
Issues of Criminal Protection of Entrepreneurial (Business) Activity

V.F. Tsepelev¹, E.A. Drozdova²

Abstract:

The article deals with issues of power squeeze on business in the context of criminal, political, criminological grounds both in the legal framework and legislative practices.

Authors analyze the number of laws and regulations as well as the the drafts of Modernization concept of the criminal legislative in economy and the federal law "On amendments to legal acts of the Russian Federation due to the introduction of legal entities' criminal and legal squeeze doctrine".

Authors illustrate the statistical data on the revealed crimes, criminal investigations filed and referred to court, data on guilty verdicts confirming the absence of such phenomenon as squeeze on business communities.

Authors give the grounded conclusion on the liberalization of criminal legislation related to business activity in Russia using certain cases. Thus, the criminal policy pursued in Russia in the field of entrepreneurial activity bears no relation with excessive squeezing of business. And excessive publicity of redundancy of countermeasures to crimes in this field has no sufficient grounds.

Keywords: *Criminality of Legal Entities, Criminal Policy, Business, Entrepreneurial (business) Activity, Criminal and Legal Squeeze*

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¹D.Sc., in Law, Professor, Honored Lawyer of the Russian Federation, Department of Criminal Law, O.E. Kutafin Moscow State Legal University (MSLU); Department of Criminal Policy, Academy of Administration of MIA of Russia

²Ph.D., in Law, Research Associate, Center of Penitentiary Security Studies (RC-3), Research Institute of the Federal Penitentiary Service (FSFI RI FPS of Russia, E-mail: Gorbunovala@ya.ru)

1. Introduction

Lately, the problem of the so-called "power squeeze" on business is debated a lot in mass media, public literature and scientific letters (Vedomosti, 2012; Volkov, 2005; Mah, 2013). As shown in the references list, this issue was submitted for discussion, first of all, by representatives of business community, that is quite logical and reasonable as they have the right to have certain interests. In this context, we shall analyze criminal, political and criminological grounds of the problem stated and its manifestations both in legal framework and legislative practices.

Years ago, a group of experts acting under the auspices of a well known public fund that represents interests of business community, prepared the draft of Modernization concept of the criminal legislative in the field of economics (LMF, 2011). The document constitutes a severe rationale for liberalization of criminal policy in this field. Specifically, the draft considers issues of criminal regulation of economy as well as assesses the current state of the criminal policy in the field of economics, state of economic crime and related legislative practices, analyzes economic grounds for modernization of the criminal doctrine, proves the rationale for liberalization of criminal policy, suggests grounds for criminalization and decriminalization of economic affairs, provides recommendations on the modernization of General part, Special part's Chapters 21 and 22 of the Criminal Code of the Russian Federation, provides the optimization of criminal proceedings on economic crimes and the reforming of correctional system as well. These approaches were later developed in the studies of same authors (CEBR, 2012). Other studies on the issue are also relevant (Garaev, 2012).

In the context of correcting the criminal policy in the field of economics, other suggestions aimed at widening the range of criminal liability subjects in the field of business activity are also proposed. Specifically, the Investigation Committee of the Russian Federation has prepared and submitted for discussion the draft federal law *"On amendments to legal acts of the Russian Federation due to the introduction of legal entities' criminal and legal squeeze doctrine"*.

2. Materials and methods

According to developers, the draft has been designed to form the legal framework through the application of criminal and legal squeeze on participation of legal entities in various criminal activities and contains provisions that regulate grounds for such squeeze on legal entities, range of subjects for the squeeze to be applied, criminal and legal measures, grounds for legal entities' relief from criminal and legal squeeze, grounds for emergence and terms of legal entities' convictions and the criminal procedure forms of criminal and legal squeeze on legal entities involved in crime, which collectively form an independent legal doctrine of criminal and legal squeeze on legal entities (Trunov, 2013). Current criminal legal system does not contain such norms, doctrines and institutions.

At the same time, developers of the draft note that in the last seven years there is an emerging trend of increase in crimes committed in interests or with the use of legal entities. Escalation of this phenomenon gives reasons to believe that in Russia a new type of criminality (the legal entities' criminality) has emerged (a foreign analog is "crime of corporations" or "corporate crime"). The specified type of criminality constitutes a real threat to all economic security of the state as well as to the rights and interests of responsible parties of economic affairs. In particular, the existence of legal entities' criminality could undermine the investment prospects of Russia (namely increases significantly the investment risks connected with vulnerability of Russian financial instruments from criminal offences), causing the capital outflow from the country. Criminality of legal entities destabilizes pillars of the economy in general, promoting recession of the key economic indicators including the growth of inflation, decrease in production level and capital outflow to the shadow economy (Esakov *et al.*, 2017).

