

THEORETICAL FOUNDATIONS OF CRIMINALISATION AND DECRIMINALISATION OF ACTS IN THE FIELD OF ECONOMIC RELATIONS

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Abstract. The *subject* of the study is the public relations of criminalisation and decriminalisation of acts in the sphere of business-economic relations. *Methodology.* The methodological basis of the research is the method of induction and deduction, the dialectical-materialist method, the method of analysis and synthesis, the historical method, which allowed an objective understanding of the content and essence of the studied issues. The *purpose* of the article is to analyse the theoretical aspects of criminalisation and decriminalisation of acts in the sphere of business-economic relations in Ukraine in order to propose effective ways to improve the mechanism of these procedures in relation to business entities. The *results* of the study have shown that criminalisation and decriminalisation of economic activity in the economy of Ukraine as a vector of criminal policy and the direction of economic development of the state presupposes the formation of an effective model of interaction of economic entities among themselves and with the state, which minimises the commission of socially dangerous acts, meets the modern needs of society and is regulated by the norms of law. *Conclusion.* The importance of a systematic approach to decisions on criminalisation and decriminalisation of economic crimes was noted. It is argued that it is necessary to create a model of lawful behaviour in the economic sphere (the task of regulatory legislation) and to categorise deviations from this behaviour according to the degree of danger to the public, with the most dangerous acts being criminal offences. It is noted that the use of this approach will allow achieving the maximum corrective effect: the development of the Ukrainian economy and its eventual decriminalisation. It is emphasised that the role of criminal law in the regulation of socio-economic relations is far from leading. At the same time, the removal or installation of certain barriers for entrepreneurs cannot be considered as the ultimate goal of criminalisation or decriminalisation of acts in the field of business in criminal law. It is stated that criminal law should pursue the achievement of its preventive objectives, including in the fight against the black economy. The decriminalisation of offences against the economic order should be accompanied by changes in regulatory legislation in the direction of simplifying its requirements for business entities. Situations are unacceptable if, on the one hand, the rules and procedures for carrying out economic activities are complicated by regulatory legislation and, on the other hand, criminal liability for violating strict rules is eliminated. This leads to a very negative result: restrictions are circumvented because there is no responsibility for violating them.

Key words: criminalisation of acts, decriminalisation of acts, economic regulation, legal regulation, economic activity, economic risks, business entities, socio-economic conditions, development of social relations, public danger, legal reality.

JEL Classification: R11, G32, H40, K40

1. Introduction

In the last fifty years, researchers have left no doubt that the processes of criminalisation and decrimina-

lisation of acts should clearly and adequately reflect the public need for criminal law, should arise as a consequence of this need.

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It is almost impossible to change criminal legislation by trial and error, relying solely on common sense, that is, ordinary consciousness. One should not ignore the existence of a dialectical relationship between law and real life, the latter being both the basis and the source of law. Throughout the historically long period of the existence of society, laws have been in force that reflect the general conditions of human life, which serve as necessary conditions for specific forms of manifestation of social existence: life, health, inviolability of the individual and his property, freedom, and the state acts as a guarantor of these conditions. Such social laws are of an absolute nature, since they declare it criminal at all times to kill, to harm health, to steal, to rob, to assault, etc.

Amendments to these laws relate either to the technical improvement of standards or to changes in their sanctions. In addition to such laws, society has laws that reflect the peculiarities of a particular period of its development. In these laws, the living conditions of the society acquire specific manifestations characteristic of a certain period of the development of the society. Violations of these conditions are not "absolute", since they are not recognised as criminal at all times, but only in certain periods of the development of society.

For example, in Soviet-era Ukraine, people engaged in speculation, private business, commercial intermediation, etc. were prosecuted. Today, these types of activities are socially useful, and those who engaged in them in the past are called "pioneers of the market economy" (Popovych, 2018).

Because socio-economic and political conditions determine the directions of development of law, including criminal law, to the extent that law always serves these basic conditions and changes along with changes in the basic conditions.

