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State economic security as criminal law protection object

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Abstract

The existence of any state is connected with socio-economic and political-legal processes in the world. During the period of global social transformations and major economic and political reforms, Russia finds itself in a socio-political situation of necessity to protect its interests, including economic ones. Therefore, the legislator solves the most important task of legal provision of economic security by criminal legal means. This text aims to examine the theoretical foundations of economic security, analyze the current state of the Russian economy with its level of functional security and identify ways to improve security and criminal law provisions. The methodology of this research is a set of methods, techniques and tools of cognition used in research, both theoretical, empirical and applied. The authors concluded that the main threat to the economic security of the country is economic crimes, the fight against which is impossible without criminal legislation. Therefore, the modernization of criminal policy should be carried out by improving legislation and introducing a well-thought-out system of law enforcement, which includes a similar valuation of all subjects of economic relations.

Keywords: economic security; threats to economic security; criminal policy; economic crimes; criminal law measures.

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La seguridad económica del estado como objeto de protección del derecho penal

Resumen

La existencia de cualquier Estado está conectada con los procesos socioeconómicos y político-jurídicos del mundo. Durante el período de transformaciones sociales globales y de importantes reformas económicas y políticas, Rusia se encuentra en una situación sociopolítica de necesidad para proteger sus intereses, incluidos los económicos. Por lo tanto, el legislador resuelve la tarea más importante de provisión legal de seguridad económica por medios jurídicos penales. Este texto tiene como objetivo examinar los fundamentos teóricos de la seguridad económica, analizar el estado actual de la economía rusa con su nivel de seguridad funcional e identificar formas de mejorar la seguridad y las disposiciones del derecho penal. La metodología de esta investigación es un conjunto de métodos, técnicas y herramientas de cognición utilizadas en la investigación, tanto teórica como empírica y aplicada. Los autores concluyeron que la principal amenaza a la seguridad económica del país son los delitos económicos, cuya lucha es imposible sin la legislación penal de por medio. Por lo tanto, la modernización de la política criminal debe realizarse mejorando la legislación e introduciendo un sistema bien pensado de aplicación de la ley, que incluya una valoración similar de todos los sujetos de las relaciones económicas.

Palabras clave: seguridad económica; amenazas a la seguridad económica; política criminal; delitos económicos; medidas de derecho penal.

Introduction

Economic security is an integral part of the economic system, an important element in developing the national economy, enterprise, society, etc. Economic security is the most important part of the national security structure of the country (Drobot and Vartanova, 2019). In current conditions, ensuring economic security is the main condition for sustainable socio-economic development of the national economy. However, modern threats to economic security are manifested at various levels of development of the socio-political system of the state (Shafieva, 2019).

The problems of ensuring economic security have now become extremely urgent. Economic security as a state of protection of the state from external and internal threats needs legal support to guarantee and respect human rights and freedoms and ensure the protection of the main institutions of civil society and the state.

The Criminal Code of the Russian Federation is designed to protect the most important public relations from the actual infliction or threat of significant harm to them by establishing a criminal law prohibition. The accuracy and clarity of criminal law norms are an important guarantee of their effective application and, as a result, ensure the implementation of the principle of the inevitability of the responsibility of punishment (Muradov, 2010).

The main threat to the State's economic security is its encroachments by criminally illegal acts of an economic nature. Criminalization of these acts was carried out in the Criminal Code of the Russian Federation ("Crimes in the sphere of economics," containing Chapters 21-23 (Articles 158-204) with extensive use of the norms of economic legislation, although Russia's criminal policy in the economic sphere does not and has never had a concept, plan, or document in which its principles and directions would be brought together (Criminal Code of the Russian Federation, 1996).

Currently, at a very general level, a promising "economic" criminal policy is considered only in the 2017-2025 Criminal Policy Roadmap (Dolinko, 2019a). The laws that toughen criminal liability for crimes in the economic sphere are mainly related to criminalizing certain acts. It should be noted a sharp increase in the activity of the state in the field of the criminal legal protection of economic activity since 2009. So, in 2001-2008, 9 laws were amended to Chapter 22 of the Criminal Code of the Russian Federation, then only in 2009 - 5 laws, for the period 2009-2011. 13 laws and 42 laws for the period 2009-2020.

