

ABOUT A CONCEPT OF CRIMES OF THE SPHERE OF ECONOMIC ACTIVITY

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Аңдатпа. Қазақстан Республикасындағы экономикалық қылмыстың жай-күйі талданады, "экономикалық қылмыс" (экономикалық қылмыстар) қылмыстық-құқықтық ұғымын анықтаудың әртүрлі тәсілдері қарастырылады, зерттеушілердің экономикалық қылмыс ұғымын оның субъектілері жүзеге асыратын кәсіпкерлік (бизнес) саласындағы экономикалық қызмет шеңберімен ғана шектелген тек қана нарықтық құбылыс ретінде айқындау туралы пікірлері қолдау табады.

Түйінді сөздер: экономикалық қылмыс, Қазақстан Республикасы, экономикалық қызмет, кәсіпкерлік саласы.

Резюме. Анализируется состояние экономической преступности в Республике Казахстан, рассматриваются различные подходы к определению уголовно-правового понятия «экономическая преступность» (экономические преступления), поддерживается мнение исследователей об определении понятия экономической преступности как исключительно рыночного явления, ограниченного лишь рамками экономической деятельности в сфере предпринимательства (бизнеса), осуществляемой его субъектами.

Ключевые слова: экономическая преступность, Республика Казахстан, экономическая деятельность, сфера предпринимательства.

Summary. The condition of economic crime in the Republic of Kazakhstan, discusses various approaches to the definition of criminal law concept of "economic crime" (economic crime), is supported by the opinion of researchers on the definition of economic crime as solely a market phenomenon, only a limited scope of economic activities in the field of entrepreneurship (business) undertaken by its actors.

Keywords: economic crime, the Republic of Kazakhstan, economic activity, the sphere of entrepreneurship.

In the conditions of economic prosperity of Kazakhstan and growth of welfare of citizens the insufficient legal settled of the specified questions generates difficulties in general in ensuring economic security of the state.

The concept of "crime in the sphere of economic activity" is rather new as it entered science and practice with adoption of the new Criminal code of RK and today is the name of chapter 7 of the Criminal code which included the composition of the crimes which are based on use of the economic mechanism and official capacity of the subject of crime [1].

The designations "economic crimes", "economic crime" in the last decades at all very famous. It is paid, in particular, the attention that economic crime became a problem of national scale because it possesses a powerful charge of destructive and dysfunctional properties and makes "negative impact on the processes proceeding both in economic and in the social sphere of activity of society" [2]. In science of criminal law there was no consensus of relative definition of a concept of economic crimes yet. It is claimed that "in general it is very difficult to define borders of such concept accurately of strictly criminal and legal sense in view of his (concept) of the known convention [3]. Studying of literature gives the grounds to allocate three views of economic crimes: wide, narrow, moderate (median).

So, it is noted that almost any crime can be reduced to categories economic, i.e. it from which his subject receives a straight line or the mediated material benefit. If to consider material benefit obligatory sign of economic crime, then such statement has the right for existence.

Many infringement of life is made from self-interest, and not accidentally murder from mercenary motives is provided in the item "z" of p. 2 of Art. 96 of the Criminal Code of Kazakhstan [4] as the qualifying circumstance, and it is equal on hiring or interfaced to robbery, extortion. The theory of criminal law and jurisprudence consider mercenary the illegal deliberate causing death made for obtaining material benefits.

Intention to receive material benefit most often is the cornerstone of such encroachments as the murder committed for the purpose of removal of organs or tissues of the person for transplantation or other use (the item "m" of p. 2 of Art. 96). The person is guided by the same motives quite often, committing crimes against personal liberty — kidnapping, illegal imprisonment and the room in a psychiatric hospital (Art. 125-127). In particular, in the item "z" of p. 2 of Art. 125 of UK the increased responsibility for kidnapping from mercenary motives is established. Many crimes against constitutional rights and freedoms of the person and citizen (chapter 3) also assume presence at the guilty person of mercenary intentions.

From self-interest many crimes of chapter 2 of the Code — involvement of the minor in criminal activity (Art. 131), involvement of the minor in commission of antisocial actions (Art. 132), trade in minors (Art. 133), substitution of the child (Art. 134), disclosure of secrecy of adoption (adoption) (Art. 135), malicious evasion from payment of funds for keeping of children or disabled parents (Art. 136), abuse of the rights of the trustee or the trustee (Art. 139), malicious evasion from keeping of the disabled spouse (spouse) (Art. 140) are committed.

Quite often and infringement of public safety and public order (chapter 9), on the interests of public service and public administration (chapter 13), military crimes (chapter 16) and against the world and safety of mankind (chapter 4) are also made for a profit.

So, acts of terrorism are carried out not only for violation of public safety, intimidation of the population or rendering impact on decision-making by public authorities (Art. 233 of UK), but also for satisfaction of illegal property and (or) other interests. Though the special instruction on the mentioned purposes in Art. 233 of the Criminal Code of Kazakhstan does not contain.

At the same time it would be wrong to call these crimes economic as illegal property interest in them acts as accompanying, and the economic relations — as additional (obligatory or facultative) object of criminal legal protection. Actually economic crimes have the mentioned relations as the main, leading object. Therefore, it is necessary to distinguish the encroachments having economic motivation (so-called economic orientation) and actually economic crimes [5].