Not much time has passed since the Criminal Code of Ukraine came into force, but this period was marked by numerous changes in the socio-economic life of society, in the definition of its political preferences. All this was reflected to varying degrees in Ukrainian legislation, including criminal legislation, which during this period underwent many changes and additions, both in the general part of the Criminal Code and in its special part. That is, groups of crimes appear that were not initially defined as such (The Criminal Code of Ukraine, 2001). These acts have been criminalised as a result of historical development and as a result of the legislator's assessment of them as crimes. Conversely, some crimes that do not belong to the first group have been decriminalised or may be decriminalised in the future. The situation in the economic and business sphere of Ukraine is particularly interesting and topical, and this study is devoted to it.

2. Conditional Aspects of Criminalisation and Decriminalisation in Modern Science

The academic literature suggests that the condition for criminalisation is the deviance of a certain form of behaviour, i.e., the most dangerous deviant acts should be prohibited under threat of criminal punishment. But deviance is a vague category, both in the consciousness of society and of the legislator. For example, tax evasion cannot be confidently classified as deviant behaviour, at least not in the minds of most citizens. However, Ukrainian legislation provides for liability for tax evasion (Popovych, 2018).

The fact of the possibility of a certain type of encroachment cannot be considered as a condition for criminalisation, since it should not be forgotten that in addition to criminal liability, there are other coercive measures (administrative, civil, disciplinary).

Thus, the main and most fundamental issue of criminalisation and decriminalisation of acts is the question of how, based on objective social processes, to determine both the need for a criminal law and its specific content.

The cornerstone in the study of this problem is the determination of the determinants of the establishment of a criminal prohibition (or its abolition) and, first of all, its conditions. The difficulty is manifested in a wide variety of approaches to the identification and definition of the conditions of criminalisation (decriminalisation) of acts. Each researcher has his own system of determining these processes (Kyselova, 2020).

The difficulty of systematising these conditions and determining their different meanings is illustrated by the fact that there is not even a consensus among researchers on the terminological designation of the selected elements. Some authors call them reasons, some – principles, some – conditions, some – tasks, some – criteria, etc.

Researchers are united by the understanding that the process of criminalisation (decriminalisation) of acts is based on multifactorial dependence, and only taking into account all factors in their entirety and interrelationship can make it possible to adopt (repeal) a criminal norm, the necessity and expediency of adoption (repeal) of which will be justified, and the effectiveness of action (low level of negative consequences of repeal) of the norm is quite high.

It is important that the correct identification of the degree of influence of conditions is the key to establishing a general form of determination of the criminal norm, which will allow to find the most appropriate approach to specific measures in the processes of criminalisation and decriminalisation of acts. In this regard, it is necessary to establish a clear gradation of determinants, through which it is possible

to determine the degree of relation of each element to the result in the form of a legislative decision.

In philosophy, determinism is the doctrine of the objective natural connection and interdependence of things, processes and phenomena of the real world. The problems of determinism are not limited only to causality, since the development of scientific knowledge has shown that causality as the main form of determinism is only one moment of global interdependence, one link in the chain of development of matter. Determinism presupposes the existence of various objectively existing forms of interrelation of phenomena, many of which are expressed in the form of relations that do not have a direct causal character, i.e., they do not directly contain moments of generation, production of one by another (Kalman, 2014).

There is no doubt that the processes of changing criminal law should start from the established and established social relations, economic and political situation in society. Public processes are always the basis for the legal regulation of public relations. Changes in the legal system are always connected with corresponding changes in the economic situation, the political situation or with changes in the socio-psychological processes of society. The specific processes taking place in reality should be attributed to the conditions of criminalisation and decriminalisation of acts. The condition is the first determinant of the processes of criminalisation and decriminalisation.

To understand what this means, it is necessary to turn to the category of reason, which is close to it in meaning. A cause is understood to be a phenomenon whose action causes, determines, modifies, produces or entails another phenomenon; the latter is called an effect. The effect produced by the cause depends on the conditions. Moreover, the same cause can produce different effects under different conditions.

It should be noted that the causes may be determinants that are outside the sphere of social conditionality of criminal law, but affect the implementation of the processes of criminalisation and decriminalisation of acts. Thus, the reason for criminalisation or decriminalisation may be the irrational will of the legislator. The reason may be the lobbying of a social group for the promotion of its interests. The reason for criminalisation and decriminalisation may also be a certain orientation of the legislator towards the criminal legislation of other countries. The reasons for criminalisation and decriminalisation of acts may include the need to comply with international obligations, the imperfection of current criminal legislation, etc.

