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COUNTERACTING ADMINISTRATIVE MISCONDUCTS IN THE SPHERE OF ECONOMIC ACTIVITY

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ABSTRACT

Purpose of the researcher was to study and analyze the experience of the international community in counteracting administrative misconducts in the sphere of economic activity on the example of the implementation of such measures in Germany and Poland. In the course of the study, the general scientific method of formal logic, the system-structural method, the method of rising from the abstract to the concrete, technical-legal, statistical and concrete sociological methods have been applied. In foreign countries, different approaches are used to regulate liability for economic crimes. In some countries, criminal sanctions are included in the positive administrative legislation (Poland), in others - in the criminal codes (Germany). The conducted study makes it possible to analyze international experience and choose the most effective model for national legislation. Research centers around developing the theoretical principles for the construction of administrative regulations on liability for

economic crimes, including a system of interrelated provisions of international legislation.

Key words: Administrative regulations, Counteracting crime, Economic crimes, International experience, Implementation of legal standards (norms), Economic Activity

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1. INTRODUCTION

Administrative responsibility is a necessary stimulator of compliance with the law; it fosters a sense of moral and legal duty towards the society and the state, and increase of the social-political activity of every citizen. The introduction of innovations in the regulations, establishing the composition of administrative misconducts, is carried out on a regular basis due to the fact that administrative responsibility is an institution, followed by dynamic development and constant changes, characterized by the need to constantly identify new acts that are objectively socially harmful and those that require a corresponding reaction from the side of enforcement authorities.

It is obvious that legal state coercion has a legal form of expression and is always implemented through legal relations. There is neither right outside the law, and there can be nor legal state coercion, but only a specific legal act can be a form of expression of state coercive will, and the one that has the highest legal force.

To experience the state coercion means to determine the place of coercion in the legal system; to identify and study the legal standards, including coercive measures; to determine their qualitative and quantitative characteristics; to assess the quality of the coercive effect; to identify differences and features of coercive impact on various social relations, etc..

However, on the other hand, when considering coercion in the legal system, we will inevitably face general problems of legal theory, legal regulation, law enforcement, etc., which are still relevant and require their solution. Thus, the normative structure perception of state coercion is impossible without eliminating the contradictions presented in legal science, scientific theories about the concept, content and structure of law.

Administrative penalties, by its nature, are essential elements of a coherent system of administrative coercive measures, aimed primarily at protecting public relations in the sphere of executive and administrative activities, protecting public order and ensuring public safety, observance of the rights and legitimate interests of the individual. That is, ultimately, administrative penalties fit into the system of normative regulation of public relations.

The concept of “punishment”, as a generalized theoretical category, is a scientific abstraction; it only directs the legislator to certain decisions when establishing specific sanctions in the law, depending on the signs of a particular type of punishment inherent in each type of legal restriction. The institution of administrative responsibility is being implemented due to the application of administrative penalties, occupying the most important place in the system of administrative and legal relations.

Administrative punishment is a state-established measure of responsibility for committing an administrative misconduct; it is applied to prevent the commission of new offenses by both the offender and other persons. Administrative punishment cannot be aimed at violation of

human dignity of an individual who has committed an administrative misconduct or causing physical suffering to him, as well as harming the business reputation of a legal entity.

Economic crime is a general term for several types of criminal acts related to industrial, commercial and other organized activities in the private or public sector of the economy. It centers around mercenary illegal activities carried out within or arising from a particular type of economic activity, which as such is or seems lawful We propose to analyze it using the Table 1.

Table 1 The most common types of economic crimes, being registered [1]

Misappropriation of property (assets)	Procurement fraud	Corruption and bribery	Cybercrime	Manipulation of accounting data
69	29	27	24	22

Economic crimes include activities such as: tax evasion, violation of antitrust laws, bribery, violation of bankruptcy law, breach of trust, fraud and misappropriation of property, violation of accounting rules, illegal copying of software, illegal use of state support programs, violation of fishing regulations for harvesting aquatic biological resources, insider trading, as well as currency manipulation. We propose to analyze it using the Figure 1.

