

DALLA COMUNITÀ INTERNAZIONALE

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The limits of criminal law and the economy model

Criminal law is an important means of combating economic crimes. However, for each country, the impact that criminal law has on the economy is different. Therefore, the question arises, what factors influence this? In the framework of this study, the economic model is considered as such a factor. The article discusses the impact that criminal laws of a state have on the economy, focusing on the classic economic models using the examples of the criminal legislation of China, Germany and the USA.

The purpose of the study is to show the relationship between the level of criminal law's impact on the economy and the economic model. The study required the use of comparative legal and dialectical methods of cognition.

In particular, the article notes that the level of criminal law's impact in a planned economy is much higher than in states with a market or mixed economy (having market institutions, but at the same time retaining a significant state role). Thus, a mixed economy is an existing modern economic model, since market and planned economies do not exist. However, the mixed economic model is different across countries and varies depending on a large number of political, economic, social and other factors. As an example of a mixed economic model, the legislation of Germany is chosen as one of the largest 'classical' mixed economies in the world. At the same time, during the transition period (during the transformation of the economic model), the following contradiction occurs: the extent of the impact of criminal law on economic relations are reduced, but the role of criminal law in the protection of these economic relationships is increasing. All spheres within the economy that feel some impact of criminal law can be conditionally divided into two groups: a) spheres that protect the role of the state in the existing economic model; b) those areas that protect inter-company relationships in the economic model. For countries in which market relations are developed (market or mixed economy), the importance of market institutions in protecting economic relations is characteristic.

I limiti del diritto penale e il modello economico

Il diritto penale è uno strumento importante per combattere i crimini economici. Tuttavia, per ogni paese, l'impatto che il diritto penale ha sull'economia è diverso. Pertanto, sorge la domanda: quali fattori influenzano questo? Nel quadro di questo studio, il modello economico è considerato come tale fattore. L'articolo discute l'impatto che le leggi penali di uno Stato hanno sull'economia, concentrandosi sui modelli economici classici utilizzando come esempi la legislazione penale di Cina, Germania e Stati Uniti.

Lo scopo dello studio è quello di mostrare la relazione tra il livello di impatto del diritto penale sull'economia e il modello economico. Lo studio ha richiesto l'uso di metodi cognitivi comparativi giuridici e dialettici.

In particolare, l'articolo rileva che il livello di impatto del diritto penale in un'economia pianificata è molto più elevato che negli Stati con un'economia di mercato o mista (che hanno istituzioni di mercato, ma allo stesso tempo mantengono un ruolo statale significativo). Pertanto, un'economia mista è un modello economico moderno esistente, poiché non esistono economie di mercato e pianificate. Tuttavia, il modello economico misto è diverso da paese a paese e varia in base a un gran numero di fattori politici, economici, sociali e di altro tipo. Come esempio di modello economico misto, la legislazione tedesca

viene scelta come una delle più grandi economie miste "classiche" del mondo. Allo stesso tempo, durante il periodo di transizione (durante la trasformazione del modello economico), si verifica la seguente contraddizione: la portata dell'impatto del diritto penale sulle relazioni economiche è ridotta, ma il ruolo del diritto penale nella tutela di queste relazioni economiche è in aumento. Tutte le sfere dell'economia che risentono dell'impatto del diritto penale possono essere condizionatamente suddivise in due gruppi: a) sfere che proteggono il ruolo dello Stato nel modello economico esistente; b) quegli ambiti che tutelano i rapporti interaziendali nel modello economico. Per i paesi in cui sono sviluppate relazioni di mercato (economia di mercato o mista), è caratteristica l'importanza delle istituzioni di mercato nella protezione delle relazioni economiche.

SUMMARY: 1. The limits of criminal law's impact on the economy in states with a with planned economies (based on the example of China). - 2. The limits of criminal law's impact on the economy in states with a mixed economy (based on the example of Germany). - 3. The limits of criminal law impact on the economy in countries with a market economy (on the example of the USA). - 4. Conclusion.

1. The limits of criminal law's impact on the economy in states with a with planned economies (based on the example of China). The role of the state, in the economy, is not a constant value. Even at the present stage of development of society, state intervention in the economy is equivalent, as a result of which the unequal level of criminal law's impact on the economy looks natural. We will find an even more tangible difference in the degree of state intervention in the economy if we turn to a historical analysis of this issue. The most interesting, from the point of view of studying the role of the state in the economy, and the criminal law's impact on it, is the change in the limits of state intervention in the economy in light of the change in the economic models of society. It seems that it is necessary to study the most common and relevant models.

The well-known American economist J. Sloman, in relation to the issue of classifying the economic systems of modern society, notes: "All societies are faced with the problem of limited resources. However, they differ significantly from each other in how this problem is solved. One important difference between societies is the degree of government control over the economy. At one extreme is the fully planned or command economy, where all economic decisions are made by the government. On the opposite side is a completely free market economy. This economic system is characterized by non-intervention of the government in the economy. All decisions are made within the market. In practice, all types of economic systems contain elements of both of the

above. Therefore, it is the degree of government intervention that distinguishes different economic systems. Thus, in the former communist countries of Eastern Europe, the government played a significant role, while in the US, the role of government is much less. In reality, market and command economies do not fully exist, but there are various types of mixed economy, to some extent approximate and distant from "pure models". In the beginning of the 21st century, the economy of North Korea is the closest thing to a purely planned economy, followed by Cuba and China, whereas the economy of Hong Kong is closest to a market economy, followed by the United States, Great Britain and France².

In the economic literature, the command economy is described as a system dominated by public (state) ownership of the means of production, collective economic decision-making, and centralized management of the economy through state planning³. The main characteristic features of a command economy are monopolism, as well as the redistributive principle of product distribution, that is, the involvement in both power and in the distribution of products. In conditions of strict implementation of plans, enterprises are deprived of the opportunity to divert funds for scientific development and technical improvement of their products, and as a result, the technical development of the entire economy is also hindered⁴. The most striking historical example of an economy being as close as possible to a command economy is that of the USSR. Although it is noted that even the USSR, to a certain extent, retained the remnants of private property and to some extent relied on market planning⁵.

It is appropriate therefore, that a study of the role of criminal law in the protection of economic relations for states close to a planned economy should be carried out, based on the example of the criminal legislation of the PRC, being the largest economy of this type.

Serious changes in the economic model in China began after 1978, when

¹ SLOMAN, *Economics, Express course*, St. Petersburg, 2007, 37-38.

² SLOMAN, *Economics, Express course*, cit., 37-38.

³ NUREEV, *Course of microeconomics*, Moscow, 2005, 62-63.

⁴ MIKHAILUSHIN-SHIMKO, *Economics*, Moscow, 2001, 68-69.

⁵ MIKHAILUSHIN-SHIMKO, *Economics*, cit., 68-69.

government restrictions on the economy were largely relaxed. As a result, new areas of economic activity have emerged, such as private enterprise, the stock market, insurance, and the futures market. However, significant state control remains over them, and China's criminal law doctrine recognizes that one of its main goals is to combat "counter-revolutionary crimes" in the economic field⁶.