To that end, we note that these statements have also negative social and legal consequences to be considered when developing and realizing the criminal policy in the field of economics (Yakovlev *et al.*, 2013). Thus, making the criminal offence of legal entities (corporations) is described as follows. First, it transfers consequences of such offence not only to the managers making administrative decisions, but also to all staff of the organization (which could be numerous and diverse); second, it brings a certain imbalance into the use of other tools of legal pressure on business activity due to emphasizing of criminal and legal pressure measures which normally are minor; third, it substantially breaks the grounds of criminal liability as it is hard to establish the subjective party of such a specific subject of crime as a legal entity (corporation). Finally, the issue with penalties applied to a legal entity (corporation) should be resolved in a different way.

So, the analysis conducted and based on statistical data on crimes in the field of business activity indicates that the excessive squeeze on business' assertion announced by the certain persons is not quite reasonable. Thus, in 2016 there were registered a total of 227.183 facts of crimes against property (Chapter 21 of the Criminal Code of the Russian Federation), substantially relating to business activity (including fraud (Article 159 of the Criminal Code of the Russian Federation), embezzlement (Article 160 of the Criminal Code of the Russian Federation), damage to property by false pretences or breach of trust (Article 165 of the Criminal Code of the Russian Federation) in contrast to total of 194.861 in 2012 and 299.291 in 2007. Regarding these crimes, 51.027 individuals were exposed in 2016, in comparison with 50.001 in 2012 and 97.622 in 2007.

The same is true for crimes in the field of business activity (Chapter 22 of the Criminal Code of the Russian Federation): 33.757 crimes in 2016 against 39.372 in 2012 and 97.793 in 2007 were registered, and the number of exposed individuals in 2016 totaled to 11.360 against 9.085 in 2012 and 27.619 in 2007.

In 2016, 2,485 crimes against interests of service in commercial and other organizations (Chapter 23) were registered against 2,585 in 2012 and 4,637 in 2007, and the number of exposed individuals totaled to 1,444 in 2016 against 1,050 in 2012 and 1,656 in 2007.

This trend has been actual for a decade (since 2007). At the same time, we should consider that crimes in the field of business activity have the increased latency in comparison with latency of general crimes. Far less such cases were sent to courts with the indictment (no more than 65-70% of the filed cases) and nearly the same number of cases (2/3 of the taken to courts) included convictions. According to Judicial department at the Supreme Court of the Russian Federation, for the last nine years the number of convicted individuals performing or participating in business activity or participating in it has consistently decreased and totaled: 12,171 in 2008, 9,314 in 2012, 9,883 in 2016: 2,067 of them (20,9%) have been sentenced to imprisonment. As for other penalties, courts generally (70-72%) sentenced and imposed restraints, fines, correctional treatment and conditional sentences as well. In this respect, extenuations were taken into account of 5,544 convicts, and aggravations were applied to 1,173 convicts.

As a result of amnesty for the ones who committed crimes in the field of business activity, as of January 15, 2014, nearly 1748 people were released, and the amendments made totaled to 1,7 billion rubles. Moreover, a general amnesty was carried out that substantially involved individuals who committed the crimes analyzed. Thus, in 2016 under the act of amnesty, courts released 674 convicts connected with business activity, among them: 255 people were released from imprisonment and 419 people were released from other legal penalties. On other grounds, 100 convicts of this category were released, including 23 ones from imprisonment and 77 ones from other legal penalties or without sentence. Moreover, in 2016 courts released from criminal liability 3,931 individuals involved in business activity, including 466 individuals on vindication grounds and 3,465 individuals released on other grounds.

3. Results and conclusion

The circumstances given raise the following question: what is excessive squeeze on business community and its representatives that are arraigned on a criminal charge caused by the abuse in the process of business activity? Obviously, it is the manifestation of business community's desire to minimize participation of the state in the economic affairs.

We believe that a considerable share of the crime prevention problem in the field of business (entrepreneurial) activity lies in responsible, law-abiding behavior of business community representatives. Appropriate criminal protection of the normal economic activity should be advantageous for them (for example, maintenance of competition, bankruptcy proceedings, securities issue, etc.). At the same time, the

crime rate in economy indicates that such a responsible attitude of ones involved in business activity and the related representatives of public authorities, is still quite uncommon. And that means that it is far too soon to dismiss criminal and legal tools of criminal in the field of business activity.