The basis of criminalisation is the main, essential feature that makes it necessary, that makes it exist. The reasons for criminalisation appear before its basis and do not depend on it, while the basis is determined

by its totality. It seems that there can only be one basis for criminalisation, so it is wrong to speak of it in the plural, as is sometimes done in academic literature. As a rule, the grounds for criminalisation are linked to different aspects of the creation of criminal law norms. Most often, the concept under consideration refers to the whole or almost the whole mass of processes and phenomena of social reality that somehow influence criminalisation (Kyselova, 2020).

As already mentioned, the basis is a phenomenon that causes another phenomenon(s) or process(es). The various causes of criminalisation, taken separately, are not in themselves capable of determining it, since, for example, neither new types of behaviour nor the obligations of the state in international relations necessarily lead to the establishment of a criminal prohibition. As a speculative construction, the basis of criminalisation unites all the real existing causes and concentrates the essence of a social phenomenon that has become a potential subject of criminalisation. It follows that there can be only one basis for criminalisation, and that is the public danger of a certain behavioural act (Klaus, 2023).

Some researchers agree with this interpretation and speak of the basis of criminalisation in the singular, understanding it as the social danger of the behaviour. When examining the social danger as a basis for criminalisation, it is necessary to recognise that, as an internal characteristic of a behavioural act, it cannot depend on the will of the legislator. Public danger becomes a sign of crime only after its legal consolidation. Thus, when they speak of public danger as a basis for criminalisation, they mean an objective reality that is assessed as a negative social phenomenon, defined as "public danger" by the will of the legislator, which has both social and political motivations.

When analysing the issue of the criminalisation of behaviours, it is necessary not so much to understand the social conditionality of the need for a criminal prohibition of a certain form of behaviour, but to consider the mechanism of its implementation.

Criminalisation is a process based on the legal concepts prevailing in society. With their help, the legislator must adequately reflect a socially dangerous act in the norm, but this does not always happen, and then it is customary to talk about a defect in the norms, which can find its expression in an incomplete reflection of the needs of society in criminal law regulation (Popovych, 2018).

The discovery of the mere fact of the existence of a behaviour in society that is capable of harming legally protected values is only the first step on the way to identifying the characteristics of this behaviour that will later lead to its criminalisation.

When deciding on possible criminalisation, it is necessary first of all to make a proper assessment of

the social conditions that exist in society at a given time. Then it is necessary to study the public relations that objectively require criminal law protection. It is also necessary to determine the characteristics of specific antisocial behaviour that may damage or threaten to damage social values.

The objective nature of public danger is expressed, first and foremost, in the fact that it causes significant damage to objects of criminal protection. However, it would be premature to claim that the public danger of a behavioural act is limited to the damage caused. It consists in the qualitative and quantitative impact of an act on society. The quality is expressed in terms of the social relations that may be violated or destroyed by an act (the most important social relations), and the quantity – in terms of the damage caused or likely to be caused, in terms of other characteristics of the behaviour.

From the above it can be concluded that the only basis for criminalising a behaviour is its objectively existing realised or potential public danger. The social danger of a behaviour is a set of characteristics that express its essence and make it necessary to legislate a criminal prohibition.

3. Theoretical Features of the Study of Crime in the Field of Economics and Entrepreneurship

Currently, economic crime occupies a significant place in the overall crime picture and it is safe to say that economic crime is the most powerful, widespread, hidden, organised and dangerous criminal activity, which even kings, presidents, prime ministers and other high-ranking officials do not disdain.

This crime is being combated in all developed countries. Worldwide, the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (5th UN Congress, 1975) considered economic crime to be one of the most dangerous forms of crime threatening the economy. Its main characteristics were formulated: the performance of criminal activities for economic gain; the connection with certain forms of organisation; the use of professional or official activities; the high social status of the subjects of this crime; the possession of political power. The Sixth United Nations Congress (6th UN Congress, 1980) analysed economic crime in terms of the undermining of the economy and the seizure of political power. And the Seventh United Nations Congress (7th UN Congress, 1985), in one of its resolutions, classified economic crimes as particularly dangerous acts and proposed to step up the fight against them.