It is recognized that in recent decades there have been significant changes in the structure of economic crime. China gradually began to move away from the classic planned economy through the introduction of market institutions. All this has led to a significant increase in the level of crime⁷. The development of the economy has led to, among other things, the development of new criminal phenomena unusual for the Chinese socialist economy (such as money laundering, fraudulent tax evasion, check forgery, violation of intellectual property rights, counterfeit medicines and food). This is largely due to the development of the Chinese economic model. As a consequence, such changes require a government response, and Chinese criminal law has been very dynamic in recent years⁸. One of the features of economic crime in China, which was studied on the example of financial crimes, is that, unlike most countries in the world, the specificity of such crimes in China lies in the fact that financial crimes are committed by persons with the same personality traits as the offender involved in other crimes⁹.

The changes that have taken place in the structure of crime in China, which are associated with changes in the economy and the development of the economic model, have affected the criminal law in the field of protecting economic relations. Legal studies note that the Chinese law enforcement system continues the policy of strengthening the control of white-collar crime, while recognizing that market regulators are not enough and state intervention is

⁶ CHEN, *Criminal law and the Criminal procedure law in the People's republic of China*, Boston, 2013, 38-39; SHULTZ, *Economic crimes in the People's Republic of China: A Swinging Door Policy*, in *American University International Law Review*, 1989, 5, 161-205.

⁷ CHEONG-WU, *Inequality and crime rates in China*, Perth, 2013, 33-34.

⁸ BROADHURST-BACON-SHOE-B. BOUHOURS-T. BOUHOURS, *Business and the Risk of Crime in China*, Canberra, 2011, 8-11. (297).

⁹ HONGMING, *Financial crime in China. Developments, sanctions and systemic spread of corruption*, Palgrave, 2016, 10-12 (194).

required¹⁰.

This is evidenced by the dynamics of criminal legislation. The chapter establishing liability for economic crimes in the original version of the PRC Criminal Code of 1979 included 15 articles, whereas the current PRC Criminal Code of 1997 (in 1997, an official new edited version of the PRC Criminal Code was adopted) establishes liability for crimes in the sphere of economic activity and contains a significantly larger number of articles (Articles 140-231)¹¹. Thus, Chinese criminal law reacted to changes in economic processes in society. A partial transformation of the economic model, with the inclusion of market elements, required a significant restructuring of criminal law.

It should be noted that this chapter is referred to by the Chinese legislator as 'Crimes aimed at undermining the socialist market economy'. Thus, the Criminal Code of the People's Republic of China emphasizes that criminal legislation is oriented towards the protection of socialist economic relations. China's criminal law doctrine traditionally emphasizes that the most important mission of criminal justice is to implement the policy of the Chinese Communist Party¹². This approach shows the close relationship between the overall political model and the role of criminal law. In a planned economy, there is always a close relationship between criminal law and the economic model, which manifests itself in the fact that criminal law is designed to protect the rules established by the state for conducting economic processes. In reality, protecting the interests of the state is the main regulator of economic processes.

The inviolability of the state's role in the economy is also guaranteed by harsh penalties for encroachments on the existing order of economic activity. Western legal studies on the problems of economic or white-collar crime in China emphasize that one of the main features of Chinese criminal law is the imposition of severe punishments from the state, which perceives such crimes as

¹⁰ GHAZI-TEHRANI-PUSHKARNA-SHEN-GEIS-PONTELL, *White-collar and corporate crime in China: a comparative analysis of enforcement capacity and non-issue making*, in *Crime, Law and Social Change*, 2013, 5.

¹¹ Criminal Code of China, in www.china.org.cn/english/government/207319.htm.

¹² EDWARDS, *Reflections on crime and punishment in China, with appended sentencing documents*, Maryland, 1977, 13-14.

much more socially dangerous than is customary in the United States and a number of European countries, in which the use of the death penalty for such crimes is unacceptable¹³. However, we note that in recent years, China has begun to abandon such frequent use of the death penalty. In particular, as a form of criminal punishment it was excluded from 12 offenses, including those of an economic nature. Although it should be borne in mind that this factor is generally associated with the political decision to reduce the number of death sentences in China.

With regard to the role of criminal law in the protection of economic relations in the PRC, it is necessary to highlight a number of aspects:

1. The ongoing economic reforms aimed at the liberalization of economic processes, and the subsequent innovative and social changes, directly affected the impact of criminal law on the economy of the PRC¹⁴. The introduction of individual market mechanisms of the innovative economy could not but affect the changing role of criminal law in the protection of economic relations. Despite the fact that the leading role of the state in the economy is still not in doubt, and the criminal law, accordingly, protects the leading role of the state in the economic sphere, the emergence of separate market institutions led to the transformation of the role of criminal law, which was also supposed to protect the interests of the market.
2. The economic reforms carried out in China have resulted in a number of negative aspects, in particular, significant environmental damage, increasing levels of inequality among the population, and a significant increase in economic crime, which the current criminal law could not cope with¹⁵. This factor required strengthening the role of criminal law in the field of protection of economic relations. Increasing the level of criminalization of the economy is a natural process in any transition period. In the Chinese economy, while maintaining the planned model, only separate elements of the market appeared, which led to the strengthening of the role of criminal law. This factor is ex-

¹³ BRODY-LUO, *Fraud and white-collar crime: a Chinese perspective*, in *Cross Cultural Management*, 2009, 3, 317-326.

¹⁴ CURRAN, *Economic reform, The floating population, and crime*, in *Journal of Contemporary criminal justice*, 1998, August, 261-280.

¹⁵ GHAZI-TEHRANI-PUSHKARNA-SHEN-GEIS-PONTELL, *White-collar and corporate crime*, cit.

plained, first of all, by the need to protect new social relations that emerged in this period.

3. As a result, over the past 40 years, criminalization has prevailed over decriminalization in China's criminal law. At the same time, in the doctrine it is considered moderate. This trend is caused by serious social and economic changes taking place in Chinese society. It is assumed that with the end of economic reforms, a number of acts criminalized during the period of such restructuring and partial changes in the planned economic model, and the introduction of market mechanisms into it, will be decriminalized again¹⁶. The factor of "temporary criminalization" in relation to acts that encroach on economic relations is characteristic of the transition period. However, 'temporary criminalization' can take place without changing the economic model and in the process of implementing reforms within the framework of the current model, which is currently observed in China.

4. In the context of the introduction of market elements into the planned economy, one of the serious challenges for Chinese society is the issue of combating corruption, which is perceived as an encroachment on economic relations. There are severe penalties for acts of corruption¹⁷. In China, the concept of economic crimes is considered complex and is similar to the content of the concept of "white-collar crime", characteristic of the American and British doctrine. This applies to both the public sector and the private sector. The ongoing economic reforms have led to an increase in the number of corruption attacks. In this context, the Chinese legislator assigned a significant role to criminal law measures to counter this phenomenon. However, the emphasis was placed on tougher penalties for these acts. In many cases, the death penalty or life imprisonment could be applied for crimes of corruption.

5. In addition to corruption crimes, financial crimes, primarily bank fraud, became a significant challenge during the period of economic reforms and the complication of the planned economic model with market elements. The

¹⁶ DONGMEI-BINJI-VASILIEV, *Problems of criminalization in the criminal law of China*, in *All-Russian Journal of Criminology*, 2019, 1, 142-151.