I.I. Rogov who is marking out the main signs of economic crime in this respect holds other opinion (criminological uniformity; communication of crime with economic mechanism; the special subject — the person who is directly performing economic functions, included in the system of those economic relations on who this crime encroaches), and among them community of a subject to encroachment. According to him, the economic system, and in a role as the main, and an additional (facultative) object acts as that. It is represented that such approach leads to excessively broad interpretation of economic crimes.

Judging by the name of chapter 7 of the Criminal Code of Kazakhstan crime in the sphere of economic activity are the acts made in the sphere of economy. Economy (from the Greek *oikonomike*) — housekeeping art. In educational literature this term is used as a word synonym "economy" and the long time in the criminal legislation of the republics of the former USSR is not casual one of heads was called "Economic crimes").

Now certain authors are inclined to call only economic crimes crimes in the sphere of economic activity [6]. "Economic crime" and "crimes in the sphere of economic activity" — concepts not identical. The second is wider as includes all crimes happening in economy including belonging to traditional property (thefts, robberies, etc.).

Concerning the studied concept, E.E. Dementieva also believes that economic crimes have the lasting systematic development and, having mercenary character, are made in the course of implementation of professional functions within and under cover of lawful economic activity [7]. In such interpretation the narrow interpretation of economic crimes predominates — they are understood only as the acts made in the sphere of economic activity.

It is necessary to recognize that the legislation of many countries including Russian, nowadays was practically not defined in the matter. So, CC of Russia included in section VIII the "Crimes in the sphere of economy" of act committed not only in the sphere of economic activity (chapter 22), but also against property (chapter 21).

This section included also encroachments against the interests of service in commercial and other organizations (chapter 23), many of which as B.V. Volzhenkin truly notices, "are not always connected with economy" (for example, abuse of authority by private notaries and auditors, employees of private detective and security services) in this connection finding of this chapter in section 8 "very doubtfully". Nevertheless, with some share of convention, crime and this chapter have to be called as economic.

Still to a large extent such name is applicable to crimes against property. At all not because as it is noted in legal literature, almost all encroachments in the sphere of economic activity do harm and to the property relations, and crimes against property at the same time break also normal way of the economic relations that "allows to draw a conclusion on difficulties, on practical impossibility of accurate, unambiguous differentiation of crimes against property and so-called economic crimes".

Of course, the known difficulties in delimitation of acts property from made in the sphere of economic activity exist. But they existed and earlier — the fact that, despite external isolation in the previous codes of chapters about property and economic crimes, separate types of acts "removed" from one chapter to another demonstrates to it, in particular. Despite the known difficulties, acts directed against property, and made in the sphere of economic activity quite perhaps it is also necessary to distinguish, and first of all on an object. In the relations of property it is accepted to allocate the static and dynamic parties. If the static party is characterized by a condition of accessory of material benefits to the owner, then dynamic — use of a subject in the course of production, distribution, consumption and exchange, finding of "a thing in a turn".

Depending on to what of these aspects the prevailing significance is attached, the crimes and encroachments made in the sphere of economic activity are allocated property (against property). In general they have to be called as A.A. Piontkovsky noticed still in the twenties the last century, as "economic crimes", or "as the crimes breaking the economic relations" [8].

Criminal code of the Kazakh SSR of 1959 y., in fact, carried to economic crimes and encroachments in the sphere of ecology, recognizing the last as a kind of economic crimes. In legal literature there were also views according to which against the nature either the relations of property, or the relation on economic use of natural resources were recognized as object of crimes. The environment, in compliance with these views, was considered as the peculiar "storeroom" which is subject to development, operation, but not as the habitat of all live on the earth — the person of an animal and flora. Ecological crimes are the socially dangerous acts encroaching on the ecological law and order established in the state, ecological safety of society and the doing harm to the surrounding environment and health of the person. Respectively these acts were isolated in separate chapter — the eleventh and located not among economic crimes, and after crimes against health of the population and morality.

According to P.S. Yanni, in general it is very difficult to define borders of a concept of economic crime accurately in strictly criminal and legal sense as behind it (concept) the known convention will be always meant [9]. For example, as criterion for in delimitation of economic crimes from official and other, so to speak, general criminal, it is possible to allocate presence at criminal action of the corresponding object among the main. It is possible to claim that in a broader sense it is necessary to refer to economic crimes also premeditated murder from mercenary motives if its purpose was, for example, hindrance to group of shareholders to receive the majority at discussion at a general meeting of a question of distribution of dividends.

At the same time it also considers that conclusions to which it is possible to come as a result even the shortest, superficial acquaintance with a concept of the term "economy" of economic literature are capable to bring a considerable destructive element in the considered especially

criminally legal perspective if to apply this concept of that value in which they are used in nonlegal science and practice.

Generalizing stated, it is possible to give the following definition of a concept of "crime in the sphere of economic activity": this made in the sphere of economy — it is deliberate or on imprudence — the action or inaction which is creating danger of infliction of harm or really doing harm to the relations of production, exchange, distribution or consumption, and recognized as crime by standards of chapter 7 of the Special part of the Criminal Code of Kazakhstan [10].

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