Nevertheless, the understanding of economic crime is still extremely vague, as is the understanding of business and corporate crime, which are its varieties.

Certainly, this limits the possibilities for a constructive dialogue to improve and unify legislation to combat this phenomenon. On the other hand, the complexity of the phenomenon itself, the dynamic changes in criminal practice in the economic sphere, the broad boundaries of economic crime, combined with the pluralism of research approaches due to methodological and personal characteristics, do not allow to count on a definitive solution to this problem in principle. The initial understanding of economic crime was reduced to its identification with property crime, and the latest trends in criminal practice were not adequately reflected in the conceptual and methodological apparatus of legal science.

However, as early as the 1960s, one of the leading French researchers in this field, M. Patin, noted in his work "Director of Criminal Affairs and Pardons" that these questions had so firmly paved the way for science that they had become almost the most important. Even at that time, criminologists considered the problem of economic crime to be a major social problem of the future that would inevitably have to be solved (Patin, 1946).

Modern economic crime, as well as crime in the sphere of economic activity, is a mercenary crime that has a significant impact on economic relations in the country and abroad. The most important stage in the study of the problems of this type of crime was the work of the criminologist E. Sutherland, who was the first to undertake a systematic study of corporate crime. The criminological concept he created had a strong ideological influence on the subsequent choice of ways to understand this pressing problem. His concept drew attention to the new fact that the subjects of the most dangerous economic crimes are persons who occupy a high social position in the field of business and commit crimes in the course of their professional activity in the interests of legal entities and their own interests. The term "white-collar crime", coined by him, accurately reflects this feature of his concept, despite its narrowness in the general understanding of economic crime (Sutherland, 1949).

E. Sutherland believed that criminologists and criminologists paid too much attention to the problems of street crime and ignored crimes committed by more "affluent" members of society. Revealing the essence of the concept of "white-collar crime", he proposed to define this type of crime as "a crime committed by a respectable person of high social status in the exercise of his profession" (Sutherland, 1950).

Based on the concept of "white-collar crime" by E. Sutherland, the definition of economic crime as corporate crime was formulated (Sutherland, 1949).

It should be noted that even today the legislation of foreign countries regulating the criminal liability of legal entities or the possibility of applying other criminal law measures to legal entities does not reveal

the essence of corporate crime (corporate crime). This seems justified, since this category is a collective one, which includes various types of crimes in the field of economic activity, including in business, in the field of computer information, environmental crimes, etc. Hence the lack of consensus on what should be understood by corporate crime.

For example, some scholars understand corporate crime as illegal acts committed on behalf of the management of a corporation by its representatives or by the managers themselves, who use the official status of a corporation to increase its wealth or protect its interests by performing or failing to perform appropriate functions. According to the authors, this definition does not accurately reflect the essence of the concept of "corporate crime", since these crimes are committed in the name of the corporation itself and not in the name of its representatives or management (Sutherland, 1950).

Other scholars argue that corporate crime consists of crimes committed by legitimate companies to achieve the legitimate goals for which they were created (industrial espionage, conspiracy to monopolise the market, etc.) (Kalman, 2014).

According to third parties, an act is recognised as having been committed by a company if it is committed, directly or through other persons, by a person or persons who control the exercise of the rights of the company and act to exercise those rights.

Although these definitions define the concept of corporate crime, they do not reflect the important and inherent features of this type of crime, such as mercenary motivation and the commission of criminal acts in the interests of the corporation.

In addition, these definitions show a tendency to view "white-collar crime" in terms of official crimes or crimes committed by members of a particular profession in the course of their official duties. In other words, there is again a narrow understanding of this type of crime, attributing it to the "white collar" (Sutherland, 1949).

The existence of this approach, which is based on the fact that economic crime is committed not only by managers on behalf of and in the interests of the company, but also by other persons and by the companies themselves, inevitably required a revision of the interpretation of the concept of "white-collar crime".

The tendency to expand this concept manifested itself in two interrelated aspects:

- Expansion of the circle of subjects of these crimes (they now include not only senior officials of enterprises, but also other employees, with only the element of committing a crime in the field of official activity remaining unchanged);
- extension of the list of crimes classified as economic crimes to include such acts as tax evasion, computer

and other crimes that harm the state's economy or its individual sectors, business activities, and the economic interests of certain groups of citizens.