¹⁷ KEITH-LIN, *Economic crime in China's transition to Rule of law economy*, in *China report*, 1999, 2, 144-163.

response to criminal challenges by the Chinese legislator was not so much a change in criminal law in terms of expanding responsibility, but also, as in the case of corruption, the establishment of severe penalties, up to life imprisonment and the death penalty¹⁸. Thus, we can talk about the presence of a certain trend of the state response in China to an increase in the level of criminalization of the economy. The specificity of state regulation in general, and the severity of the measures applied in relation to other criminal acts, perceived by the Chinese legislator as socially dangerous, led to the establishment of the most severe penalties for crimes committed in the economic sphere. At the same time, in recent years, there has been a tendency in the criminal legislation of China to reduce the severity of punishments for a number of crimes of an economic nature, which is explained by both a decrease in the number of attacks in some areas of the economy, and in general by the policy of reducing the level of criminal repression.

In terms of the impact criminal law on the economy of the PRC, we will single out the main areas of economic activity in which the state intervenes by utilizing criminal law policies and procedures:

- a) production and distribution of low-quality products; production and sale of counterfeit medicines that can harm human health. It should be noted that in practice, a person found guilty of producing or selling counterfeit medicines, as a rule, is given a harsh sentence, in particular, the sentence against Mo Yunbiao, who was sentenced to 10 years in prison for manufacturing counterfeit Viagra, is noted¹⁹.
- b) smuggling and related activities.
- c) crimes against the order of management of companies and enterprises. Responsibility for criminal acts in this area is established in 12 articles of the Criminal Code of the People's Republic of China. As a rule, these acts are malfeasance in certain areas of economic activity, such as bankruptcy, enterprise management, etc.
- d) crimes that encroach on public relations in the financial sector. The largest

¹⁸ CHENG-MA, *White collar crime and the criminal justice system*, *Journal of financial crime*, 2009, 2, 166-179.

¹⁹ AKHMETSHIN, *Criminal law of the People's Republic of China*, Moscow, 1999, 131.

number of articles is § 4 Ch. 3 of the Criminal Code of the People's Republic of China, which combines 22 articles. In fact, this paragraph combines crimes that infringe on public relations in the sphere of the circulation of funds and securities, the banking sector, relations arising in connection with the safety of trade secrets, etc.

e) Crimes on the stock market. Three articles of the Criminal Code of the People's Republic of China (articles 180-182) are devoted to this issue. They establish liability, in particular, for insider trading and market manipulation.

f) Malfeasance in the banking sector.

The Chinese legislator actively protects the banking sector. Paying attention to the design of criminal law norms aimed at combating violations in the banking sector, one cannot fail to note the focus of these norms on protecting the rights and interests of depositors, the state, and the banks themselves in relation to illegal actions on the part of bank employees. On the other hand, the PRC Criminal Code protects the interests of banks by establishing liability for fraudulently obtaining a loan.

g) Fraudulent activities in the field of economic activity.

In § 5 ch. 3 of the Criminal Code of the People's Republic of China (Art. 192-200 of the Criminal Code of the People's Republic of China) there are articles establishing liability for committing fraudulent acts in the field of economic activity. In the legal literature, attention is drawn to severe sanctions for all crimes under this paragraph - found in article 198 - fraudulent activities in the field of insurance - the maximum punishment is set in the form of imprisonment for a term of ten years or more; the rest of the articles provide for life imprisonment or the death penalty as the maximum penalty²⁰. Also noteworthy are the large number of articles on financial fraud in various fields of activity: insurance, fraudulent activities with letters of credit, fraudulent activities with credit cards, etc.

h) Tax crimes.

A separate sphere of the criminal laws' impact on the economy in China is formed in the tax sphere. Responsibility for the crimes of this group is provided for in § 6 Ch. 3 of the Criminal Code of the People's Republic of Chi-

²⁰ AKHMETSHIN, *Criminal law of the People's Republic of China*, cit., 153.

na (Articles 201-212 of the Criminal Code of the People's Republic of China). By establishing such a broad legal regulation of responsibility for tax crimes, the Chinese leadership solved the problem of shortfalls in budget funds as a result of non-payment of taxes or other fees.

Attention is drawn to two main features of Chinese criminal law in the field of combating tax evasion or other payments. Firstly, the detailed regulation of responsibility for these acts, as evidenced by the large number of articles in the Criminal Code of the People's Republic of China establishing responsibility for this group of crimes, indicates the important role of criminal law in relation to this issue. Secondly, the severity of punishments for crimes in the field of taxation; in a number of articles, for the most serious forms of these acts, life imprisonment or the death penalty can serve as a punishment.

i) Crimes against intellectual property.

In § 7 ch. 3 of the Criminal Code of the People's Republic of China therein contain acts related to infringement of intellectual property. At the same time, taking into account the peculiarities of China's economic development, the limited interest of the Chinese legislator regarding the problem of trademark falsification is not surprising. The situation in this matter changed only in the 1990s, when the protection of intellectual property rights became a priority for the authorities for two main reasons. First, Chinese goods did not meet the high standards of international trade in the context of globalization and liberalization. Secondly, China's entry into the World Trade Organization and, as a result, the obligation to bring its domestic legislation in line with global standards²¹. On the other hand, the expansion of responsibility for crimes in the field of intellectual property largely occurred under pressure from the United States, which, being China's largest trading partner, insisted on the need to protect intellectual property rights. As a result, the number of criminalized acts in this area has been significantly increased²².

A feature of the crimes placed in this paragraph are relatively mild sanctions for their commission. In particular, for most acts, the punishment cannot ex-

²¹ AKHMETSHIN, *Criminal law of the People's Republic of China*, cit., 157-158.

²² GEIS-PONTELL, *Introduction: White-Collar and Corporate Crime in Asia*, in *Asian Criminology*, 2010, 5, 83-88.

ceed 3 years in prison, for the rest, with rare exceptions, 7 years in prison.

k) Crimes aimed at undermining the legitimate activities of the market.

In § 8 ch. 3 of the Criminal Code of the People's Republic of China can be found various acts connected with undermining the legitimate activities of the market. They cover the following areas: the legal conduct of public auctions; carrying out economic activities without a license, as well as buying and selling an export-import license; forcible coercion to buy, sell goods or provide services; protection of the business reputation of the company; advertising; land relations.

An analysis of the doctrine of Chinese criminal law²³ in the context of liability for economic crimes shows that the limits of criminal liability for economic crimes in China are currently being revised, in particular, criminal legislation is being modernized in the area of liability for smuggling, counterfeiting, crimes in the pharmaceutical sector, crimes encroaching on normal functioning of financial administration, etc.²⁴ Thus, there is a change in the limits of criminal liability for economic crimes in parallel with the development of the socialist economic model. In the future, these limits will also be significantly modernized.

In this context, we note the following:

1. The role of criminal law in the Chinese economy is significant. One of the main criteria for identifying the role of criminal law in the protection of economic relations is the extent to which criminal law prohibitions change the border of freedom in the behavior of people involved in economic relations. In this regard, it is of great importance that the specificity of the planned economic model, with a large role of the state in the economy, suggests that criminal law protects its interests by establishing prohibitions in those areas of activity in which it does not allow the emergence of private institutions, which is an objective need to protect the leading role of the state in the economy.

This factor is still inherent in the criminal legislation of the PRC, although to

²³ RONALD, *Law and Justice in Chinas new marketplace*, Pallgrave Mcmillan UK, 2001; LIU, *China's criminal legislation on embezzlement and bribery*, Singapore, 2020.

²⁴ WANG, *Criminal law in China*, Wolters Kluwer, 2017.

a lesser extent than it was before the start of the reforms that introduced individual market institutions into the modern economic model. Such a hybrid option required both the preservation of partially basic prohibitions that maintain the leading role of the state in the economy and the criminalization of new socially dangerous acts that have become characteristic of the transformed economic model in view of market reforms.

