

## СОВРЕМЕННЫЕ ПОДХОДЫ В ТЕОРИИ ПРЕДУПРЕЖДЕНИЯ ЭКОНОМИЧЕСКОЙ ПРЕСТУПНОСТИ: ИСПАНСКИЙ ОПЫТ

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**Аннотация.** В статье исследуются теоретические сложности разработки наиболее эффективных способов предупреждения экономической преступности. Практическая значимость результатов исследования основана на тщательном изучении работ испанских юристов. Авторами предложены наиболее эффективные и проверенные временем методы предупреждения преступности в экономической отрасли. Первоначальная цель представленного исследования состоит в конкретных рекомендациях (основанных на опыте криминологических теорий в Испании) по разработке наиболее эффективных мер по предотвращению экономических преступлений. Сама испанская доктрина считает, что нынешний этап развития криминологической науки дает возможность пересмотреть некоторые криминологические теории на эту тему. Основные постулаты психологических теорий, направленные на объяснение этиологии экономических преступлений, также подверглись изучению в представленной статье, несмотря на кризис, который они переживают в настоящее время, и критику по отношению к ним за определенную долю их идеологизации и их стремление уменьшить значение феномена экономической преступности к отдельным индивидуальным патологическим чертам личности. Так, при транспонировании положений указанных теорий к современным реалиям отмечается, что лица, находящиеся в конкретных условиях социальной действительности, вынуждены к ним адаптироваться. В этой связи авторами рассмотрены обстоятельства, благоприятствующие отказу участников юридических лиц от каких-либо приемлемых ценностных ориентиров, в случае если когда-либо у них они присутствовали и могли препятствовать совершению преступных деяний. Установлено, что этот процесс происходит естественным образом: ему способствуют социальные и иные внешние условия. Однако ключевым, скорее, является вопрос определения причин возникновения девиантного поведения в организациях, потому что далеко не каждое юридическое лицо осуществляет незаконную деятельность. Для некоторых предприятий особенно важно лидерство, амбициозное руководство, которое и определяет внутренние этические рамки. Тенденция к отождествлению собственной выгоды с выгодой предприятия нередко приводит к вовлечению в бизнес лиц с выраженными корыстными представлениями о ведении предпринимательской деятельности и к поощрению представлений, угодных руководству, которые способствуют получению прибыли в обход закона.

## MODERN APPROACHES IN THE THEORY OF ECONOMIC CRIME PREVENTION: SPANISH EXPERIENCE

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**Abstract.** The authors explore the theoretical difficulties of developing the most effective ways to prevent economic crime. The practical significance of the results of the study is based on a thorough analysis of the work of Spanish lawyers. The authors have proposed the most effective and time-tested methods of crime prevention in the economic sector. The initial goal of the study is to provide specific recommendations (based on the experience of criminological theories in Spain) on developing the most effective measures to prevent economic crime. The Spanish doctrine itself believes the current stage of criminological science development to be quite a good opportunity to reconsider some criminological theories on this topic. In particular, the aim of such an approach is mainly to develop specific ways so as to prevent economic

**Keywords**

Criminology; theory of crime prevention; prevention of economic crime; economic crime; lawfulness; criminal prosecution

crime. The basic postulates of psychological theories, aimed at explaining the etiology of economic crime, are being discussed in the following article, despite the crisis they are currently going through and the criticism towards them for a certain share of their ideologization and their desire to reduce the phenomenon of economic crime to some individual pathological traits of a personality. Sociological theories that have a solid ground, but do not allow us to understand the origins of criminal behavior in the economy at the whole scale, are also being analyzed in this work.

**Relevance**

In modern conditions arises a crucial public need to develop new concepts of prevention of economic crime. Such situation is propelled by the constant complication process of schemes of criminal financial transactions, by the latency of crime rate in economy, by the accumulation and amalgamation of criminal potential and by the possibility of real erosion of economy. The activities of law enforcement agencies in the sphere of prevention of economic crime are crucial for our society. However, law enforcers need some new legal tools to solve this problem. The leading methods of the following research of the problem were systematic and comparative methods, methods of synthesis and analysis, which allow us to analyze, generalize and systematize the approaches of Spanish lawyers to some of criminological theories and which also allow us to explore new methods of preventing economic crime.

