagnostics data, fraud of insurance organizations). In addition, the digitalization of medical technologies raises a new question about the qualification of crimes caused by medical errors: there is a moment of division of responsibility between the doctor and the designer of diagnostic systems and specialists who enter medical data about the patient. There are certain legal risks. Thus, in order to increase the amount of insurance payments, the management of medical institutions may deliberately distort medical information. For example, changing the pixels on a magnetic resonance imaging help to distort the functioning of the diagnostic algorithm. Such manipulations mislead artificial intelligence, which diagnoses a non-existent disease. The development of new forms of interaction (telemedicine) between a doctor and a patient determines risk situations in which information systems do not provide confirmation of the doctor's identity, as a result of which it turns out that a medical appointment is conducted by an unqualified doctor.

The very functionality of medical information systems can also affect the risk of medical errors. Different machine learning methods take into account extrapolation of past medical experience about treatment and results in order to optimize algorithms and settings. Operation of the medical information system updates the data of medical experience. It is established that if such data (incorrect conclusions and information about the results of treatment) are entered by doctors, most of whom have low qualifications, then there is a high probability of errors. Self-learning in medical information systems will lead to the automatic designing of the program code, which will generate the source code of the program according to the specified conditions, generating erroneous medical conclusions based on the previously downloaded information.

In such circumstances, it is necessary to adapt the current legislation to regulate relations in the digital economy and ensure their security. Therefore, in order to develop additional criteria for the correct qualification of economic crimes, it will be appropriate to analyze the materials of judicial practice necessary to differentiate economic crimes from other types of crimes, which will influence the penalization and criminalization of economic crimes. Admittedly, some work has been done in this direction: chapter 28 of the Criminal code of the Russian Federation currently considers that the information is both the goal (disclosure, dissemination, illicit manufacturing, illicit trafficking and the criminal attacks means (Internet and other networks) (Criminal code of the Russian Federation from 13.06.1996 N 63-FZ; Solovyov, 2016). Most often, such acts related to economic activities as the illegal sale of highly active substances, narcotic and psychotropic substances, weapons, sex services, fraudulent actions and criminal encroachments on property and crimes in the field of computer information fall under the qualification. In other words, markets for illegal economic activity have long been formed through electronic technologies. Analysis of the authors' points of view on the solution of this problem indicates the need to prosecute the administrators and developers of such illegal and anonymous electronic platforms. In addition, according to popular opinion, the cryptocurrency is recognized by the legislator as an object of civil rights as an unclassified separate property (Civil code of the Russian Federation from 30.11.1994 Federal Act No. 51, article 128), with the exception of the positions of the Supreme Court of the Russian Federation (Resolution of the Plenum of the Supreme Court of the Russian Federation from 26.02.2019 No. 1).

7. Conclusion

Analysis of the provisions of criminal legislation and law enforcement practice allows us to note a significant range of problems in theory and practice in the process of qualifying economic crimes. Thus, it is established that the norms of criminal law determine the barriers of established civil-law relations. A practical problem is the qualification of fraudulent actions in the course of business activities due to the broad interpretation of possible penalties. At the same time, the procedure of detention is equal to the criminal liability of citizens who are not recognized by the court as guilty. The chapters of the Criminal code of the Russian Federation reflect a significant number of articles on which no decisions or a small number of decisions were made due to blank dispositions. The development of economic relations in the digital environment contributes to the continuous growth of cybercrime. The appearance of chapter 28 in the Criminal code of the Russian Federation does not fully consider the specifics of economic relations in the digital field.

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