The analysis of the texts of the laws that made these changes to the Criminal Code of the Russian Federation, and explanatory notes to them, allows us to conclude that there are three main directions of reforming the "economic" criminal legislation in the last two decades.

The first direction is to reduce the risks of doing business related to illegal criminal prosecution or excessive sanctions established by criminal law that do not correspond to the public danger of the act.

The second direction is to strengthen the counteraction to acts that infringe on the state's financial interests and tax crimes. Finally, it is necessary to note the counteraction to the so-called "flight of capital."

The third direction is a counteraction to new forms of illegal behavior in economic activity. The direction is conditional – unlike the other two directions and reforms within which are carried out in practice more or less purposefully, the criminalization of new types of acts in the sphere of economy is, for the most part, reactive and represents attempts to solve acute problems in the economy or society radically.

Based on this, we can conclude the chronic nature of most modern problems of Russia's "economic" criminal policy.

Currently, law enforcement practice needs to disclose the content of the norms providing for the responsibility for economic crimes and the development of scientifically based methods for the identification, disclosure, and investigation of crimes in economics.

The scientific novelty is determined by the fact that the work aims to solve problems and contradictions caused by the need to introduce new provisions of criminal legislation and form an integrated and systematic approach to improving the activities of law enforcement agencies.

The study aims to consider the theoretical foundations of economic security, the analysis of the current state of the Russian economy and the level of security of its functioning, and identify ways to improve security and the laws of its criminal law provision.

To achieve this goal, this study solves the following main tasks:

- Consideration of the role and place of economic security in the national security system of Russia;
- Analysis of the main threats to economic security and criminogenically significant factors of their determination in modern conditions;
- Substantiation of proposals for improving criminal law measures to ensure the economic security of Russia.

1. Literature Review

Currently, the Russian Federation is seriously threatened by the growing potential of organized crime, the fight against which is increasingly becoming political. Organized crime penetrates all spheres of society, and among its priorities is the economy. The development of a market economy in our country provokes the growth of external and internal threats to national economic security.

The relevance of the topic is dictated by the current global situation, characterized by the impact of the economic crisis on the processes taking place within the state since it is the economic basis of the development of the state that is a priority: the development of the economy gives impetus to the development of science, the social environment and other spheres of society. At the present stage, economic security guarantees the country's independence implements an independent economic policy, and creates conditions for stable development.

Many works on studying economic security, threats, and means of protection have been published in the scientific literature.

The research on this problem is devoted to the scientific works of such modern authors as: N.V. Genrikh, V.I. Dolinko, V.M. Egorshin, V.M. Esipov, E.S. Muradov, P.N. Panchenko, I.G. Ragozina, A.V. Syusyukin.

Genrikh (2002) “Criminological aspects of countering threats to Russia’s economic security”. The author examines economic security in detail as a criminological problem. He also provides criminological characteristics of crime in economic activity.

Dolinko, in his work (2019a) “Ensuring the economic security of Russia by criminal law measures,” examines the issues of ensuring the economic security of the Russian Federation by criminal law measures.

Egorshin, in his study (2000) “Economic crime and security of modern Russia (theoretical and criminological analysis),” analyzes the essence and content of economic security in the national security system of the state and the criminological content of threats to economic security. He also considers economic security as the socio-economic basis of a right-wing state.

Esipov (2004) devoted his research to analyzing the current state of crime in economics “Organizational and economic mechanism of countering the criminal economy at the stage of market reforms.”

Muradov (2010) “Economic security as an object of criminal law protection” in its article explores the concepts of “security,” “economic security,” and “threat to economic security.”

Shlemko and Binko (2015) “Economic security: the essence and directions of ensuring” explore the theoretical foundations of economic security.

When working on this study, the works of the following authors were studied on the economic security of the state as an object of criminal law protection: Economic security of the individual in the system of economic security of the state (Bank, 2020). The system of economic security of territories of advanced development and assessment of their effective impact on the level of economic security of regions (Mironova, 2021).

