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ESTABLISHMENT OF THE INSTITUTE OF LIABILITY FOR CRIMINAL OFFENSES IN THE SPHERE OF ECONOMIC ACTIVITY IN THE CRIMINAL LAW OF THE REPUBLIC OF KAZAKHSTAN: A RETROSPECTIVE ANALYSIS

Abstract. This article provides a retrospective analysis of the formation and development of the system of criminal liability for offenses (crimes) in the sphere of economic activity in the Republic of Kazakhstan.

In the course of the study, the author examines the evolution of legislation, starting from the Soviet period (Criminal Code of the Kazakh Soviet Socialist Republic of 1959), through the stage of the establishment of independence (Criminal Code of the Republic of Kazakhstan of 1997), to its modern state (Criminal Code of the Republic of Kazakhstan of 2014).

The paper emphasizes the interconnection between the transformation of the state's economic system and the modernization of criminal law standards. Particular attention is paid to the processes of humanization, decriminalization, and the introduction of the somewhat controversial institution of criminal infractions.

Based on the results of the retrospective analysis of domestic criminal legislation concerning liability for offenses (crimes) in the sphere of economic activity in the Republic of Kazakhstan, conclusions and proposals are formulated aimed at a prospective and consistent modification of the modern criminal law policy of the Republic of Kazakhstan in the economic field through a phased transformation of the criminal law framework for ensuring the state's economic security.

Keywords: criminal law; economic criminal offenses; economic crime; retrospective analysis; Criminal Code of the Kazakh Soviet Socialist Republic; Criminal Code of the Republic of Kazakhstan; decriminalization; economic activity; economic security.

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ ҚЫЛМЫСТЫҚ ҚҰҚЫҒЫНДАҒЫ ЭКОНОМИКАЛЫҚ ҚЫЗМЕТ САЛАСЫНДАҒЫ ҚЫЛМЫСТЫҚ ҚҰҚЫҚ БҰЗУШЫЛЫҚТАР ҮШІН ЖАУАПТЫЛЫҚ ИНСТИТУТЫНЫҢ ҚАЛЫПТАСУЫ: РЕТРОСПЕКТИВТІК ТАЛДАУ

Аннотация. Мақалада Қазақстан Республикасындағы экономикалық қызмет саласындағы құқық бұзушылықтар (қылмыстар) үшін қылмыстық жауаптылық институтының қалыптасуы мен даму процесіне ретроспективалық талдау жүргізіледі.

Зерттеу барысында автор заңнаманың эволюциясын кеңестік кезеңнен (Қазақ КСР-нің 1959 жылғы ҚК) бастап, тәуелсіздіктің қалыптасу кезеңі (Қазақстан Республикасының 1997 жылғы ҚК) арқылы қазіргі жағдайына (Қазақстан Республикасының 2014 жылғы ҚК) дейін қарастырған.

Жұмыста мемлекеттің экономикалық жүйесінің трансформациясы мен қылмыстық-құқықтық нормалардың жаңғыртылуы арасындағы өзара байланыс баса айтылады. Мақалада ізгілендіру, декриминализациялау процестеріне және белгілі бір дәрежеде даулы болып табылатын қылмыстық теріс қылықтар институтын енгізуге ерекше назар аударылған.

Қазақстан Республикасындағы экономикалық қызмет саласындағы құқық бұзушылықтар (қылмыстар) үшін жауаптылық туралы отандық қылмыстық заңнамаға жүргізілген ретроспективалық талдау нәтижелері бойынша мемлекеттің экономикалық қауіпсіздігін қамтамасыз етудің қылмыстық-құқықтық жүйесін кезең-кезеңімен түрлендіру арқылы экономикалық саладағы Қазақстан Республикасының қазіргі қылмыстық-құқықтық саясатын келешекте және жүйелі түрде өзгертуге бағытталған тұжырымдар мен ұсыныстар тұжырымдалған.



Түйінді сөздер: қылмыстық құқық; экономикалық қылмыстық құқық бұзушылықтар; экономикалық қылмыс; ретроспективалық талдау; Қазақ Кеңестік Социалистік Республикасының Қылмыстық кодексі; Қазақстан Республикасының Қылмыстық кодексі; декриминализациялау; экономикалық қызмет; экономикалық қауіпсіздік.

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СТАНОВЛЕНИЕ ИНСТИТУТА ОТВЕТСТВЕННОСТИ ЗА УГОЛОВНЫЕ ПРАВОНАРУШЕНИЯ В СФЕРЕ ЭКОНОМИЧЕСКОЙ ДЕЯТЕЛЬНОСТИ В УГОЛОВНОМ ПРАВЕ РЕСПУБЛИКИ КАЗАХСТАН: РЕТРОСПЕКТИВНЫЙ АНАЛИЗ

Аннотация. В статье проводится ретроспективный анализ процесса формирования и развития института уголовной ответственности за правонарушения (преступления) в сфере экономической деятельности в Республике Казахстан.

В ходе исследования автором рассмотрена эволюция законодательства, начиная с советского периода (Уголовный кодекс Казахской ССР 1959 г.) через этап становления независимости (Уголовный кодекс Республики Казахстан 1997 г.) до современного состояния (Уголовный кодекс Республики Казахстан 2014 г.).