These changes were caused not only by the internal logic of the development of scientific knowledge, but also by the evolution of the phenomenon under study – economic crime.

The new understanding of the problem allowed both Ukrainian and foreign researchers to propose many new definitions of the concept of economic crime, which differed from each other in one way or another.

However, it is worth noting that although crimes in the field of business activities are committed in most cases by corporations (legal entities), these offences are only a partial part of all corporate crime.

At the same time, white-collar crime is a product of the existing economic system. As the core of economic crime, white-collar crime is constantly changing. And the criminals who commit white-collar crime are, as a rule, intellectually developed, both legally and professionally, and are several steps ahead of those who are called upon to combat them. This crime is like a chameleon and its prevention cannot be limited to individual measures. Only an integrated approach and, above all, changes in legislation and public opinion regarding entrepreneurs and their activities can keep this illegal phenomenon within limits.

In Ukraine, the shortcomings of legislation and law enforcement practice have a significant impact on economic crime. It should be noted that economic reforms were initiated in the absence of many basic documents that should regulate relations in various spheres of society, primarily the Criminal Code (The Criminal Code of Ukraine, 2001). This has led to confusion and impunity. In addition, the legal framework was created spontaneously, often in relation to individual situations developing in the economy, which is completely wrong, as it violates the consistency of legislation. The adopted normative legal acts and other documents were vague and contained many blank reference norms, which further complicated the implementation of rights. Moreover, the same relationships were named differently in different sources, which led to abuse by officials. This discrepancy still exists today, despite the numerous amendments that have been made to almost every law.

The discrepancy between the adopted normative acts regulating business relations and the creation of an organisational and logistical base for their implementation initially created a situation in which the entrepreneur found himself in the position of a violator, which, on the one hand, made him the object of criminal encroachments, and on the other – created an environment of impunity for violating the established rules (Popovych, 2018).

A characteristic feature of today's legislative support is the imbalance between the obligations of participants in business relations to society, its morality, value system and the rights represented, as well as an underestimation of the coercive power of the state in ensuring compliance with the rules of a civilised market (Klaus, 2023).

In any legal system, participants in economic activity, including entrepreneurship, are forced to simultaneously achieve two goals: firstly, the goals of self-preservation (of themselves, their family and their property), and secondly, the goals of the most efficient and profitable activity, because the more aggressive the business environment, the more resources the entrepreneur is forced to use for self-preservation, resorting to illegal actions if necessary, and, accordingly, the less resources he/she can use for investments and other investments in the development of his/her business and the country's economy (Homin, 2009).

Currently, business crime is a negative phenomenon that affects not only Ukraine but also many other countries where business activities are carried out. It can be concluded that business crime has reached a level that threatens the national security of Ukraine. Therefore, its prevention should be seen as one of the most important activities of all law enforcement and regulatory authorities.

4. Modern Problems and Mechanisms of Criminalisation and Decriminalisation of Acts in the Field of Economic and Commercial Relations in Ukraine

Currently, Ukraine is actively working on the decriminalisation of economic risks of business entities. One of the main directions of this activity is the improvement of criminal law instruments of influence on economic relations (Minakov, 2023).

An analysis of the amendments to the Criminal Code of Ukraine shows that, in general, the tasks of decriminalisation of economic risks were solved by decriminalisation of crimes against the order of economic activity (The Criminal Code of Ukraine, 2001). Accordingly, the removal of the barrier to the development of economic relations was the revision of the public danger of a number of acts previously classified as criminal.

The work on both decriminalisation and criminalisation of economic risks in Ukraine has not been completed, therefore all possible instruments should be studied in detail during their implementation. First of all, it seems advisable to determine the mechanisms of criminalisation and decriminalisation of crimes against the order of economic activity. In parallel with this task, it is worth outlining what points should be assessed in terms

of the consequences of a decision to exclude the provision on liability for a particular crime in the economic sphere (Bloomberg, 2022).