**1. Introduction**

Edwin Sutherland, who is one of the most famous criminologists of all time, suggested the concept of «white-collar crime» back in 1939 [1]. This concept was aimed at finding an approach to the understanding of the original etiology of criminal acts committed by wealthy people. E. Sutherland's greatest merit consists in the fact that he was the first to doubt that the causes of criminal behavior are marginal social status, poverty, failures in person's private life or even genetic predisposition. The social reality itself demanded to look closely at displays of criminal activity from a new criminological perspective. The need to explore new social phenomena arose suddenly at that time because of the fact that marginality and atavisms, for instance, ceased to satisfy the need of the society to explain somehow the roots of criminal behavior in the economy. It should also be kept in mind that for the purpose of preventing economic crime it is highly advisable to closely study the characteristics of already committed economic crimes and to thoroughly analyze the factors which generally contribute to the criminals' choice of methods and certain conditions for committing crimes.

**2. Methodological base**

The study of really effective methods of preventing economic crime became a controversial subject of the most heated discussions in early 30s in the previous century.

*2.1. E. Sutherland's theory of differential Association.* Concordantly to this theory, the analysis of criminal behavior requires starting the research from discovering to which group the individual belongs and what is her/his social background. It is due to the fact that any deviant behavior is the result of socialization of personality. A person learns criminal thinking during the interaction with those people who consider criminal behavior to be quite acceptable. At the same time such a person moves slowly away from those for whom illegal actions are unacceptable. When the arguments justifying committing crime outweigh the arguments against doing it, the person simply does commit crime [2].

*2.2. Theory of neutralization.* The above stated explanation of the phenomenon of economic crime proposed by E. Sutherland was supplemented by the theory of neutralization suggested by G. Sykes and D. Matza. According to their position, the criminal behavior itself emerges due to the fact that criminals always find a way «to neutralize» (videlicet «to justify») their guilt and free themselves from the factors which shall suppress the criminal behavior, as follows, cultural attitudes or moral norms [3]. Deviant behavior stems from the offender's being able to deny responsibility by means of certain neutralization strategies such as: deliberate non-admission of guilt («I was forced to do it because it was impossible not to comply with the order of the head» or «it is a fairly common practice of running a business») or even harsh victim blaming; referring to the irrationality of particular law provisions («the tax burden is excessive and does not let us be competitive enough»); or sometimes even being extremely loyal to the boss and to the interests of the service («I had to increase the volume of sales of the enterprise and thereby save hundreds of working places»).

E. Sutherland and also other authors had previously attempted to explain the phenomenon of

economic crime, but at the same time they still had not managed to offer a single basis for creating special psychological portraits of people committing crimes in the economic sphere.

### 3. Results

When we apply the provisions of the above-mentioned theories to actual modern realities, it can be easily seen that people who are at the moment in some specific conditions of social reality are forced to adapt to such new provisions. Especially the participants of a legal entity must know how to commit certain crimes and how to hide the fact of having committed them [4]. This favors the abandoning of any acceptable social values and waymarks by such people, particularly, if they have ever been present at committing crime and could have prevented committed criminal acts. This process occurs naturally. It is promoted and moved forward by social conditions and other external conditions, for example, when a criminal in the economic sphere does not fit into the usual understanding of the image of an ordinary criminal. Crimes committed in the economic sphere are not often followed by public blame. It happens is due to the fact that the social danger of crimes in the economic sphere, because of their complexity, cannot always be recognized by society. However, the key question is rather to determine the causes of deviant behavior in organizations, as not every legal entity is somehow involved in illegal activities. For some enterprises leadership in their branch and ambitious ruling, which sets the ethical framework, are crucially important. Employees are guided by them while performing their duties. The tendency to identify one's own benefit with the benefit of the whole company does usually result in involving such people in business, who express obviously selfish ideas about doing business, and in the promotion of ideas that are pleasing the governing bodies, who in their turn to their best to get the most of possible profit.