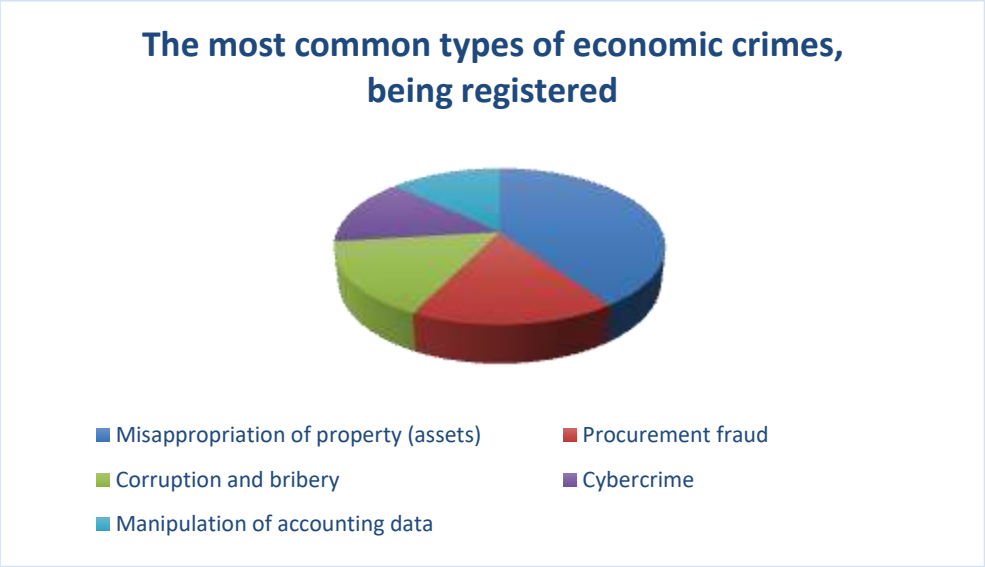

Figure 1. Visualization of the frequency of economic crimes committed [1]

Serious profit-motivated crimes are usually connected with the need to legalize income. Legalization of illegally obtained income is an act that is qualified as a major crime, most often carried out through the mediation of economic entities or financial institutions, that is defrauding of income is performed by other persons. For this reason, such actions are usually considered as a separate type of economic crime . In particular, the Member States of European Union (the article will consider measures to combat administrative misconducts in Germany and Poland) were called upon to develop definitions of the legal regulations applicable to offenses in their national jurisdictions and to establish sanctions (which should be effective, proportionate and restrictive) [2-3].

First of all, measures can be taken concerning the list of ten special areas of crimes of a transboundary nature. At least three of them (legalization of criminal proceeds, corruption and production of counterfeit means of payment) are classic economic crimes. In particular, EU financial market regulations are a good example of how criminal law can be a useful complementary tool to ensure effective enforcement. As the financial crisis has shown, financial market rules are neither always followed nor applied sufficiently. This can seriously chip away confidence in the financial sector. Strengthening the interaction of Member States' legal systems, including in administrative law, can help prevent the risk of improper functioning of financial markets and create a single legal framework in the internal market.

Achieving the set objective involves solving the following research tasks:

- to consider the concept of administrative misconducts in the sphere of economic activity in terms of normative and comparative perception;
- to reveal the connection between the processes of criminalization and decriminalization of acts in the economic sphere with the economic policies of states, which are considered as an example;
- to study the basic elements of the composition of administrative misconduct in the sphere of economic activity, using historical material, foreign legislation and international legal standards for comparison;
- to asses the system of misconduct in the sphere of economic activity in terms of the criteria for its construction and formulate proposals for its improvement;
- to forecast the development and improvement of norms on crimes in the sphere of economic activity;
- to formulate scientific recommendations on the application of criminal legislation on administrative misconducts in the sphere of economic activity.

The basic hypothesis of the study lies in the fact that effective counteraction to misconducts in the sphere of economic activity is possible only in case of deep incorporation with different countries of the world.

The degree of scientific elaboration of the problem, the issues of administrative misconducts have been considered in the works of such legal theorists as [4-5].

Issues related to combating economic crimes, including in the foreign economic sphere, have been revealed in the scientific works of many researchers. In particular, the studies of such scientists at [6] are devoted to these problems.

The issues of legal regulation and qualification of criminal infringements on the economic sphere have been covered in the researches [7-9].

Investigation in the field of lawmaking, including concerning the integration of national laws into the system of international law, has been conducted by [4].

Without diminishing the significance of the scientific developments of these authors, it should be noted that currently in modern legal science the problems related to the definition of administrative legislation in the system of measures to counteract economic misconducts have not been completely resolved yet. The issue of establishing the criminological conditionality of administrative regulation in this area, the criteria for recognizing illegal encroachments on the economic sphere also should be considered, as well as the definition of a specific set of technical and legal tools and the rules for its application in the statement of administrative standards on liability for economic crimes.

2. METHODS AND MATERIALS

The study is based on the general principles of scientific knowledge, namely: objectivity, comprehensiveness, completeness, historicism, unity of theory and practice. General scientific methods of formal logic have been used in the course of establishing the mechanism for creating criminal law standards and identifying factors affecting the criminalization of illegal encroachments on the sphere of economic activity, and in determining specific instruments of the legislative technique necessary in the construction of criminal law standards.