The doctrine of Chinese criminal law recognizes that it is largely a conductor of state interests in the economy and is aimed at protecting the existing economic model. At the same time, the state perceives economic crimes as a serious threat and, as a result, establishes severe penalties for economic crimes.

2. The Chinese economic model is not static, and elements of a market economy have been introduced into the planned economy in recent years. It should be noted that the emergence of some market institutions in the Chinese economy has only strengthened the role of criminal law in the protection of economic relations. At the same time, the expansion of criminal liability for economic crimes in the PRC occurred due to the emergence of criminal law norms that directly protect market relations, such as crimes against intellectual property and crimes in the stock market.

3. A feature of the Chinese model of the criminal law's impact on the economy is the presence of a number of criminal law norms that provide for responsibility for those negative phenomena that the market should eliminate. For example, the production of low-quality products. In countries with developed market institutions, the production of low-quality products is unprofitable for the manufacturer as they cannot withstand competition. However, in a state with a predominantly planned economy and a high role of the state in the production and distribution of material resources, when direct market relations are limited, this is an encroachment on the state monopoly, and as a result, criminal liability becomes necessary.

Based on the results of the study, we will characterize the role of the criminal laws impact on the economy in China, as a state with a planned economic model:

The planned economic model (on the example of the PRC) is characterized by the high role of the state in regulating economic processes. This situation is

fully projected on the criminal law's impact, as evidenced by a large number of economic areas in which the Chinese legislator intervenes. Economic crimes are perceived as a threat to the existing economic model, and criminal law is designed to protect existing economic institutions. As a result, severe punishments are meted out for crimes connected with undermining the socialist market economy, up to and including the death penalty, which is possible for a large number of economic crimes. At the same time, the economic reforms that were carried out in the PRC introduced elements of a market economy into the existing planned model and required a change in the role of criminal law in the protection of economic relations in view of the fact that previously, there was only protection for the state. As a consequence, in recent decades in China, criminalization has significantly prevailed over decriminalization; at the same time, for a number of economic crimes, the most severe punishments were established, up to life imprisonment and the death penalty

2. *The limits of criminal law's impact on the economy in states with a mixed economy (based on the example of Germany).* A mixed economy is understood as a type of society that synthesizes the mechanism of the market and the vigorous activity of the state²⁵. J. Sloman notes that the state can exercise control over the following areas: relative prices for goods and resources by taxing or subsidizing them, or through direct price control; relative incomes, using income taxes, social payments or direct control over wages, profits, rents, etc.; a model of production and consumption using legislation, producing goods and services, taxing them and subsidizing or nationalizing them; macroeconomic problems of unemployment, inflation, low growth and balance of payments deficit, using taxes and government spending, control over banking and interest rates, direct control over prices and exchange rates²⁶. Among the states with such an economic model, the most frequently mentioned are the large Western European states, primarily the Federal Republic of Germany and France. We will focus on the first of them in more detail.

²⁵ NUREEV, *Course of microeconomics*, cit., 63.

²⁶ SLOMAN, *Economics, Express course*, cit., 44.

One of the leading German experts in the field of economic criminal law, M. Engelhart, notes that economic criminal law is considered as a separate area of criminal law with specific features and dynamics. However, the outlines of modern economic criminal law are not clear, which is associated with the definition of the role of criminal law in the protection of economic relations. The emphasis on the role of criminal law in economic relations should largely be placed on crime prevention²⁷.

The current Criminal Code of the Federal Republic of Germany dates back to the Criminal Code of the German Empire of May 15, 1871²⁸. The Criminal Code of the Federal Republic of Germany has undergone significant changes over the years of its existence, based on the development of social needs and historical processes in the Federal Republic of Germany. The Criminal Code of Germany actually focuses on three areas of economic relations: counterfeiting of banknotes and tokens of payment (section 8); punishable acts related to bankruptcy (section 24); punishable acts against competition (section 26). A feature of the criminal legislation of Germany is that the criminal law norms are contained not only directly in the current Criminal Code, but also in a number of legislative acts adopted in the development of criminal legislation. I. A. Klepitsky, in this regard, notes that “in most cases (with rare exceptions, for example, in relation to tax misconduct), the rules on economic crimes are placed in different chapters of the Criminal Code, by virtue of tradition, mainly in the chapters on property crimes. In jurisprudence, these encroachments are considered not as property (*Vermögensdelikte*), but as economic (*Wirtschaftsdelikte*) crimes²⁹.”

The study of doctrinal sources on the role of criminal law in the protection of economic relations in Germany³⁰ allows us to highlight a number of theses

²⁷ ENGELHEART, *Developments and Status of Economic Criminal Law in Germany*, in *German Law Journal*, 2014, 4, 693-718.

²⁸ Criminal code of Germany (official text in English), in www.gesetze-im-internet.de/englisch_stgb/german_criminal_code.pdf.

²⁹ KLEPITSKY, *New economic criminal law*, Moscow, 2021.

³⁰ BREITNER-SCHNEIDER, *Wirtschaftsstrafrecht*, Nomos Verlagsgesellschaft, 2020; GRAEWE-SENUYSAL, *Wirtschaftsstrafrecht in der Unternehmenspraxis Einführung und wichtige Grundlagen*, Springer, 2018; HELLMAN, *Fälle zum Wirtschaftsstrafrecht*, Kohlhammer verlag, 2018; KLEPITSKY, *New economic criminal law*, Moscow, 2021; ESAKOV, *Economic criminal law: General part*, Moscow, 2019; TALAN, *Legislation of European states on economic crimes*, Uchenye zapiski Kazanskogo universiteta, Series

that require additional discussion:

1. The level of criminal law's impact on economic relations in Germany is low compared to states with a planned economic model. The economic model of Germany is characterized by the lack of control over large economic sectors, which is typical for a planned economic model. Consequently, there is no need to protect the state monopoly in certain economic sectors in criminal law (for example, to impose a ban on foreign economic activity, currency circulation, etc.). Of course, this does not apply to sectors related to the economy, but, first of all, is aimed at protecting other groups of social relations (for example, the trade in weapons or drugs, which can legally be exclusively under the jurisdiction of the state). In this regard, the criminal legislation of Germany is not aimed at restricting the rights to carry out economic relations. At the same time, the criminal legislation of the Federal Republic of Germany contains a fairly large number of criminal law norms on liability for encroachments on economic relations. However, this factor cannot directly indicate the high role of criminal law in the economy. Criminalization, in this case, is associated with the need to protect the subjects of market economic relations from possible negative encroachments in this area.

2. The study of economic crime statistics in Germany shows its stable level. The most common offenses in the economic sphere are associated with various types of fraud, offenses in the business sphere, malfeasance committed in corporations, industrial espionage, and money laundering³¹. The established economic model, without significant economic reforms, is characterized by both the stability of criminal legislation in the field of protection of economic relations, and a stable level of criminalization in this area. Since the German economic model, which implies limited state intervention in the economy, has not undergone significant changes for several decades, the role of criminal law in the protection of economic relations is relatively stable. Changes to the criminal legislation in the field of protection of economic relations, which consists not only directly from the Criminal Code of the Federal Republic of Germany, but also other legislative acts, are minor. Moreover, such changes,

Humanities, 2007, Tom 149, Book. 6, 261-273.