*3.1. The theories of tension.* These theories are rather popular in various Spanish criminological research. They may serve to clarify some aspects of the phenomenon of economic crime [5; 6]. Roughly speaking, such theories are on the whole similar to the theory of anomie developed by R. Merton in the 30s of the XX century, which explains criminal behavior by the fact that a person resorts to using criminal methods in order to achieve goals, when he/she fails to achieve them by legal means acceptable in the society [7, p. 44–51]. According

to the theories of tension, criminal behavior can have different ways of being expressed, depending on social reality. Most commonly, it comes down to the fact that the subject of crime applies to easier and more illegal means (than those established by law and have developed in society) so as to achieve their goals. For example, the emergence of a new competitor in the market can lead to the heads of legal entities resorting to illegal actions aimed at ensuring their only monopoly position; the pressure of large shareholders who maintain the volume of their capital only if a certain level of profit is achieved. All this creates a situation of tension that leads to criminal behavior. This is due to the fact that the capitalist model of society is usually characterized by allowing the existence of investors who are rapidly moving their assets searching constantly for quick profit. Such activity can often easily become a criminal one.

*3.2. The phenomenon of transferring responsibility for risks.* Nowadays, the following trend is fixed in many organizations: the management shifts its share of responsibility for risks to other people due to the management of the organization being under harsh pressure. The management actually puts the responsibility on the weaker «elements» in the organization [8]. The heads of the enterprise, who are always in a competitive environment, unscrupulously make people cooperate, conclude all anti-competitive agreement and bribe officials as a result. At the same time, in view of all the imperfections of the legislation, in some cases certain difficulties with holding such people to account arise. This transferring risk and responsibility to mid-level staff is one of the distinctive features of any organization and serves to explain the etiology of criminal behavior.

*3.3. Economic analysis of law by the Chicago school of sociology.* Another explanation of criminal behavior was offered to public in the middle of 70s in the twentieth century by the Chicago sociological school. It goes on about the particularly economic analysis of law, which was skillfully used by G. Becker, the Nobel prize winner in 1992 to explain criminal behavior. The subject of economic crimes by G. Becker is far from a desperate individual of R. Merton, but a calculating criminal who carefully calculates all the economic aspects of committing such a crime — all the losses and benefits from criminal acts [9, p. 120–132]. There exists some kind of consensus that this theory is quite acceptable for the analysis of economic crimes, especially for committing corporate crimes.

*3.4. The explanation of economic crime rate by using social psychology.* The tendency to neutralize the attitude to any kind of criminal behavior in an organization is usually explained by the peculiarities of the attitude to risk [10; 11]. The so-called «aversion to risk» declines when a decision is made jointly by a group of people. When the group decisions are already made, takes place the effect of so-called depersonalization of an act, which lets each individual leave aside his/her moral attitudes far more easily. Each individual takes responsibility for only particular type of activity instead of taking responsibility for crime-nature activity on the whole.

*3.5. Theory of possibilities.* The explanation of criminal behavior appeared most recently with the development of this theory which can also be used in studying the phenomenon of economic crime. According to this theory, the uprise of criminal behavior is associated with increased number of opportunities [12]. New spaces, such as the Internet, discover new horizons for the development of criminal activity in the economy, and there are not enough effective ways to prevent crimes committed with the use of new and each time even more perfect and better-considered ways. We cannot help but admit that currently existing criminological theories cannot offer completely effective methods for preventing economic crime. This is due to a number of certain circumstances, for instance, the fact that many of the criminologists still stick to monistic approaches to explaining economic crime, and the phenomenon of economic crime which should be investigated more comprehensively than it is now. Moreover, the abstractive and rather conceptual character of criminological theories does not contribute to their effective practical application in modern conditions.

#### 4. Discussions

In order to develop a number of effective ways of preventing economic crime in the Spanish scientific community, the factors that mostly explain the phenomenon of such type of crime are being thoroughly analyzed. They can serve as a starting point in decision-making process on the issue of the most appropriate measures which may help to prevent economic crime.