The decision to decriminalise a particular corpus delicti is preceded by a statement that the protective potential of the relevant criminal law norm has been exhausted, that the criminal law prohibition is not adequate to the existing system of public relations. This conclusion is possible only as a result of a systematic analysis: it is necessary to build a model of lawful behaviour in the economic sphere (the task of regulatory legislation) and to categorise deviations from this behaviour according to the degree of public danger, with the most dangerous acts constituting crimes.

Both criminalisation and decriminalisation should clearly define their ultimate goal: to determine what should happen in society as a response to this decision (a barrier to entrepreneurship will be removed/installed, economic activity will intensify, the amount of tax revenue to the budget will increase). But can the removal of certain barriers for entrepreneurs be the ultimate goal of decriminalisation of crimes in criminal law? The authors of the article believe that it is not. Accordingly, in order to achieve the preventive and protective goals of criminal law, when deciding whether to criminalise or decriminalise crimes, it is necessary to predict the success of combating the shadow economy through civil, administrative, legal or other mechanisms.

In the following, an attempt will be made to summarise the reasons and grounds for criminalisation and decriminalisation of acts in the field of economic entrepreneurship. Criminal law reforms may be conditioned by the need to bring criminal legislation into line with the provisions of the Basic Law of the State, the requirements of international treaties binding on the country, including within the framework of harmonisation of legislation with partner states in regional integration (for Ukraine, the European Union), and regulatory legislation. However, the most important reason for decriminalisation in criminal law scholarship is recognised as the "lack of a sufficient level" of public danger of an act for which a criminal law prohibition has been established, or the inadequacy of a criminal law prohibition to the existing system of public relations (Klaus, 2023).

Taking into account the place of criminal liability among the means of resolving contradictions and conflicts, the grounds for decriminalisation of acts in the field of economic activity arise when there are other, non-criminal, more effective ways to resolve them. Simultaneously with these processes, the principle of economy of repression is included in the justification of the process of lifting the criminal law prohibition. As a whole, the economy

of criminal repression and the inappropriateness of criminal law measures are an essential condition for the decriminalisation of certain crimes against the order of economic activity. The establishment of the criminal liability of an act is permissible if the positive social results of the application of criminal law exceed the inevitable negative consequences of criminalisation (Minakov, 2023).

In connection with the assessment of the public danger of an act in the sphere of economic activity, it is possible to admit that the legislator may make an incorrect initial assessment of the public danger of the acts prohibited under the threat of punishment. This situation should be taken into account when drafting a regulatory legal act. An incorrect assessment of the public danger of an act by the legislator is revealed by the law enforcement officer, which is illustrated by the data of judicial practice. A number of norms establishing responsibility for economic crimes were not actually applied in practice, which was one of the main arguments for decriminalising a number of norms protecting fair competition and antitrust activities in Ukraine (Klaus, 2023).

With regard to possible decriminalisation, the typicality and prevalence of certain acts should be assessed. The criminalisation of individual negative acts is pointless, as they have no regulatory significance. However, even for homogeneous acts of antisocial behaviour, there is an upper limit that determines the possibility of their criminalisation. The attempt to criminalise all too common forms of behaviour is therefore dysfunctional, since the result would go beyond the practical possibilities of the criminal justice system and thus normalise impunity for crimes. Finally, the inclusion of a large number of entrepreneurs or business entities with widespread forms of deviant behaviour in the category of criminals will not be perceived as fair by the public legal consciousness, which is unlikely to contribute to increasing the prestige of criminal law. In general, public opinion should be considered as an essential basis for decriminalising certain acts in the field of economic activity (or as a basis for maintaining a criminal prohibition), which is also taken into account in the framework of public discussions on draft laws.

For Ukraine, foreign experience often serves, if not as a reason, then as a very strong argument for the processes of criminalisation and decriminalisation. Legislative orientation to the criminal legislation of other countries, especially partner countries, is a necessary condition for the success of integration processes. Thus, the abolition of criminalisation in our country, if similar grounds for criminal liability are maintained in other countries, will not contribute to the successful fight against the black economy,

but on the contrary will reduce the attractiveness of the country for investors (Homin, 2009).

It seems that the set of the above conditions and circumstances determines the processes of criminalisation and decriminalisation of crimes against the system of economic activity.