³¹ Wirtschaftskriminalität 2020, Bundeslagebild, 2020.

as a rule, are associated with the emergence of new economic relations (global economic development, or the emergence of new economic factors (globalization of the economy, international obligations, etc.)).

The stable level of criminalization of the economy is also explained by the stability of the economic model. The study of statistics shows both a possible insignificant increase in the level of individual economic crimes, and a decrease. This largely depends on specific external and internal factors. For example, a growth of economic cybercrime is currently observed throughout the world. The pandemic plays an important role in this. Such external factors cannot but affect criminalization within economic relations. However, such changes, as well as the reaction of the state to them, associated with changes in criminal law, do not change the essential role of criminal law in the protection of economic relations; the limits of the criminal-legal impact of the state on the economy remain relatively stable.

3. In Germany, regulatory legal mechanisms and, directly, economic mechanisms, take on an important role in the aspect of protecting economic relations. This factor is generally characteristic of stable economic models. The emergence of new forms of economic relations as a consequence of reforms, implies a reduction in the mechanism of self-regulation of the economy. Accordingly, in this case, a greater level of state intervention in economic relations is required, including by means of criminal law. However, over time, market mechanisms should gradually replace state influence in this area. Since the German economic model is a stable developed model, the role of self-regulation of the economy, as well as regulatory legal mechanisms, is quite large.

4. Among the important factors that determine the limits of the criminal laws' impact on the economy of Germany, European globalization should be singled out.

In recent years, the independence of the criminal legislation of individual European states has been somewhat reduced. This is due to the ongoing integration of EU member states. As a result, European legislation, in many areas, is being changed on the basis of directives coming from pan-European authorities. The pan-European directives being adopted are aimed at bringing the

legislation of individual EU states closer in various areas. Criminal law is no exception in this aspect. Separate pan-European documents have been adopted in the field of combating: money laundering; monopoly in the market; criminal liability of legal entities, etc.

Accordingly, the provisions set out in these acts should be implemented in the criminal legislation of individual states. Thus, a significant external factor that determines the boundaries of criminal law intervention in economic relations for Germany is the fulfillment of international obligations that arise within the framework of pan-European integration.

5. From the point of view of using the repressive potential of criminal law in relation to economic crimes, the criminal legislation of the Federal Republic of Germany is characterized by light sanctions. Preference is given to the use of measures not related to isolation from society (primarily a fine)³². However, for the most socially dangerous crimes related to the economy, the criminal legislation of Germany provides severe penalties. For example, for qualified cases of money laundering the punishment can be up to 15 years in prison. It seems that the issue of the severity of punishments for economic crimes as a whole, should be considered in the context of the system of punishments and the developed doctrinal approaches. In this aspect, it should be noted that encroachments on economic relations by the German legislator generally imply less severe penalties than encroachments on the person, the security of the state, and society. It seems that such a balanced attitude of the German legislator, who assumes the perception of most economic crimes as acts with a low degree of public danger relative to other crimes and, as a result, incur light punishments (in most cases not involving imprisonment), but at the same time, a group of economic-oriented acts is distinguished, characterized by an increased degree of public danger. These are acts that economic institutions and regulatory branches of law cannot cope with and, accordingly, require criminal legal action, which involves not only the criminalization of a socially

³² YAKUBENKO, *Punishment for economic crimes in the criminal law of Germany*, in *Bulletin of the Kuzbass Institute*, 2021, 1, 127-134; DVORETSKY, *Analysis of directions for improving the system of criminal penalties and other correctional and security measures in the context of optimizing criminal liability under the Criminal Code of Germany*, in *Bulletin of the Tambov University, Series Humanities*, Tambov, 2009, Issue. 6 (74), 417-420.

dangerous act, but the establishment of severe penalties for its commission. At the same time, the range of such acts in the criminal legislation of Germany is relatively small.

In order to determine the boundaries of the impact of criminal law, we briefly characterize the areas of economic relations in which the German legislator intervenes:

1. Forgery of banknotes and means of payment.

Section 8 of the Criminal Code of Germany (§ 146-152 a) is devoted to the issues of combating crimes related to the counterfeiting of banknotes and payment marks, which combines five elements of crime: counterfeiting of banknotes; sale of counterfeit banknotes; counterfeit payment means; preparation for counterfeiting money and payment means; forgery of payment cards and blanks (forms) of European checks (eurocheques).

2. Punishable acts related to bankruptcy.

Section 24 of the German Criminal Code contains acts establishing criminal liability for violations in the field of bankruptcy. In the doctrine of the criminal law of Germany, these acts are studied in sufficient detail. At the same time, the need for criminal law protection for this group of relations is noted³³.

3. Punishable acts against competition.

A separate section also highlights punishable acts against competition. §298-302 of the German Criminal Code is dedicated to them.

4. Money laundering.

The criminal legislation of Germany, on the subject of liability for money laundering, directly includes the norms of the criminal law in this area, as well as the Law on money laundering (Money laundering act)³⁴.

It should be noted that Germany is an active participant in international cooperation to combat money laundering. On average, more than 100 major investigations in the financial sector related to money laundering are conduct-

³³ HOFFILER, *Der Unternehmer in der Insolvenz: Eine Erste Explorative Studie*, Hamburg, 2012; KRUG, *Ideen zu Einer Gemeinsamen Strafgesetzgebung für Deutschland*, Berlin, 1857.

³⁴ Money laundering act of Germany of 23 august 2008, in [www.galilat.org/UserFiles/documentos/es/base/Alemania/002-GwG%20-%20Money%20Laundering%20Act%20\(Ley%20de%20Lavado\).pdf](http://www.galilat.org/UserFiles/documentos/es/base/Alemania/002-GwG%20-%20Money%20Laundering%20Act%20(Ley%20de%20Lavado).pdf).

ed annually in Germany³⁵. It should be noted that the German legislature considers this act as a crime with an increased degree of public danger and provides for relatively severe penalties (up to 15 years in prison) for its commission.

5. Fraud and breach of trust.

German criminal law establishes liability for several types of economic fraud. In particular, in addition to the general rule on fraud, § 263 of the German Criminal Code establishes criminal liability for: a) computer fraud (§ 263a); b) fraudulently receiving subsidies (§ 264 of the German Criminal Code); c) investment fraud (§ 264a of the German Criminal Code); d) credit fraud (§ 265b). Liability for breach of trust is also established separately. In addition to the general norm, liability has been established for: a) insurance fraud (§ 265 of the German Criminal Code); b) check and credit card fraud (§ 266b).

6. Tax crimes.

One of the features of the criminal legislation of Germany is that criminal liability for individual criminal acts is established not only directly in the criminal code. One of the legislative acts, which contains the components of individual crimes, is the tax code. According to § 369 of the German Tax Code, tax crimes include:

- a) actions that are prosecuted by tax legislation;
- b) illegal import, export, or transit of goods;
- c) falsification of seals or preparatory actions that are related to tax documentation;
- d) assisting and inducing a person to commit a crime, noted in the above paragraphs³⁶.

7. Insider trading and other crimes in the securities market.

Insider trading is criminalized in § 39 of the German Securities Market Act³⁷. An analysis of the doctrine of criminal law of Germany in the context of liability for economic crimes³⁸ shows that experts adhere to the position of relative

³⁵ *Money laundering and the financing of terrorism*, London, 2009, vol. 2, 258.

³⁶ German Tax Code, in www.gesetze-im-internet.de/englisch_ao/englisch_ao.html#p2194.