Economic security in the tax sphere in the system of ensuring the economic security of the state (Goncharenko and Kutsenko, 2015). Sources, types and factors of threats to economic security, the creation of an economic security service (Musatayeva, 2015). Economic security and competitiveness of the region as the most important component of economic security (Makhanko and Shalaginova, 2014). Managing for the future: the 1990s and beyond (Drucker, 1993). How money is managed: the ends and means of monetary policy (Einzig, 1959). Economics in one

lesson: the shortest and the surest way to understand basic economics (Hazlitt, 1979).

2. Methodology

The methodology of scientific research is a set of methods, techniques, tools, and other tools of cognition used in research at the theoretical, empirical, and applied levels and credible information about the processes and phenomena under consideration. The research methodology is based on the scientific provisions of criminal law on the nature of crime and criminality and their impact on the state of the country's economic security.

Scientific research on this problem is carried out using the dialectical method of cognition. The application of the dialectical method made it possible to study the continuous development, qualitative changes, and interrelationships of criminal law norms in the context of responsibility for crimes aimed at undermining the country's economic security.

The dialectical approach to analyzing an object is characterized by three basic principles: development, a common connection, and contradiction. In the context of this study, the principle of development finds its identification in the emergence, formation, and appearance of the old basis of a new quality of crimes in economics. The principle of the general connection is to understand the essence of crime in the economic sphere.

This requires investigation of the external and internal connections of the object of criminal law protection; to distinguish among their diverse significant, recurring connections. Finally, the principle of contradiction orients us to analyze its main contradictions when realizing the essence of the object of criminal law protection.

The regulatory framework of the study is the Decree of the President of the Russian Federation and federal laws in the field of economic activity. The information base is statistical data.

3. Results

The need to criminalize crimes that undermine national security is because the degree and nature of the public danger of these acts indicate the impossibility of effectively countering them only by economic measures provided for by financial, business and banking legislation. This is what forced the State to resort to criminal law response measures, the positive effect of which, subject to compliance with all other principles of criminalization (in particular, the principle of unreliability of prohibition)

and the good work of law enforcement agencies, should significantly exceed the potentially possible negative social consequences.

Moreover, the social conditionality of criminalization of crimes aimed at undermining national security, the definition of their generic object as an order of public relations, which is harmed as a result of the commission of a corresponding crime in this area, indicates the need to use the preventive capabilities of criminal law to minimize them.

The solution to the criminalization of economic crimes in the Russian Federation is possible primarily by establishing criminal law prohibitions for socially dangerous acts in new socio-economic conditions and against the country's ongoing reform.

In current conditions, all activities in the field of economics should be carried out, taking into account the innovative component. In addition, innovative legislative solutions to minimize criminal abuses to undermine the country's economic security are also needed.

New ways of committing crimes require thorough research of the mechanisms of their commission and the criminalization of individual acts in economics, their classification, and the development of qualification rules.

In the modern period, crisis phenomena in the economic sphere contribute to the development of negative trends in all areas of the functioning of the state. The instability of the economic system makes it impossible to channel funds into innovative projects and the development of production, adversely affecting the state's financial and economic security. Moreover, the low level of economic security undermines the public's trust in the state represented by its law enforcement agencies (Egorshin, 2000).

Important circumstances that determine the social conditionality of criminal law norms on crimes in the economic sphere in the Russian Federation are the availability of the possibility of combating a socially dangerous act by criminal legal means and the availability of resources for the criminal prosecution of persons have committed socially dangerous acts. In the list of subject areas of national security, a special place belongs to economic security.

Economic security is a part of national security, and ensuring it is a priority task of any state. Economic security, being a synthetic category, has a fairly broad interpretation, and, first of all, in the context of balanced development, it prevents the violation of reproduced proportions, the imbalance of connections between various components of the system, and ensures the stability of the economic system, increases the ability to withstand internal and external loads. At the same time, it is the institutional vector through legal, political, and economic mechanisms that can ensure

the integrity of the national system, strengthen its ability to maintain dynamic equilibrium, successfully adapt to endogenous and exogenous challenges, and effectively overcome crisis phenomena.

