Anastasia A. Chavgun
student
Yaroslavl State University named after P.G. Demidov
Yaroslavl, Yaroslavl region

CRITICAL ANALYSIS OF THE NORMS ON CRIMINAL BANKRUPTCY IN THE LEGISLATION OF FOREIGN COUNTRIES

Abstract*: this article analyzes the features of criminal bankruptcy: excessive casuistry of norms in the legislation of a number of countries, an attempt by the legislator to cover the entire range of ways of committing a crime, which indicates an incorrect approach from the point of view of legislative technique; the other extreme is an abstract approach to the construction of a norm that provides a law enforcement officer with a high degree of freedom when deciding on the presence of corpus delicti in the act.*

Keywords*: foreign countries, intentional bankruptcy, insolvency, debtor, income.*

Чавгун Анастасия Александровна
студентка
ФГБОУ ВО «Ярославский государственный университет им. П.Г. Демидова»
г. Ярославль, Ярославская область

КРИТИЧЕСКИЙ АНАЛИЗ НОРМ О КРИМИНАЛЬНОМ БАНКРОТСТВЕ В ЗАКОНОДАТЕЛЬСТВЕ ЗАРУБЕЖНЫХ СТРАН

Аннотация*: в статье анализируются особенности криминального банкротства: исследуется чрезмерная казуистика норм в законодательстве ряда стран, попытка законодателя охватить весь спектр способов совершения преступления, что свидетельствует о неправильном подходе с точки зрения законодательной техники; другая крайность – абстрактный подход к построению нормы, предоставляющий сотруднику правоохранительных органов высокую степень свободы при принятии решения о наличии состава преступления в деянии.*

***Ключевые слова**: зарубежные страны, преднамеренное банкротство, несостоятельность, должник, доход.*

Considering the shortcomings of the provisions of the criminal codes of foreign countries, the following can be distinguished. For example, Article 314–7 of the French Criminal Code provides for liability for actions aimed at aggravating or organizing the insolvency of a person. The description of the objective side is quite classically presented as two alternative actions. The methods of committing an act are: increasing the liabilities or understating the assets of a person, as well as hiding or understating all or their income, hiding or underestimating the value of the property available to the person. One of the mandatory conditions for the recognition of an act as criminal is the presence at the time of its commission of a court verdict of a property nature in criminal cases, or a corresponding decision in civil or administrative cases. The French legislator does not distinguish between a bankrupt individual and a bankrupt business entity [1, p. 34].

In addition, the objective side of the crime is unusually described in the aspect of describing actions aimed at bringing a person into a state of insolvency. If we compare the French Criminal Code with the Criminal Code of the Russian Federation in this part, we can see that a foreign legislator combines the acts presented in two articles of the domestic code, namely: Part 1 of Article 195 («unlawful actions in bankruptcy») and

Article 196 of the Criminal Code of the Russian Federation («intentional bankruptcy»). Of course, the composition of Article 196 of the Criminal Code of the Russian Federation in the criminal law of France is not fully represented, but only in terms of increasing the insolvency that has already appeared in the person. From the above, it is obvious that the structure of the Criminal Code of the Russian Federation allows us to separate these undoubtedly different criminal acts in their meaning, and therefore the variant of the description of the compositions in the domestic codex seems to me more optimal [2, p. 67].

Above, we talked about the provisions of the Criminal Code of the Federal Republic of Germany on criminal bankruptcy. With all the advantages, the main

disadvantage is the excessive overload of articles (paragraphs), which often «sins» the domestic legislator. The structure of the Criminal Code of Germany allows some of the provisions to be transferred to the initial articles of the Code [3, p. 98].

Of particular interest is the legislation of the Baltic countries, which have adopted a number of provisions from both (post)Soviet legislation, and from the legislation of European countries. For example, the Criminal Code of Latvia provides for a broad system of norms on crimes in the field of criminal bankruptcy. Thus, Article 214 of the Criminal Code of Latvia includes two parts. Part 1 establishes liability for failure by a person to file a bankruptcy application in cases where the filing of such an application is expressly provided for by law, as well as for filing a bankruptcy application containing false information. If we talk about the introduction of such a composition into domestic criminal law, then it is worth noting that there are certain advantages in the bankruptcy procedure for the debtor – an economic entity, in connection with which it is hardly worth saying that concealing one's own insolvency is a mass phenomenon. One of the principles of criminalization of an act is the regulation of widespread social phenomena, therefore, the inclusion in the Criminal Code of norms designed for a single application seems inappropriate from the point of view of criminal policy [4, p. 39].