When deciding on the decriminalisation of crimes, attention should also be paid to the use of tools for assessing the regulatory impact of a legal act. It is necessary to make a forecast of the consequences of the adoption (publication) of a regulatory legal act, including an assessment of the regulatory impact of the draft regulatory legal act on the conditions for conducting business, the compliance of the draft regulatory legal act with the socio-economic needs and capabilities of society and the state, as well as the goals of sustainable development.

It is believed that the preparation of a draft legal act does not begin with a forecast of the consequences of its adoption (the forecast of the consequences of the adoption of a legal act is a stage of work with ready-made proposals), but with an assessment of the existing socio-economic and legal reality, analysis of the accumulated experience of its implementation, and, in fact, with an analysis of actual regulation in a particular area. In this respect, the ability of the legislator to 'capture' economic needs is paramount. Obviously, this does not fully apply to situations in which completely new relationships emerge that have not been subject to legal regulation in the past (e.g., the development and implementation of new financial technologies). Having studied the prospects for the development of public relations or having identified contradictions, including in the model of their criminal law protection, it is possible to finally propose a set of measures for their desirable development or prevention, and to make the necessary decisions that will allow the law to develop in the direction desirable for various groups of participants in economic business relations (Popovych, 2018).

In order to maintain the stable effectiveness of the legal regulation of public relations, it is necessary to assess the effects of the regulation with a certain periodicity. The statement of the fact of confirmation of the forecast and effectiveness of regulation of public relations in the present should not indicate the end of the cycle. In the process of functioning of legal norms, new information appears, for example, the results of scientific research, new forecasts can be obtained, which, when correlated with the results of the regulatory impact assessment, can also act as the main one for setting new tasks for the legislator (Minakov, 2023).

The authors are convinced that the role of regulatory impact assessment tools in the decision-making process on criminalisation and decriminalisation

of acts in the field of economic activity should be strengthened. An important aspect is the connection between different types of forecasting the consequences of the adoption of regulations and their results in the process of criminalisation/decriminalisation of the economy. The tasks of regulatory impact assessment do not include forecasting and monitoring in the sphere of criminal law relations; these are the tasks of criminal law forecasting and monitoring of criminal legislation. It should be noted that regulatory impact assessment as a way of forecasting the consequences of the adoption of regulatory legal acts closely interacts with other forecasting methods. In addition, the results of regulatory impact assessment can contribute to solving a very important task – crime prevention. Having data on the real consequences of legal regulation, it is possible to prevent contradictions in the economic sphere from turning into causes and conditions of crime.

5. Conclusions

In conclusion, the following conclusions can be drawn. Criminalisation and decriminalisation of economic activity in the economy as a vector of criminal law policy and a direction of economic development of the State involves the formation of an effective model of interaction between business entities and the State, which minimises the commission of socially dangerous acts, meets the current needs of society and is regulated by law. Decriminalisation of the economy means granting entrepreneurial risk the status of a socially useful rather than a socially dangerous phenomenon. One

of the main areas of decriminalisation of economic risks in Ukraine is the improvement of criminal law instruments to influence economic relations.

The authors believe that the role of criminal law in the regulation of social and economic relations is far from being the leading one. At the same time, the removal or establishment of certain barriers for entrepreneurs cannot be considered the ultimate goal of criminalisation or decriminalisation of acts in the field of economic activity in criminal law. Criminal law should pursue its preventive goals, including in the fight against the shadow economy. The decriminalisation of offences against the system of economic activity should be accompanied by changes in regulatory legislation in the direction of simplifying its requirements for business entities. Situations are unacceptable if, on the one hand, the rules and procedures for carrying out economic activities are complicated by regulatory legislation and, on the other hand, criminal liability for violation of strict rules is abolished. This leads to a very negative result: restrictions are circumvented because there is no responsibility for their violation.

It should be noted that it is important to adopt a systematic approach when deciding on criminalisation and decriminalisation of economic crimes. It is necessary to create a model of lawful behaviour in the economic sphere (the task of regulatory legislation) and to categorise deviations from this behaviour according to the degree of public danger, where the most dangerous acts will constitute crimes. This approach will allow the maximum correlative effect to be achieved: the development of the economy and its eventual decriminalisation.

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