Certainly, both criminal legislation in this field and practice of its application should be improved. It would seem that statements noted before include not only questionable changes caused by division of Article 159 of the Criminal Code of the Russian Federation "The Fraud" on number of special components of crime (Article 159-1 – 159-6), but also additions to Chapter 22 of the Criminal Code of the Russian Federation with new elements of crime. We could assume that other legislation drafts aimed at improving the criminal policy in the considered field will be introduced as well.

These statements give all grounds to claim that criminal policy in modern Russia has the trend of liability liberalization for crimes in the field of business. And number of corresponding changes in the criminal and remedial legislation simply prove it.

Thus, the Article 761 "Exemption from Criminal Liability on Crimes in the Field of Business Activity" was introduced into the Criminal Code of the Russian Federation, by the Federal law of December 7, 2011 No. 420-FZ. According to Part 1 of this article, the one who committed the crime provided by Articles 198-199 of the present Code for the first time, shall be exempted from criminal liability if the damage caused to the budgetary system of the Russian Federation as a result of the crime is completely compensated. The given statement essentially duplicates corresponding notes to Criminal Code articles listed above, establishing the same grounds for exemption from criminal responsibility.

Part 2 of Article 76 of the Criminal Code establishes an order on exemption from criminal responsibility of ones who committed a wider range of crimes in the field of business activity for the first time, if they have compensated the damage caused to a citizen, organization or state as a result of commitment of such crime and has transferred double monetary compensation to the federal budget or has transferred the income received as a result of the crime commitment and a double monetary compensation to the federal budget of the income received as a result of the crime commitment.

Previously, Federal law of December 29, 2009 No. 383-FZ has brought Part 1 into Article 108 of the Criminal Procedure Code of the Russian Federation, saying that confinement as a restraint measure shall not be applied to the ones suspected or accused of a number of crimes in the field of business or economic activity, in the absence of the circumstances specified in Clauses 1-4 of Part 1 of the present Article (when the suspected or accused of a crime has no permanent residence in the territory of the Russian Federation, or the personality has not been identified, or they have violated the restraint measure chosen before, or they have escaped from

preliminary investigation bodies or from a court). The resolution of the Supreme Court Plenum of the Russian Federation of December 19, 2013 No. 41 "On Practice of Application by Courts of the Legislation on Restraint Measures in the form of Remanding in Custody, House Imprisonment and Bail" supports such an approach as well.

In particular, Paragraph 7 of this resolution gives guidance: *"to take note of courts to the features of applying the restraint measures prescribed by the law in the form of confinement of suspected and the accused of crimes in the field of business and other economic activity"*.

Part 1 of Article 108 of the Criminal Procedure Code of the Russian Federation sets ban on application of remand in custody in the absence of the circumstances specified in Clauses 1-4 of Part 1 of Article 108 of the Criminal Procedure Code of the Russian Federation, regarding suspected or accused of the crimes provided by Articles 171-174, 176-178, 180-183, 185, 190 – 199 of the Criminal Code of the Russian Federation, without any other conditions. As for the ones suspected or accused of the crimes provided by Articles 159, 160, and 165 of the Criminal Code of the Russian Federation, the noted above is applied if *"these crimes are committed in the field of business activity."*

Developing the provision given in Clause 8 of the resolution, the Supreme Court Plenum of the Russian Federation determines: *"for solving the issue of the entrepreneurial nature of activity, courts should be guided by Paragraph 1 of Article 2 of the Civil Code of the Russian Federation that constitutes that business activity is independent activity conducted at the sole risk and aimed at persistent making of profit from the use of property, sales of goods, supply of labor or services by the individuals registered in the manner prescribed by law"*.

To clarify to courts, the crimes provided by Articles 159, 160, and 165 of the Criminal Code of the Russian Federation, should be considered the ones committed in the field of business activity if they are committed by an individual conducting the business activity independently or participating in the business activity which is conducted by a legal entity, and these crimes are directly connected with the specified activity. These include private (individual) entrepreneurs in case of crime connected with conducting of business and (or) managing of the owned property used for business activity, and also corporate bodies of the organization in the process of managing the organization or conducting business activity.

To sum up, the criminal policy and doctrine of the Russian state in the field of business (entrepreneurial) activity is highly reasonable and quite liberal. Posing the question on excessive crime countermeasures in this field has no sufficient grounds.

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