*4.1. The identity of a criminal as a criminological factor.* Let us turn to the characteristics of an offender since we absolutely cannot deny its primary role in the emergence of any criminal behavior, especially in the economy. Despite the current

skepticism towards all the theories that explain economic crime solely by the characteristics of the subject of crimes, we do still highlight some of the main traits of character of the offender's personality in the economic sphere. Thus, in accordance with the fundamental systematization of criminological theories (conducted by Miguel Bajo and Silvina Basigalupo) personal criminogenic factors contributing to the Commission of crimes in the economic sphere were identified in the following article [13]. Firstly, the subject who tends to commit economic crimes usually belongs to the highest strata of the society. This factor is determining when it refers to the formation and active development of criminal activity of the above-mentioned subject in the economic sphere. His high social status creates an image of decency, maintaining which is an indispensable part of his life. Awareness of criminal liability for the criminal acts committed by them does not necessarily deprive the subject of such kind of crimes of any illusions. He does have a natural tendency to commit crimes. The fact that the subject of economic crimes usually belongs to those people who were held liable for criminal offence only for the first time, according to Spanish researchers, under no circumstances can indicate that they had not previously committed any crime. This fact, on the contrary, proves specific social danger of such a subject and the imperfections in the methods of preventing any of his activities. Moreover, the propensity of the subject to commit economic crimes by no means can be influenced by the educational factor or any traumatic experience which the subject could obtain in the places of detention. Despite the fact that the subject is aware of his actions being illegal, he will not consider them to be criminal activity. The reasons for such path of thinking are quite obvious. Therethrough, the subject is inclined to consider his social position as a factor which gives him the right to violate the existing law, especially in such cases when violation of law leads to the achievement of any allegedly socially beneficial goal. In addition, there is a widespread attitude towards the law as something unjust and irrational among such people. Or such men may have their own views as to what kind of behavior is considered to be criminal [ibid.].

*4.2 Social criminogenic factors.* Concerning social criminogenic factors that contribute to criminal activity in the sphere of economy, Miguel Bajo Fernández and Silvina Bacigalupo propose their basic ideas and considerations based on the specific characteristics inherent to capitalist society,

specifically the fact that the signs of the capitalist system themselves are crucial in explaining the phenomenon of economic crime. This means the desire for personal enrichment, the system of free competition itself and the consequences of uneven economic development [13]. In conjunction with all of the ideas mentioned above, it is worth emphasizing that the fundamental factors, which explain the phenomenon of economic crime, provide valuable information that contributes to a more effective choice of means to prevent criminal activity in the economy.

### 5. Conclusion

There exist a number of significant obstacles which hinder the implementation of many effective methods of economic crime prevention: for instance, the previously described traits of the personality of criminals in the highest degree create difficulties in the usage of social preventive measures. Although such measures are generally believed to be able to prevail over criminal measures [5; 14].

*5.1. External semblance of lawfulness.* According to Miguel Bajo Fernández, one of the factors which may make it difficult to prevent economic crime is the seeming of legality in the economic activity of an organization or an individual entrepreneur. Furthermore, real reasons for their success rarely come to surface [13]. Nevertheless, even if criminal nature of economic activity is somehow revealed, it is highly unlikely that this will lead to its public reprimand or it will be so minimal that it will not serve the purpose of crime prevention in economy.

*5.2. The complexity of transferring concepts and criteria adopted in the economy to the criminal law sphere.* People typically carrying out criminal prosecution do not have any economic education. It should be noted that in order to effectively prevent economic crime, those people who carry out preliminary investigation of economic crimes should be obliged to understand the issues of performing reporting, to be able to analyze the movement of capital, to be familiar with the matters of corporate governance, in the functioning mechanism of the exchange house, in foreign trade. Knowledge of economics is essential for obtaining crucial information, studying and classifying it.