It is worth noting that the institutional provision of the state's economic security has not been finally formed into a system-structural complex, which does not allow for clear monitoring, responding, and taking timely and adequate measures to eliminate threats to economic security. In particular, the disadvantage is the lack of collaborative work in ensuring economic security in spatial and structural change since the institutional and legal provision of economic security primarily concerns the macro level.

Strengthening the institutional vector in ensuring the country's economic security should first occur by modernizing existing and creating new economic and social institutions that will increase labor productivity on a qualitatively new basis and economic growth.

The addition requires forming an institutional and legal basis at different levels of the hierarchy of economic management, which is ensured by the institutions performing the functions of decision-making, informing, and motivating.

According to this approach, it is necessary to form the institutional foundations for improving the state's economic security system.

In 2010, Federal Law No. 390-FZ, as of December 28, 2010, "On Security" came into force, not fully defining the term "security". The National Security strategy of the Russian Federation, approved by Presidential Decree No. 683 as of December 31, 2015, draws attention to the need for measures to combat the shadow and criminal economy, sets goals to increase Russia's investment attractiveness, improve the business climate, overcome capital outflow, and achieve sustainable economic growth.

In the Strategy of Economic Security of the Russian Federation until 2030, approved by Presidential Decree No. 208 as of May 13, 2017, a high level of criminalization and corruption in the economic sphere is named among the main threats to Russia's economic security. Furthermore, the main goals of the state policy ensuring economic growth are named. Therefore, one of the state's priorities is ensuring the security of economic activity.

To assess economic security, certain criteria are used – indicator indicators. A set of indicators allows you to predict the danger in advance and take action (Dolinko, 2018a).

Economic security is a set of conditions and relevant factors that directly ensure the stability of the national economy, its independence, and the ability to be regularly updated and improved. It is quite difficult to establish clear criteria that would make it possible to draw a line between dangerous

and safe in the economic sphere. This, in our opinion, is the main reason for the discussion on this issue. In theory, it is proposed to allocate threshold values that serve as a danger indicator.

In general, it can be said that economic security itself is a position of protection of the country's economy from global and internal influences (Genrikh, 2002).

Thus, an important condition for ensuring the state's economic security is both the availability of a protection system and the possibility of its continuous improvement.

From the criminal-legal point of view, the following threshold values of the state's economic security level can be distinguished: the level of crime in the economic sphere of activity, a persistent negative trend towards its growth, and the amount of material damage caused. However, suppose these indicators are the basis for determining economic security. Then, there may be a false impression that threats to economic security from criminal encroachments are decreasing since there is a steady trend towards a decrease in the number of detected crimes in this area (Ragozina, 2013).

Implementing strategic guidelines for the state's socio-economic development in economic security is carried out through the modernization of criminal policy, which defines the key directions, goals, principles, and means of influencing economic crime. In addition, such an impact occurs due to the formation of legislation and law enforcement practice, determining the optimal ways to influence the legal consciousness of the population of the country, which is typical for any legal system (Kucherov *et al.*, 2021).

It is necessary to determine the place and role of economic security problems in the state's national security structure at the level of federal legislation. Implemented in a specific state act, the economic security strategy will allow state authorities to make the right decisions in economics and law, actualizing the problems of countering criminal encroachments on Russia's economic security.

4. Discussion

In 2021, the main attention of the state was focused on the topic of economic recovery. However, this year, economists predict concerns related to financial and geopolitical risks, while economic growth issues will go to a secondary plan, jeopardizing the country's economic security.

The focus of economic attention remains inflation, and the key issue remains the containment of price growth. Also, the greatest risks to the

further development of the economy today are the spread of new coronavirus strains. Against the background of these events, one of the goals of modern organized crime is the desire to penetrate politics and the economy and gain a foothold in these areas (Esipov, 2004).

When considering the concept of economic security, it is advisable to rely on the following provisions: economic security is the most important component of the national security system; economic interests are the object of protection; proper protection of national interests is possible only if there is a stable system for detecting actual negative impacts, preventing probabilistic impacts and leveling the causes of their occurrence; impacts on economic security may contain internal and external factors of the country's economic system.