³⁷ Law of the Federal Republic of Germany "On the Securities Market", in www.gesetze-im-internet.de/wphg/BJNR174910994.html#BJNR174910994BJNG000604377.

³⁸ HELLMAM-BECKEMPER, *Wirtschaftsstrafrecht*, Kohlhammer, 2008; KUDICH-OGIACIOGLU,

stability of the limits of criminal law in the context of liability for economic crimes in Germany. At the same time, emphasis is placed on the study of the already indicated areas of state intervention in the protection of economic relations.

Analyzing the spheres of the impact of criminal law on the economy of Germany, it should be noted that, in general, they coincide with those that are protected in the criminal laws of the PRC. It seems that this is due to the gradual introduction of market institutions in them. At the same time, it should be borne in mind that for the PRC, most of these areas of criminal law influence are novelties, and the stability of criminal legislation in them does not differ.

Regarding the role of criminal law in the state regulation of the German economy, attention should be paid to several of the following main aspects.

1. The current criminal legislation of Germany in the field of protection of economic relations is stable. Minor changes are made to it. However, the criminal legislation of Germany, in recent decades, has been influenced by the development of European criminal legislation. Although the economic models of the states of the European Union are close to each other, they are not identical. In this regard, the modern criminal legislation of European states is not fully independent and focused on its own economic model.

2. Participation of the state by criminal law means in state regulation of the economy is limited. Since the built economic model assumes both self-regulation of economic relations and the adequacy of their protection by the norms of positive law, the role of criminal law is reduced to protecting economic relations from negative encroachments on the basis of market interaction. Accordingly, the most socially dangerous infringements on competition, on the freedom of entrepreneurial activity, on the legal circulation of funds and securities, as well as relations related to the protection of the interests of the state within the framework of a mixed economic model, are placed under criminal law protection. In particular, such areas include the tax sphere, the sphere of combating counterfeiting, and money laundering.

Wirtschaftsstrafrecht, Muller, 2011; GRAEVE-SENUYSAL, *Wirtschaftsstrafrecht in der Unternehmenspraxis*, Einführung, 2018.

Summing up the study of the role of criminal law means in state regulation of the economy for states with a mixed economic model, using the example of Germany, we note the following.

The criminal legislation of Germany is focused on the protection of market relations, as a result of which the level of criminal law intervention of the state in the economy is limited. The boundaries of criminal law influence are relatively stable; individual changes made to the criminal law are associated with the development of market relations, market globalization, the development of common European legislation or other external factors, which implies the emergence of new economic relations that require criminal law protection. At the same time, the role of criminal law in the protection of economic relations is lower than in states with a planned economic model, since criminal law in this case is not used as a tool for protecting state monopoly in a large number of economic sectors.

3. *The limits of criminal law impact on the economy in countries with a market economy (on the example of the USA).* The ‘classical’ economic model is also a market economy. It is defined as a system based on private property, freedom of choice and competition, based on self-interest and a restrictive role for the government³⁹. The main features of a market economy are: private ownership of resources and the use of markets and prices to coordinate and manage economic activity. Under pure capitalism, the role of the authorities is limited to protecting private property and maintaining an environment conducive to the functioning of the market system. However, in capitalism, the government plays a prominent role in the economy (including in the United States), it sets the rules for economic activity, provides conditions for economic stability and growth, provides some goods and services that otherwise would not be produced at all, or produced in small quantities, and works to improve the distribution of income⁴⁰. It should be noted that in recent years the role of the state in a market economy has been steadily increasing. For example, in the United States, in the middle of the 20th century, the state ac-

³⁹ NUREEV, *Course of microeconomics*, cit., 62-63

⁴⁰ MCCONNEL-BREW, *Economics*, Moscow, 2010, 40-41.

quired 15% of the goods and services produced, at the beginning of the 21st century this figure already exceeded 20%⁴¹.

Let's make an assumption that there are no states left in the world that fully correspond to all the signs of a market economy. The economies of Hong Kong and the USA are closest to the market economic model. As part of our study we will consider the level of criminal-legal interference in the market economy using the example of the United States.

In American criminology, the concept of 'economic crime' is used in the context of 'white-collar crime'. Sociologist Edwin Sutherland coined the term in 1939 at his presidential address to the American Sociological Association. Sutherland defined white-collar crime as "a crime committed by a person of high standing and respectability in society." This term contains two main elements: the status of a person, which they acquired, or a related profession with a high social status, and committed a business-related crime⁴².

Today, federal law defines 'white-collar crime' as "an unlawful act, or series of acts, committed without the use of physical violence, but by concealment and deceit, to acquire money or property, evade payments, lose money or property, or obtain economic or personal advantages"⁴³.

'Corporate crime' is another term used to describe economic crime. This is a narrower concept than 'white-collar crime', focusing on organized crime. If the decision to violate the law is applied corporately or individually, but in favor of the entire corporation, then this violation will be considered a corporate crime. If, on the other hand, the actions of a corporation's employees are directed against its interests, such as in cases of embezzlement, and personal benefits are obtained from association with the corporation, these actions will be qualified as 'white-collar crime' or professional crime⁴⁴.

The legal system of the United States is also characterized by close interaction between the norms of criminal and civil law in the field of protecting economic relations, in particular, in the event of criminal liability, a number of civil law sanctions may be applied, including restitution, payment of the cost of

⁴¹ MIKHAILUSHIN-SHIMKO, *Economics*, cit., 68.

⁴² ADLER-MUELLER, *Criminology*, 2001.

⁴³ ADLER-MUELLER, *Criminology*, cit.

⁴⁴ ADLER-MUELLER, *Criminology*, cit.

enforcement of the decisions, and restoration of the violated right⁴⁵.

An analysis of theoretical sources on the role of criminal law in the protection of economic relations and official statistics on white-collar crime in the United States⁴⁶ allows us to formulate several main theses that require additional discussion:

1. The level of the impact of criminal law on economic relations in the United States is quite limited. In fact, in this way it can perform two main roles: protecting state interests within the framework of the economic model by restricting the freedom of behavior of the subjects in economic relations and protecting directly existing economic relations. In a conditionally market economy (the market economy in its pure form does not exist), to which the American economic model belongs, there is no need to establish a prohibition by criminal law on the implementation of certain areas of economic activity characteristic of a market economy (in this case, generally recognized forms of deviant behavior are not taken into account). Accordingly, the role of criminal law is reduced to the protection of already existing market relations. At the same time, in view of the fact that the market economy model is relatively stable, its tools often take on the protection of economic relations. This applies both directly to market institutions and the norms of positive legislation. Based on this, it should be noted that the level of criminal legal interference in economic relations in the United States is reduced to the protection of established market relations. In this context, criminal law performs a similar function as in the mixed economy model.

2. The specifics of the market economy model and stability, in terms of economic reforms, allow the US criminal law in this area to be kept in a stable state. The US criminal law in the sphere of protection of economic relations has significant specifics, primarily associated with the existence of their own legislation within individual states, which implies certain differences in the construction of a system to counter economic (white-collar) crimes. Neverthe-

⁴⁵ POGOSOVA, *Correlation between criminal and civil law in the US doctrine*, in *Punitive Sanctions Institute // Law*, 2013. 8. 79-80.