*5.3. The difficulty in applying penalties to criminals.* Carlos Perez paid special attention to this issue in his work on tax crimes [14]. He deliberately stressed the unwillingness of the authorities for selective criminal law mechanisms to be applied

to the subjects of economic crime, because they tend to put them in a privileged position. Perez gave a rather negative assessment of the softness of criminal law enforcement and he also stated the lack of negative attitude in society to this category of crimes. Moreover, it was strongly emphasized in his work that the growing internationalization of economic crime in combination with insufficient interaction between the states on the international level, resulted in people's not being brought to justice properly. It is not clear what Perez actually means by «properly» and «mildness» of law enforcement agencies, but all in all his position is quite tough. He also pointed out another important factor that, in his view, may have hindered successful prevention of economic crimes. Parliamentarians, when adopting laws on any issues related to this matter, are guided by the same system of values which most people who commit crimes in economic sphere have. They have the same social status as people against whom these laws are often directed. In addition, they are often financed by the same category of people.

*5.4. Archaism of criminal law.* Constantly emerging new displays of economic crime are not constrained because of fragmented and uncertain regulatory environment. This makes it really difficult to reach a uniform understanding and a certain unified classification of economic crimes. It may take place due to the provisions of criminal law on economic crimes being unclear and vague. G. Kaiser in his criminological study of economic crimes emphasized that economic criminal law is not systematized properly at all. Furthermore, its regulation is tricky and rather ambiguous, and, on top of all, fragmented, insufficient and incomprehensible neither to judges nor to people, conducting criminal investigations [15]. This hinders its effective application in the sphere of dealing with the issue of qualification of crimes in the economic sphere.

### 6. Recommendations

Performing measures to prevent crime in the economic sphere requires a complex and integrated approach. They should be conducted not only in legal branch, but also in the social and the economic ones. There is an essential public need to strengthen the role of law enforcement agencies in the prevention of economic crime, including the method of increasing the effectiveness of carrying out law enforcement investigative operations. It also should be mentioned that such kind of activity is usually carried out in order to keep a lid on the

suppression of economic crime rather successfully. From this perspective, it makes sense to study the law enforcement investigative operations so as to define the ways of their most effective application in order to detect and prevent committing individual crimes in the economic sphere. The success of the activity performed law enforcement agencies in preventing criminal activity in the economic sphere is essentially significant for the whole society. However, it is becoming more and more difficult to deal with due to the diversity of its displays. In assessing the current state of affairs, apart from giving assessment to number of crimes committed, it is absolutely necessary to take into account such permanently emerging factors as the indirect impact of criminals on the activities of lending institutions, the penetration of corrupted elements into the economy and the possibility of even greater involvement of deliberately organized crime in the structures that are fundamental for the stability of the whole economic system of any state in the world.

*6.1. Importance of effective investigative operations in the prevention of economic crime.* The complexity of crime prevention in general in the researched area finds its roots in the fact that, most commonly, criminals pose a special threat to the state. They tend to have knowledge of both economics and law. They are aware of the fact which tactics may appear to be most effective in order to avoid criminal liability. In this regard, they can resort to a variety of ways of committing economic crimes, taking advantage because of legal uncertainty and lack of regulation of relations in the field of economy. The detection and prevention of such crimes is extremely complicated due to the fact that each stage of their committing is preconsidered in details by the offenders. This state of affairs is not only an indication of the necessity to continuously improve the skills of people involved in the prevention of economic crime, but also the need to use a number of different sources of information to identify and prevent criminal activity. Taking into account the latency of economic crime rate and the awareness of criminals about the measures that can be applied to identify them, law enforcement agencies face great difficulties in obtaining information related to the upcoming crimes and, according to these facts, in the prevention of such crimes. Law enforcement investigative operations are of fundamental importance for the prevention of economic crimes, since it is carried out, most commonly, behind the scenes. This provides

the significant effectiveness, which can achieve investigative action [14]. It goes without saying that the information obtained in this way requires full compliance with the procedure provided by the criminal procedure legislation for the legalization of such information. Nevertheless, it should be the efforts applied by people engaged in investigative operations that represent primary contribution to the prevention and early detection of criminal activity and minimization of harm to the society and the state.