Economic security is a state of the economy in which the preservation and protection of a person's fundamentally necessary needs and interests, the surrounding society, and the country from actual and possible external and internal influences are ensured (Goncharenko and Kutsenko, 2015).

The economic security of the state is determined by the state of socio-economic relations and productivity, extensive use of the results of scientific and technological development in the country's economy, and the system of foreign economic relations. Furthermore, the state's economic security is interconnected with the categories of "sustainability" and "development" of the economy. A country's sustainable economic development means the strong and reliable development of its elements, including economic and related organizational ties between them and the ability to resist internal and corresponding external threats (Shlemko and Binko, 2015).

Almost all researchers, despite the subjective approach, agree that the essence of economic security is: 1) the state of the economy, ensuring a sufficient level of social, political, and defense development of society and the state; 2) the security of the economy from internal and external threats (Muradov, 2010: 100).

It is necessary to agree with the opinion of Selivanovskaya and Sboyeva. They argue that countering the criminalization of the economy as a threat to the economic security of the Russian Federation involves a theoretical and practical analysis of criminal legislation providing for the responsibility for crimes in this area (Selivanovskaya and Sboyeva, 2021).

Dolinko's position is very convincing, asserting that the law enforcement agencies of our country reliably protect the economic security of Russia and the economic sovereignty of our sovereign state, protecting Russia from the destructive effects of external and internal threats and factors, from dangers and various kinds of negative challenges and risks in the field of Russia's economic security (Dolinko, 2019b).

The concept of “economic safety” occurs mainly in the meaning of security, the ability of a person or state to withstand critical situations, effectively use financial resources, and the effectiveness of social support measures for the population (Koroleva and Senchenko, 2018).

For example, on the World Bank website: “The U.S. social and economic safety net has evolved over nearly a century, through government policies related mainly to three general areas: (1) providing basic financial security, (2) protecting vulnerable populations, and (3) promoting equality of opportunity” (Nightingale *et al.*, 2003) – it is said about the system of state provision of the population.

The term “economic security” can also be used similarly. So, President Roosevelt created the Committee on Economic Security (the Committee on Economic security), whose goals were formulated as follows: “Roosevelt asks the committee to propose “sound means” to secure against “several of the great disturbing factors in life – especially those which relate to unemployment and old age” (Marmor and Mashaw, 2011). Thus, the competence of this committee was on the issues of social protection.

The International Committee of the Red Cross characterizes economic security (economic security) as the ability of an individual, family, or society to adequately and permanently Meet immediate needs. American publications associate the problem of economic security with material well-being, affordable healthcare, family support measures, and equal opportunities for citizens (Case, 2015). Often, the term “economic security” refers to financial stability: “economic security refers to capital flows worldwide and capital markets and products that are the object of these flows.

Through these channels, currencies may be destroyed, inflation passed on, stocks exhausted, and financial institutions destroyed (Andruseac, 2015) – “economic security refers to the global movement of capital and capital markets and products to which funds are directed. Through these channels, currency depreciation, inflation growth, depletion of reserves, and destabilization of financial institutions can be achieved” (Andruseac, 2015: 235).

Internal threats are directly the state’s inability to self–development, and self-preservation due directly to the state of its economy and other related factors.

External threats are directly foreign economic and geopolitical factors concerning global environmental processes, affecting national sovereignty. Ensuring absolute economic security assumes that the country’s direct participation in the world economy also contributes to the development of the domestic economy.

There is also a direct threat (the threat created by the targeted, planned activity of the subject is aimed against a specific national interest, there is a target installation to counteract it); an indirect threat (acts against a specific national interest without a target installation to counteract it). According to the form of impact, threats are classified into direct (directed directly against the realization of specific national interest) and indirect (acting on a specific national interest through its relationship with other national interests).

Monitoring those threats that directly cause a negative transformation of the overall economic situation at the state level also makes it possible to create a system of direct measures to eliminate or prevent the overall results of their impact (Goncharenko and Kutsenko, 2015). At the same time, the whole package of measures is aimed not only at restoring the production and resource capabilities of the entire state but also at creating directly optimal conditions for the whole life of society.