The structure of Part 2 of Article 214 of the Criminal Code of Latvia is similar in content to the structure

Article 197 of the Criminal Code of the Russian Federation, but while maintaining the formality of the composition, as in Part 1 of Article 214 of the Criminal Code. In my opinion, in the criminal codes, the most striking sign of borrowing the «European approach» is the formality of the criminal bankruptcy compositions: «Filing an application for insolvency, in which deliberately false information is presented or information is hidden, if an insolvency process can be announced or has been announced due to the application (a deliberately false statement of insolvency)" [5, p. 122]. Such an approach to the formalization of compositions greatly facilitates the work of law enforcement officers to prove the existence of the corpus delicti, but is fraught with excessive criminal repression. I see the achievement of balance exclusively in the field of law enforcement, the formation of a certain practice.

In general, the analysis of foreign legislation on criminal bankruptcy allows us to highlight the following features.

1. The absence of the existing division in Russian legislation of the elements of crimes related to bankruptcy into unlawful actions in bankruptcy, intentional bankruptcy, fictitious bankruptcy. Two approaches prevail in the criminal codes of foreign countries. For example, Germany, Spain, England, etc. adhere to the «lists» approach, that is, the criminal legislation of the above-mentioned countries contains lists of acts that in domestic criminal legislation act as ways of committing all types of criminal bankruptcies. The second approach is that there is an indication in the criminal Code that any actions aimed at creating situations of insolvency will be criminal (the most prominent representative of this approach is the legislation of France). The introduction of one of the approaches into domestic legislation is impractical, but understanding the composition of criminal bankruptcy would facilitate the adoption of appropriate explanations by the Plenum of the Supreme Court of the Russian Federation on the range of actions that may indicate the presence of signs of criminal bankruptcy in the actions of a person.

2. Refusal to use optional features of the objective and subjective sides of the crime when describing the main elements of crimes. The foreign legislator uses these signs when describing more serious cases of malicious bankruptcies. In domestic legislation, the use of this approach is not seen as optimal for the following reasons: a) the «materiality» of the components of criminal bankruptcy, as a consequence, the absence of the need to separately indicate the consequences in the form of harm; b) the predominance of a selfish motive on the part of the subject of the crime in its commission; c) active criticism of the compositions of creating danger.

3. The construction of criminal bankruptcy structures on the principle of formal. This trend is typical for the legislation of most developed foreign countries. The abundant use of notes, which, on the one hand, helps the law enforcement officer to better understand the logic of the legislator, and on the other hand, clutters and complicates the text of the criminal law.

4. The description of bankruptcy crimes in the criminal law of foreign countries is not without drawbacks. The main disadvantages that we were able to identify as a result of the analysis are: – excessive casuistry of norms in the legislation of a number of countries, an attempt by the legislator to cover the entire range of ways of committing a crime, which indicates an incorrect approach from the point of view of legislative technique; – the other extreme is an abstract approach to the construction of the norm, giving the law enforcement officer a high degree of freedom when deciding on the presence of the corpus delicti in the act.

In conclusion, I would like to say that an appeal to foreign legislation regarding the regulation of liability for criminal bankruptcies in order to improve existing criminal law norms can be beneficial, but only on condition that this appeal will not be expressed in blind copying, but within the framework of a selective approach, taking into account the peculiarities of domestic law.

Список литературы

1. Grover Mitchell. Corporate bankruptcy in the USA: features of detection and counteraction. Geneva: Primer Publishing House. – 2009.

2. Марьина Н.Н. Криминальные банкротства: особенности совершения / Н.Н. Марьина // Вестник КРУ МВД России. – 2012. – №3.

3. Poczanski N. Lidjren. Responsibility for criminal insolvency in the assessments of modern European jurists. Strasbourg: «Scientific legal thought». – 2012.

4. Бобков А.В. Криминальное банкротство в исторической ретроспективе / А.В. Бобков // Социальные конфликты в правовом контексте: анализ и проблемы регулирования: Сб. научных работ аспирантов и соискателей. – Омск: Омский государственный университет им. Ф.М. Достоевского, 2005.

5. Васильев Е.А. Гражданское и торговое право капиталистических государств / Е.А. Васильев. – М., 1993.