In the course of carrying out law enforcement investigative operations both the criminal acts of the subjects of crimes and the actions of people who may have any information about the preparation or already committed crimes in the economic sphere are subject to obligatory fixation. Such people are to be identified before the initiation of criminal case. Otherwise, it would be difficult to take any actions in order to involve such men in activities related to the investigation of the criminal case. This fact deprives law enforcement agencies of additional sources of evidence. Moreover, it also has a negative impact on the effectiveness of the investigation as a whole matter. The use of entities that have any information about a pending crime in the economic sphere owns its practical use, for example, in discovering the direction of the criminal's intentions. For example, such people during interrogation can firmly confirm that even before entering into obligations of contract, the person was unable to pay for his obligations and in advance had absolutely no intention to fulfill his obligations under the contract. Or they may testify and, on the contrary, confirm the fact of concealment of illegality of acquiring property, or the fact of sale of such property.

*6.2. Certain peculiarities of preventing economic crime in organizations.* Prevention of economic crime in organizations has its own specific traits. Special control over the activity of a business entity will be required, if there are any signs spotted indicating its illegal activities. In particular, such features may include: active turnover of staff; low staff's morale; documents that contain serious untrue adjustments to the financial statements may not be available to be inspected; bank accounts may not be audited timely; there may be a growing number of customers' complaints; there may be a tendency to reduce profit what does not correlate at all with the successful functioning of the organization; there may be numerous adjustments to the results of inspections, sometimes even touch-

ing upon significant sums of money; discrepancies, identified as a result of the inventory stock control, may not be presented in the relevant account records; the expectations from the results of the organization may sometimes be unrealistic; there may also exist rumors of a conflict of interest; duplicate invoices may be used for payments to suppliers; the purchases may be organized from only one source or from a single supplier; funds may be transferred to an anonymous account abroad; changes of legal representatives, accountants, auditors and other inspectors may happen rather often [14].

The existence of systems and mechanisms aimed at protecting organizations from criminal attacks at the domestic level cannot be left unmentioned. It goes on about the measures taken by each organization with the aim at preventing economic crime. Just to name a few procedures which are usually passed on: according to them the functioning of an organization itself is almost fully ensured on the basis of the principles such as security, transparency, reliability of the rendered data about the activities of a particular organization [11].

In order to define the events that tend to accompany the commission of economic crimes, in order to choose the most appropriate methods and means of disclosing such crimes, in order to assess correctly the signs of criminal acts, it is strongly advisable to study thoroughly the characteristics of particular crimes committed against the economy of the country. The importance of the analysis of economic crimes consists in the value of establishing the certain specifics of the objective circumstances that play an essential role when a criminal chooses a criminal model of his criminal activity. It is extremely necessary to analyze in details the factors that contribute to the offender's choice of specific methods and conditions when committing a crime; the circumstances that determine the cho-

sen by the offender and his social environment tactics of self-protection from criminal prosecution. It can be assumed that the analysis of criminal activity may be effectively carried out fully according to the study of methods of its implementation. This is bound to the fact that the offender is not inclined to change the chosen way how the crime shall be committed. The criminal may sometimes develop his strategy of committing a misdeed for years and may long prepare the conditions in which the offense will be performed.

The choice of method to prevent crimes in the sphere of economy depends fully on the identification of one of the typical criminalistic situations and the corresponding types of investigative operations. They can surely be modified depending on various factors. It is crucially important to understand that criminals in the economy tend to possess organized means to counteract to the activity of law enforcement agencies. They also follow the tendency to take measures so as to ensure their safety and the impossibility of neutralization [16; 17]. While selecting most effective measures to prevent economic crime, it is strongly recommended to use all available information on the mechanisms of committing such type of crimes, to apply methods of mathematical modeling and situation analysis [18]. It is also strongly advised to encourage the identification of people involved in the potential criminal activity, to take really active measures to prevent any criminal activity, to engage individuals into the cooperation with law enforcement agencies, to identify the property obtained by the offenders with the help of criminal means and its location. The issues of ensuring the protection of the rights of victims of criminal attacks in the economic sphere also require the most focused and the closest attention to be paid to them.

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#### ДЛЯ ЦИТИРОВАНИЯ

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