Therefore, the mechanism and direct measures of economic policy, in general, which are formed and provided at the federal level, should be directly aimed at preventing global and domestic specific negative impacts on the economic security of the whole of Russia.

The system approach directly determines the following key structural components in the economic security system: a functional purpose, the subject-object composition, specific legal information, and directly instrumental support. Thus, economic security cannot be considered directly in isolation from the object of such security, and, directly, certain hierarchical levels can also be distinguished in the system (Syusyukin, 2004).

Ensuring economic security is one of the highest prerogatives of the state, and it should have a comprehensive nature of measures that will be supported by the entire system of state bodies and structural entities of the economy (Smirnova and Temnyakov, 2021).

The creation of a high-quality regulatory legal framework will make it possible to shift the focus to the sphere of law enforcement, that is, the law enforcement activities of national security entities, to implement a targeted approach in ensuring appropriate types of national security (Makareiko, 2020).

Because of the above, the economic security system itself is always aimed at a certain balancing of interests and specific regulation of potential collisions between certain security objects in general, directly preventing negative impacts also in the real sector of the economy, a certain strengthening of the stability of all economic activities to specific exogenous and also undesirable endogenous impacts. The objects of Russia's economic security, as is known, are the state, society, individual elements of the economic system, organizations, and territories.

Conclusion

When considering the concept of economic security, it is advisable to rely on the following provisions: economic security is the most important component of the national security system; the object of its protection is the interests of the country in the field of economics; proper protection of national interests is possible only if there is a stable system for detecting real negative impacts, preventing probabilistic causes of their occurrence; impacts on economic security may contain internal and external factors.

The purpose of economic security is to ensure stable economic development of the country to meet the economic and social needs of the population with adequate labor costs and, at the same time, directly reasonable use of natural resources and their criminal protection.

As a result of the analysis of a complex of socio-economic and other factors, it was found out that the criminalization of acts in the economic sphere is due to a significant degree of public danger of these acts, the impossibility of successfully countering them with the help of other measures. In addition, the social conditionality of the encroachments mentioned above is also due to economic transformations. The definition of the object of the crime has an important theoretical and applied significance since the correct definition of the object impacts clarifying the elements of the crime and its placement in the Criminal Code of the Russian Federation.

The object of the crime is also important for establishing the degree of public danger of the act, its correct qualification, and differentiation from other crimes and acts that are not crimes. In addition, the object of the crime allows to fully disclose the social and legal content of the committed act.

The essence of all crimes is not that they encroach on the security of society, that is, they are socially dangerous, but that they encroach on the order established in society with the help of legislation, which is necessary for the safety of citizens, society and the state. Thus, the common object of any crime is not public safety but the order of relations between people enshrined in legislation, which creates a social order necessary to ensure the country's security.

Social order should be ensured by exercising rights and performing duties by subjects exercising the rights granted lawful.

In characterizing the concept of the object of crimes in economics, it is necessary to focus on the correlation of the terminological designation of the corresponding type of crime. Furthermore, establishing the content of the concept of crimes aimed at undermining the country's security requires clarifying the essence of such a definition as "economic security."

In order to formulate the concept of crimes in the economic sphere, it is necessary to identify its essential features, based on which the definition is formulated. We believe that these crimes are characterized by certain essential features, which determine the content of the corresponding concept. Establishing the content of the concept of crime in the sphere of economic activity, in our opinion, is based on the general definition of «crime» defined in Article 14 of the Criminal Code of the Russian Federation.

Let us take the definition of a crime in the Criminal Code of the Russian Federation and its main features. It should be noted that illegality as a formal sign of a crime must be provided for in the criminal law. In the current Criminal Code of the Russian Federation, a significant part of the elements of crimes committed in the sphere of economic activity is contained in Chapter 22 of the Criminal Code, «Crimes in the sphere of economics» (Articles 158-204).

The need to criminalize crimes in the sphere of economic security of the country is because the degree and nature of the public danger of these acts indicate the impossibility of effectively countering them only by legislation. This is what forced the State to resort to criminal law response measures. The positive effect of which, subject to compliance with all other principles of criminalization and good work of law enforcement agencies, should significantly exceed the potentially possible negative social consequences.

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