By using the system-structural method: the place of criminal law standards in the system of legal regulation of economic activity has been determined; the necessity to develop theoretical principles of construction of criminal law standards has been established; as well as the study of the place of criminal law construction theory on liability for economic misconducts in the general theory of legislative technique has been carried out.

Special methods, namely: technical legal, statistical and specific sociological methods (study of documents, surveys, involved observation, etc.) have been used during studying the criminological parameters of economic crime and identifying factors, influencing the criminalization of illegal encroachments on the sphere of economic activity. The application of the method of rising from the abstract to the concrete made it possible to formulate the theoretical basis for constructing rules on liability for administrative misconducts in the sphere of economic activity, taking into account the general provisions of legislative technique [5].

3. RESULTS OF THE RESEARCH

1. For the purpose of the most intensive response to economic crime with the introduction of administrative regulations on fraud with subsidies in accordance with §264 and credit fraud by virtue of §265, the German legislator has included two special forms of modern highly organized “white-collar crime”: firstly, through the introduction of special delivery supplies; secondly, in which false information is sufficient for punishability, and the onset of damage to property, as well as intentions, aimed at this, do not need to be proved.

Accordingly, the competitive delicts from the Competition Statute were actually transferred again by the developers to the 24th section of the Criminal Code of the Federal Republic of Germany, to the provisions of §283-283d and, at the same time, on the basis of the criminal policy requirements, were transformed into the standards on liability for false bankruptcy, and, to a greater extent, brought into line with the requirements of the principle of guilt. Thus, the heading of the section now points at “punishable acts related to bankruptcy”.

2. The provisions of §152a “On the falsification of European check forms and European check cards” were extended to all payment cards in order to ensure the protection of cashless payments. It should be noted that a new version of the provisions of §226b of the Criminal Code of the Federal Republic of Germany “On the punishability of abuse of check credit cards” is the best protection of non-cash money circulation. The action itself, which, according to the explanation of the Supreme Federal Court of the Federal Republic of Germany, in itself is not actually a fraud or abuse of trust, at the same time it becomes directly a crime in the case of presentation of a guaranteed check card of uncleared check.

3. From our point of view, the German legislator, continuing the reform of the legislation, seeks to comply with the changed technical and economic forms of business relations in the provisions of another Law “On the Fight against Economic Crime” as of May 15, 1986. Criminal law standards covering a highly organized form - computer crime, are in the foreground.

Thus, the following crimes, defined below, inflicts damage on someone else's data processing device, namely: "Computer fraud", according to §263a, the definition of which includes the misuse of missing and stolen cards for cash registers or ATMs, as well as exceeding the limit of provision by the authorized cardholder; "Falsification of evidence-important data" in accordance with §269, which have been entered or will be entered into the computer, herewith, falsification must be carried out in such a way that when reading damaged data it was revealed in the section "Forged or falsified document"; "Data modification" by virtue of §303a, which relates to information obtained or collected by electronic, magnetic or any other method not directly perceived as a method, as well as computer sabotage according to §303b.

The second group of new criminal law standards was composed of regulations on protection the system of cashless payments, in accordance with the provisions of §152a, §266b, which it was logical to apply to all types of payment cards, according to amendments made by the developers in §152a of the Law "On Criminal Law Reform". Due to the fact that the third group serves to protect individuals, seeking to invest money, saving on taxes or engaging in speculative transactions, investment fraud in accordance with § 264a, which is a highly organized dangerous compound "endangerment ...", should be specified here:

- fraud regarding the offer of securities, the preemptive rights of shareholders to purchase new shares and the right to share;
- new edition of §88 and §89 of the Law "On the Stock Exchange", regarding fraud with the rate through speculative transactions;
- new standard on progressive speculative advertising for clients in the form of so-called "Snowball systems" on the basis of the provisions of §6c of the Law "On Combating Unfair Competition". From our point of view the Law "On Liability for Economic Crimes" in the narrow sense includes a significantly expanded norm "On Industrial Espionage" - based on §17 paragraph 2 of the Law "On Combating Unfair Competition" (citing legislative acts for 4).

4. In Poland, top-level officials are particularly prone to committing economic crimes in the business environment. According to some national statistics data, such as employment, the share of various managers of the total population is about 5,9%, and the share of CEO (chief executive officers) of the same population is about 8% (that is 0,5% of the population). For comparison, the vast majority of people, convicted of official crimes, claim in court that they are high ranking officials or other first-level managers (43%), refer to Table 2. As a matter of fact, if you bring together all individuals holding top management positions (members of boards of directors, senior officials, owners / founders), then they make up 45%, of which 28% are referred to middle managers and only 16% - specialists without responsibilities. We propose to analyze it using the Table 2.