⁴⁶ FERGUSON, *White collar crime*, Chelsea house, 2010; BRICKEY-KAHTLEEN-TAUB, *Corporate and white-collar crime*, Wolters Kluwer, 2017; ANDERSON, *FBI and white-collar crime*, Mason crest, 2014; KLEPITSKY, *New economic criminal law*, Moscow, 2021.

less, it can be stated that, in general, the system for combating economic crimes is similar throughout the United States. This is largely due to the fact that responsibility for some of the acts of an economic nature is established in federal acts, such as, Money laundering control act of 1986⁴⁷; Act of economic espionage⁴⁸ and others. At the same time, US criminal law, in this area, remains relatively stable. Separate changes to criminal law are adopted, but it should be borne in mind that this is usually due to the development of economic relations and the emergence of new socially dangerous acts that encroach on certain sectors of the economy. In general, in this aspect, the dynamics of the development of the US criminal legislation is similar to the development of the criminal legislation of Germany, discussed earlier. The high level of development of market institutions and the existing economic model predetermines the well-established role of criminal law in the protection of economic relations. Nevertheless, criminal law intervention is recognized as necessary and is a stable element of state influence on the economy.

3. A number of acts that encroach on market economic relations are perceived by the American legislator as crimes with an increased degree of public danger, and severe penalties are provided for them.

In this regard, there is a trend that states with a market orientation (close to market and mixed economic models) are characterized by the establishment of increased responsibility for acts that encroach on the fundamentals of the market (competition, freedom of trade, etc.), as well as for encroachments that significantly affect economic relations and their development (for example, money laundering).

It should be noted that the American legislator applies relatively severe penalties for a number of economic acts. For example, these include money laundering, acts of corruption, insider trading and market manipulation, industrial espionage, and others. In particular, some offenses can be punished by 20 or more years in prison. This factor largely goes back to the concept of white-collar crime, often committed in the United States, and the perception, respectively, of these acts as crimes with an increased degree of public danger.

⁴⁷ Money laundering control act of USA, in www.law.cornell.edu/uscode/text/18/1956].

⁴⁸ Money laundering control act of USA, in <https://www.law.cornell.edu/uscode/text/18/1956>].

At the same time, in general, the penalties for crimes provided for in the criminal legislation of the United States are more severe than, for example, in the criminal legislation of Germany. In this sense, the severity of punishments for a number of crimes of an economic nature as a whole, fits into the established system of penalties in the US criminal law, and on the other hand, into the concept of understanding white-collar crimes as acts with an increased degree of public danger.

4. The limits of the criminal laws impact on the US economy depend on external economic factors, such as globalization, economic progress and the emergence of new technologies. Global challenges are currently a significant factor influencing the role of criminal law in terms of protecting economic relations. For an open market economy, which implies the presence of a large number of transnational corporations on its territory, a variety of foreign economic relations, the impact of the international economy and globalization is especially noticeable. In many ways, the consequence of this factor is that the US criminal law is becoming a 'pioneer' in establishing criminal liability for 'new economic offenses.' In particular, such as money laundering, insider trading, market manipulation, industrial espionage, etc. This is largely due to the fact that the negative aspects of market globalization are among the first to cause significant harm to economic relations in the United States. Consequently, the American legislator is forced to respond to changing market relations, to the emergence of new forms of deviant behavior in the economy, the introduction of new or changes in existing criminal law prohibitions (for example, by expanding the subject of money laundering or corruption crimes at the expense of cryptocurrencies). Thus, it should be stated that the criminal legislation of the United States (its limits) are subject more to the influence of external economic, and other factors, than the legislation of other states.

Consider the main areas of criminal law protection of the economy in the United States.

1. Crimes in the field of bankruptcy.

In the US criminal law doctrine, bankruptcy crimes are considered as a serious threat to the existing market relations. In particular, there are two main "injustices" that are abused in the bankruptcy process: as a result of unfair

compensation in relation to one creditor, damage is caused to other creditors, that is, each of the other creditors receives less than could be expected in the case of a fair distribution of a bankruptcy estate; abuses in the process of bankruptcy reduce the amount of taxes collected, that is, cause damage directly to the state; therefore, confidence in the bankruptcy system as a whole is undermined⁴⁹.

Bankruptcy offenses are provided for in Chapter 18, §§ 151-158 of the US Model Criminal Code.

There are several main crimes in the field of bankruptcy: a) concealment of assets; false obligations; bribes; b) embezzlement of the debtor's property; c) unfavorable management and behavior of officials; d) conclusion of agreements in order to fix the payment in the interests of one of the parties; e) ignoring bankruptcy laws and regulations; and e) fraudulent bankruptcy.

2. Crimes in the sphere of the circulation of coins, money and securities.

The United States provides for liability for such acts as: a) counterfeiting of coins; b) decrease in weight of coins; c) damage to coins; d) waste of metals; e) change in weight, content of precious metals in US coins; f) actions with counterfeit documents and securities; g) production or possession of counterfeit stamps for coins; and h) production or storage of counterfeit stamps for coins of foreign countries.

3. Crimes in the sphere of lending.

US law provides for liability for fraudulent credit transactions and provides for liability for committing fraudulent actions when granting a loan. In particular, criminal liability has been established for the following types of acts: a) extending a loan on unfavorable terms for the bank; b) bribery of the person responsible for the purpose of expanding the loan on unfavorable terms for the bank; and c) extending credit through fraud.

4. Organization of gambling.

C h. 50 establishes criminal liability for acts related to illegal gambling. It should be noted that the problem of gambling is extremely relevant for American legislation.

⁴⁹ CLEMENT, *A study on bankruptcy crime prosecution under title 18: is the process undermining the goals of the bankruptcy system?*, in *Emory bankruptcy development journal*, 2015, 31, 409-431.

With regard to the chapter under consideration, it is necessary to pay attention to criminal liability for accepting bets without appropriate permission, including by phone. It should be noted that the US betting market is quite wide and very profitable. An interesting feature is the establishment of criminal liability for the organization of gambling establishments on ships and boats.

5. Money laundering.

Responsibility for money laundering in the United States is provided for in the Money laundering control act of 1986, which is included in the US Model Criminal Code (Chapter 95)⁵⁰. Note that American experts consider money laundering as a crime with an increased degree of public danger associated with other acts of an economic and corrupt nature, as well as crimes of a terrorist nature⁵¹.

It should be noted that for all possible acts, 20 years in prison is provided as a maximum punishment.

6. Insider trading.

Insider trading legislation in the United States is highly developed. However, the issue of liability for insider trading is usually decided in accordance with the laws within individual states. General prohibitions on insider trading in US law are provided for in the Securities Market Act of 1933 and the Exchange Act of 1934. Separately, sanctions for insider trading are set forth in the Insider Trading Sanctions Act of 1984 and the Insider Trading and Securities Fraud Control Act of 1988.

Among the main types of abuses in the sphere of insider trading, these legislative acts indicate:

- a) fraud in the sale of securities;
- b) receiving short-term profits;
- c) manipulation of securities.

In general legislative acts, the penalties for such crimes are usually of a financial nature. However, some state laws may provide for more severe penalties,

⁵⁰ Money laundering control act of USA, in www.law.cornell.edu/uscode/text/18/1956].

⁵¹ VAN DUYRE-HARVEY-ANTONOUPOLOS-MALJEVIC-VON LAMPE, *Human Dimensions in Organized crime, money laundering and corruption*, Washington, 2013; *Combating Money laundering and Terrorist financing*, London, 2008.

such as imprisonment. For example, in 2011, American billionaire Raja Rajaratnam was sentenced to 11 years for entering into financial transactions using insider information.

