PROBLEMS OF CRIMINAL LEGAL PROTECTION OF COMPETITION FROM ITS RESTRICTION

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ANNOTATION

The article analyzes the signs of restriction of competition established in the industry legislation, as well as ways to criminally limit it. The characteristic problematic issues of methods of committing a crime under Art. 178 of the Criminal Code and proposed measures to improve the criminal law that ensures the protection of competition in our country.

Keywords. Criminal protection of competition, ways to limit competition, the domestic economy.

April 5, 2018 Mr. Oda held sitting and of the State Council on the development of competition in which it was stated that it is necessary to find a balance, to ensure it is fair and equal competition. For the breakthrough development of the country, it is critically important to ensure economic freedoms and a high level of competition.[1]

The Criminal Code of the Russian Federation (hereinafter - the Criminal Code) put under criminal law protection the issues of restricting competition from unfair market competition by concluding an unlawful agreement by competitors operating on the same market, provided that such an agreement (cartel) has adverse consequences for the state , organizations or citizens in the form of causing major damage, or generating large-scale income.

Since the current version of Art. 178 of the Criminal Code[2] is blanket in nature, for its disclosure it is necessary to be guided by the provisions of Art. 11 Federal Law “On Protection of Competition”.

Thus, agreements between competing business entities are recognized as a cartel and prohibited, that is, between business entities selling goods on the same product market, or between business entities purchasing goods on the same product market, if such agreements result or may lead to:

1) the establishment or maintenance of prices (tariffs), discounts, allowances (surcharges) and (or) margins;

2) increase, decrease or maintenance of prices at the auction;

3) the division of the product market according to the territorial principle, the volume of sale or purchase of goods, the range of goods sold or the composition of sellers or buyers (customers);

4) reduction or termination of production of goods;

5) refusal to conclude contracts with certain sellers or buyers (customers).

Currently, only the aforementioned signs of competition restriction have criminal legal significance , which of course has a relative value, which is dependent on the current situation in the commodity markets.

Since the current version of Art. 178 of the Criminal Code provides for the material corpus delicti; for the latter to exist, it is necessary to establish the fact of causing major damage (at least 250 thousand rubles), or to generate large-scale income (at least 50 million rubles) .

At the same time, the ineffectiveness of the antitrust policy in Russia is obvious, for example, it is enough to follow the changes in gas prices, compare the prices for mobile telephony services in Russia with European ones or analyze large transactions with shares of commodity companies. Cartels (agreements on market sharing and pricing) are so common that their participants do not realize the wrongfulness of the deed, often discussing the conditions of the cartels in the presence of journalists (just recall media discussions about wheat prices in the fall of 2002).[3]

The changes that have taken place in the improvement of the criminal law providing for the prevention, limitation and elimination of competition received an appropriate statistical assessment. The peak of criminal cases under Article 178 of the Criminal Code of the Russian Federation was recorded in 2001, when 64 criminal cases were instituted. After amending Art. 178 of the Criminal Code in 2003, when the corpus delicti was formulated as material criminal proceedings began to take place only in isolated cases.

In 2015, the disposition of Art. 178 of the Criminal Code of the Russian Federation decriminalized such dangerous types of restriction of competition as setting monopoly low and monopolistically high prices, as well as other types of abuse of a dominant position in the market, criminal acts were only competitors' agreements, whether in written or verbal form, restricting competition.

However, despite the indicated state of affairs, the statistics on the initiation of criminal cases under article 178 of the Criminal Code of the Russian Federation are still single-handed, measures taken to improve the criminal legal norm are not effective, such a conclusion is inevitable, since the Russian economy is an extremely monopolized market, and therefore competition is extremely limited on it.

The current edition of the article under the Criminal Code very unsuccessfully formulated a criminal law prohibition only for concluding cartel agreements, leaving competition unprotected with the participation of perpetrators in the execution of cartel agreements. A procedure has been established that makes it possible to reasonably avoid criminal liability for persons who actually benefit from acquiring rights to manage a legal entity during its reorganization through mergers, spin-offs, sale, etc. The consequence

of all the legislative gaps listed is an extremely low law enforcement practice, which, starting with the latest amendments to Art. 178 of the Criminal Code indicates that this norm in the current wording is “declarative” and currently only two criminal cases have been sent to the court under this article.

Equals is also not conducive to the protection of competition is administrative-legal regulation and protection of the domestic market by concerted action th and abuse of dominant position, as a means pravoprinuzhdeniya under administrative law and criminal-legal protection are not comparable in terms of the impact on the individual rights of citizens, and hence on its effectiveness on the collection and use of evidence base.

Literature

[1] State Council meeting on the protection of competition of April 5, 2018. http://www.kremlin.ru/events/president/news/57205.

[2] See: Federal Law of 08.03.2015 , No. 45-ФЗ “On Amending Article 178 of the Criminal Code of the Russian Federation”. "RossiyskayaGazeta", No. 49 dated 03/11/2015.

[3] I.A. Klepitsky. Criminal protection of competition in Russia: why the law does not work ?. "Legislation" of 2005 No. 10.

ГОСУДАРСТВЕННАЯ СЛУЖБА РОССИИ И ЗАРУБЕЖНЫХ СТРАН: СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ

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STATE SERVICE OF RUSSIA AND FOREIGN COUNTRIES: COMPARATIVE LEGAL ANALYSIS

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АННОТАЦИЯ

В статье рассмотрен опыт государственного устройства государственной службы Российской Федерации и зарубежных стран. Целью статьи является сравнительно-правовое исследование проблем института государственной службы в России и за рубежом на примере ряда зарубежных стран: США, Великобритании, Франции, Германии. Анализ правового регулирования государственной службы зарубежных стран и федеральной государственной службы Российской Федерации обусловлен возможностью совершенствования законодательства Российской Федерации. Результатом исследования является формулирование выводов и предложений по совершенствованию административного законодательства, регулирующего устройство государственной службы Российской Федерации, с использованием опыта зарубежных стран.

ABSTARCT

Article considers the experience of the state structure of the state service of the Russian Federation and foreign countries. The purpose of this article is a comparative legal study of the problems of the Institute of state service in Russia and abroad in several foreign countries: USA, UK, France, Germany. The analysis of legal regulation of the state service of foreign countries and the Federal state service of the Russian Federation is conditioned by the possibility of improving the legislation of the Russian Federation. The result of the study is the formulation of conclusions and proposals for improving the administrative legislation regulating the structure of the public service of the Russian Federation, using the experience of foreign countries.

Ключевые слова: государственная служба, административно-правовая сфера, реформирование, англосаксонская система, континентальная система, зарубежные страны, административные регламенты.

Key words: public service, administrative and legal sphere, reform, Anglo-Saxon system, continental system, foreign countries, administrative regulations.

В Российской Федерации продолжается реформа государственной службы, направленная на формирование эффективной государственной службы. Это – приоритетное направление преобразований в административно-правовой сфере, вследствие чего изучение зарубежного опыта по устройству государственной гражданской службы является достаточно актуальной проблемой, тем более, что во множестве зарубежных стран уже разработаны модели такого реформирования, на основе которых проводится работа по повышению ее эффективности. Как отмечает профессор А.З. Арсланбекова, актуальность данной темы также обусловлена тем, что «исследование проблем института государственной службы в РФ, ее сравнительно-правовой анализ с аналогичными институтами зарубежных стран позволяют определить проблемы реализации функций, принципов нормативно-правового регулирования и