Table 2 The most common economic misconducts in Poland [1]

Official position at the time of the court hearing	Quantity	%
Chairman / member of the board of directors	16	7.2
CEO (chief executive officers)	36	16.2
Owner / founder	48	21.6
Middle-ranking manager	24	10.8
Accounting Specialist / Financial Specialist	15	6.8
Another full-time specialist	23	10.4
External consultant (for example, investment adviser)	30	13.5
Lawyer	5	2.3
Government official	8	3.6
Unemployed	17	7.6
Total	222	100

5. In Poland, legislation on administrative misconducts is almost completely separated from criminal law. This situation is due to the existence of old codes on administrative delicts, which regulate actions other than criminal law. The legislator of Poland, however, deliberately started creating the legislation on administrative delicts, separated from criminal law [6].

Although some provisions of the Criminal Code of the Republic of Poland, by analogy, apply to administrative delict. Despite the different nature of the law on administrative misconducts (its separation or belonging to the criminal law), it is distinguished by its extraordinary branching. The approved Concept of the Law on Administrative Penalties of Poland also states the expediency of uniting the composition of administrative misconducts in one codified at [10-11]. Although there are separate laws on misconducts in other countries, however they regulate the general provisions on the concept of misdemeanors, types of sanctions, the perpetrators. The possibility of establishing the composition of misconducts and penalties not only within the norms of laws, but also in acts of government and local governments is a characteristic feature of most countries [12-13].

4. DISCUSSION

The results of the study conducted show that:

1. The theory of legislative technique, developed within the general legal theory, and the branch doctrine on the technique of criminal law-making create a theoretical and methodological basis for the regulation of liability for economic crimes. However, it is not sufficiently instrumental, as it is of generalized, abstract nature and does not take into account (and cannot take into account) the specifics of criminal infringements on economic security, which negatively affects the quality of specific legislative decisions and gives rise to develop a private theory for constructing legal norms on liability for economic misconducts.

2. A retrospective analysis of the legislation has revealed the legal regulation patterns of liability for economic crimes in terms of the development of techniques for constructing administrative and legal norms, which are reflected in:

- the legislator's desire to consolidate criminal standards and administrative rules on liability for economic crimes (firstly - within the framework of the codified criminal and administrative law, and then - by separating the relevant standards in a separate chapter of the Administrative Code);
- changing the ways of concretizing the signs of crimes related to the negative impact on the economic sphere;
- shrinkage the scope of criminalization of illegal encroachments on the economic sphere under the influence of objective (emergence of new threats in view of the industry development) and subjective (change in the legislator's assessment of the significance of economic obligations) factors;
- intensification of responsibility differentiation through the construction of independent special regulations and qualifying features, reflecting the characteristics of the place and methods of committing a crime, the specifics of the consequences in the form of harm to the economic sphere, increased level of public danger due to the use of official position and group methods of committing an illegal act;
- expanding the alternative sanctions while maintaining the leading role of a fine as a form of punishment for economic crimes.

3. The legal regulation of social relations that have a negative impact on the economy is primary in relation to the introduction of penal prohibition, as the assessment of the deviation degree from the parameters of economic security is possible only at the level of positive regulation. Accordingly, the establishment of criminal liability is possible only for actions

recognized as illegal in the framework of economic legislation, which requires the widest possible use of blanket rule in the construction of criminal standards [14].

4. Legislative structures' imperfections of administrative legal norms on responsibility for economic crimes, expressed in the absence of clear normatively established features that make it possible to distinguish between criminal and administrative liability, create conditions for selective, capricious enforcement, for replacement of criminal liability with administrative. This is indirectly confirmed by the decrease in the number of registered economic crimes, which is observed against the background of an increase in related administrative offenses under constant conditions of intersectoral differentiation of responsibilities.

5. CONCLUSION

In foreign countries, different approaches are used to regulate liability for economic crimes. In some countries, criminal sanctions are included in the positive administrative legislation (Poland), in others - in the criminal codes (Germany). Herewith, the first approach becomes preferred due to the desire of the legislator to increase the general preventive value of administrative and legal prohibitions in such a way.

Despite these differences, there are general trends to expand the scope of administrative and legal protection in the legislation of a number of foreign countries by decriminalizing illegal encroachments that threaten to harm the economic sphere, financial security. They can be executed by constructing so-called inchoate crimes, as well as weakening the repressiveness of criminal sanctions for negative impact on the economic sphere by imposing a penalty in the form of a fine as an alternative to imprisonment. The study has showed that the effectiveness of combating criminal infringements on the economic sphere largely depends on the construction of criminal and administrative standards.

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