7. Tax crimes.

Tax crimes are a separate area of the impact of criminal law on the economy in the United States. Responsibility for this group of crimes is provided for in § 7201-7217 of the US Internal Revenue Code.

It should be noted that US law regulates liability for tax crimes in detail. At the same time, such responsibility extends not only to taxpayers, but also to officials in the event that they commit offenses against taxpayers. A number of tax crimes are perceived by the American legislator as serious crimes, which is directly indicated in the text of the articles. It should be noted that in the theory of US criminal law tax crimes pose a serious threat to the development of society. As a result, there are proposals for further tightening of criminal legislation providing for liability for tax evasion⁵².

8. Industrial espionage and other acts against competition.

Protection of competition and countering criminal monopoly is the cornerstone in the issue of protecting market relations. US criminal law is no exception, which provides for fairly strict liability in this area. One of the most common acts that harm free competition is industrial espionage. In the theory of US criminal law, attention is especially drawn to the increased social danger of this crime⁵³.

US criminal law doctrine⁵⁴ points to the concept of the increased danger of white-collar crime for a market economy. This explains the intervention in the above areas through criminal legal means and the relatively harsh penalties for white-collar crimes in the United States. At the same time, the limits of the state's criminal legal influence on the economy in the United States are relatively stable.

In general, when analyzing the role of criminal law in the protection of eco-

⁵² MORSE, *Effects of Tax Evasion in the United States*, New York, 2015.

⁵³ RYAN-HOWELL-KEECH-LUO-SPERRY-YANTIS, *Intellectual property crimes*, in *American criminal law review*; 54, 1509-1554.

⁵⁴ SHOVER-HOSCHTELLER, *Choosing white collar crime*, Cambridge, 2005; RORIE, *The handbook of white collar crime*, Wiley, 2019; MILLS-WEISBERG, *White collar crime*, Wolters Kluwer, 2020.

economic relations in the United States, several main theses should be made:

1. The level of criminal-legal state intervention in economic relations in the United States is limited. This thesis is supported by the fact that the American legislator does not need to significantly restrict the freedom of behavior of subjects in economic relations in order to protect the existing economic model. The state actually establishes liability for two types of acts: gross violations of the rules for conducting market activities that can cause significant damage to participants in economic relations; acts related to economic activity, but causing significant damage to both the state and society as a whole (for example, infringement of competition, tax crimes, money laundering). For the second group of crimes, the legislator, as a rule, provides for very severe penalties (in particular, in the case of money laundering, the maximum penalty for any of the acts can reach 20 years in prison). However, it should be noted that severe penalties are also provided for many other crimes of an economic nature, in particular, for crimes in the field of bankruptcy and credit crimes, it is quite possible to impose imprisonment for a term of more than 10 years.

In general, characterizing the level of the criminal laws impact on the economy in the United States, we can formulate the following thesis: criminal law is used as a tool for protecting economic relations only if other (market and legal) regulators fail; at the same time, the scope of criminal law protection is insignificant, but all acts that are classified as criminal are perceived as acts with increased public danger, and relatively severe punishments are possible for most of them.

2. The criminal legislation of the United States in the issue of responsibility for economic crimes is focused on two groups of penalties: economic penalties (fines and other ways of violating economic rights) and imprisonment. At the same time, in the overwhelming majority of cases, an alternative opportunity is provided to choose penalties that restrict the economic rights of the convicted and their personal freedom.

Summing up the study of the level of impact of criminal law on economic relations in the United States, it should be noted:

Criminal liability is established for a limited range of acts related either to the violation of market activity or public prohibitions that are established in the

public interest. As a result, the impact of US criminal law on economic relations is limited and is directed to specific areas of economic relations (competition, bankruptcy, money laundering, tax relations, etc.), the regulation of which by market institutions and other branches of law is impossible or insufficient. At the same time, some of these acts are perceived as crimes with an increased degree of public danger and, as a result, severe penalties are provided for their commission. Penalties for economic crimes in the United States are focused on two main aspects: loss of economic rights or, alternatively, imprisonment.

4. Conclusion. In general, the study of the level of criminal laws impact on the economy on the example of states close to classic economy models allows us to make a number of theses:

1. All spheres of the criminal laws impact on the economy can be conditionally divided into two groups: a) spheres that protect the role of the state in the existing economic model; b) those areas that protect market relations.

The first group exists in any economic model. However, the higher the role of the state in regulating economic processes in society, the greater the number of prohibitions and restrictions on the part of the state in the process of economic activity. As a result, protecting its role in the regulation of economic relations, the state establishes responsibility for the violation of these prohibitions.

The second group of spheres of economic activity in which the state interferes is the regulation of which the market cannot directly cope with. In this case, the need for criminal legal impact on economic relations is determined by the role of the market in regulating economic processes: the higher the mechanism of self-regulation of market relations, the lower the level of criminal legal intervention of the state in the economy.

2. For states in which market relations are developed (market or mixed economy), the great importance of directly market institutions in the field of protecting economic relations is characteristic. The level of criminal-legal intervention of states with market and mixed economies is approximately the same. This is explained by the great importance of market institutions proper in such economic models. Criminal law intervenes exclusively in those areas

that the market and regulatory legislation are unable to protect on their own, or those areas in which state intervention is necessary in order to protect its role in the economic model. Such areas for a market and a mixed economy are the same (criminal monopoly, money laundering, insider trading, bankruptcy crimes, tax crimes, counterfeiting). At the same time, the legislator perceives economic crimes in this case as crimes with an increased degree of public danger and provides for relatively severe penalties for their commission.

3. The level of criminal law impact in a planned economy is much higher than in states with a market or mixed economy. The example of the PRC clearly shows that the number of sectors of the economy in which the state intervenes by criminal law means, is greater than in countries with a market and mixed economic model. Even more important in determining the role of criminal law in the economy of the PRC is that they are aimed at protecting the state's role in the planned economy. The increased level of criminal law impact on the PRC economy is due to two factors: the need to protect the existing economic model and the increased level of economic restrictions on the part of the state, which are characteristic of the planned economy model; the relatively weak role of the market in regulating economic processes in society compared to fully market or mixed economic models, and, consequently, the inability of market institutions to protect existing economic relations.

4. A change in the economic model or a significant change within the existing economic model leads to an increase in the role of criminal law in the protection of economic relations. This is explained by the fact that a change in the economic model significantly changes the principles of economic regulation, which leads to the emergence of "new economic niches", and, as a result, new types of criminal behavior that cannot be directly regulated by the market. In particular, an illustrative example of a forced increase in the level of the criminal law impact on the economy was a partial change in the economic model in China.

5. The study showed that a feature of post-socialist criminal law related to the protection of economic relations is that it develops in a "catching up" manner. This explains its great dynamics, since the criminal legislation needs to be re-

configured for new economic relations. But at the same time, the existing system of economic relations is also subject to various kinds of changes. Accordingly, if:

- a) the criminal legislation of market and mixed economy models is characterized by the dynamics of the development of criminal legislation, primarily under the influence of changing existing market economic relations, then
- b) for a transitional economic model, the factors of the dynamics of criminal legislation are both changing economic relations and the need to transform criminal legislation towards a market model. We can observe this factor both on the example of the previously studied criminal legislation of the PRC, in which, despite remaining committed to a more planned economic model, certain market changes were carried out that required the transformation of criminal legislation in the field of protection of economic relations.