В работе подчеркивается взаимосвязь между трансформацией экономической системы государства и модернизацией уголовно-правовых норм. Особое внимание в статье уделено процессам гуманизации, декриминализации и, введению в некотором роде, спорного института уголовных проступков.

По итогам проведенного ретроспективного анализа отечественного уголовного законодательства об ответственности за правонарушения (преступления) в сфере экономической деятельности в Республике Казахстан сформулированы выводы и предложения, направленные на перспективное и последовательное изменение современной уголовно-правовой политики Республики Казахстан в экономической сфере путем поэтапной трансформации уголовно-правовой системы обеспечения экономической безопасности государства.

Ключевые слова: уголовное право; экономические уголовные правонарушения; экономическое преступление; ретроспективный анализ; Уголовный кодекс Казахской Советской Социалистической Республики; Уголовный кодекс Республики Казахстан; декриминализация; экономическая деятельность; экономическая безопасность.

Introduction. It is well known that the evolution of criminal law (as with any branch and field of public knowledge) in every state is inextricably linked to the nature of its socio-economic structure.

As the foundation of the social and state life of any country, the economy sets the trajectory for the entire spectrum of social, economic, geopolitical, informational, legal, and other policies.

For instance, according to Paragraph 4 of Article 60 of the Constitution of the Republic of Kazakhstan: “Draft laws introduced by way of legislative initiative of the Government of the Republic of Kazakhstan for the purpose of operational response to conditions that pose a threat to the life and health of the population, the constitutional order, the protection of public order, and the economic security of the country, shall be considered by the Kurultai immediately”¹, this underscores the critical importance of a socio-legal response to the aforementioned conditions and the threats arising from them, in order to ensure the timely security of the population, society, and the state as a whole.

Thus, in the current Constitution of the Republic of Kazakhstan of the Republic of Kazakhstan, the legislator has placed the issues of the state's economic security on a par with other most priority and important directions and institutions for the development of a full-fledged society and state.

Along with this, Subparagraph 1) of Article 65 of the Constitution of Kazakhstan stipulates that “The Government shall elaborate the main directions of the state's socio-economic policy, its defense capability, security, and public order, and organize their implementation”².

¹ Constitution of the Republic of Kazakhstan: the Constitution was adopted by the national referendum on March 15, 2026 [Electronic resource].

– Access mode: <https://adilet.zan.kz/eng/docs/K2600000000>.

² In the same place.



The above task of the Government is undoubtedly its most vital and key obligation in implementing the strategic ideas of the Head of State and the people of Kazakhstan, which determine the main directions of its domestic and foreign policy.

Furthermore, under conditions of accelerated technological and, accordingly, socio-economic development (*utilizing the capabilities of artificial intelligence*), Kazakhstan is following the path of creating special zones and cities of accelerated economic development for the common good (*including for the purpose of attracting direct investment*).

Thus, according to Paragraph 6 of Article 5 of the Constitution: “For the purpose of accelerated economic development of individual regions of the Republic of Kazakhstan, a special legal regime in the financial sphere or a special legal regime of a 'city of accelerated development' may be established in accordance with constitutional laws. Said special legal regimes may provide for specific features of public administration and the functioning of the judicial system”³.

At the same time, while creating appropriate conditions and opportunities for the socio-economic development of individuals, society, and the state, Kazakhstan must also “take care” of the security issues of the entire system of social relations, including protecting entities in Kazakhstan from various types of both semi-criminal and criminal infringements.

Consequently, the economy (*economic relations*) also plays a significant role in the development of the state's criminal law policy, determining which forms of behavior are recognized as socially dangerous and which are socially useful or neutral.

In this regard, a retrospective analysis of criminal liability for economic acts holds particular scientific and practical interest for the Republic of Kazakhstan, as over a relatively short historical period, the country made a transition from a strictly centralized planned economy to an open market system integrated into global economic processes.

The relevance of the study is driven by the need to understand the patterns in the development of legal norms that ensure the security of economic relations. Understanding how the legislator's conceptual approaches to protecting the economic system have evolved allows for an assessment of the effectiveness of existing norms and prediction of further directions for modernizing criminal law policy.

The primary goal of the publication is a systematic retrospective analysis of the emergence, formation, and transformation of criminal law institutions that protect economic relations in Kazakhstan, identifying the interconnection between state reforms and criminal law innovations.

The objectives of the article are to analyze the genesis and historical stages in the development of legislation on liability for economic criminal offenses in Kazakhstan (from 1959 to the present), to examine select statistical data from the Committee on Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan (CPS&SR GPO RK) related to the topic of research, and to develop specific, evidence-based recommendations to improve the regulatory framework and law enforcement practice in counteracting economic crime in Kazakhstan.

Materials and methods. During the preparation of the article, a historical-legal (retrospective) method of analysis was applied to examine the history of the development of Kazakhstani legislation on liability for economic criminal offenses. In addition, the use of the logical method allowed for an analysis of scientific literature and the provisions of domestic legislation on specific issues of ensuring economic security, leading to several proposals for improving national legislation in the area under study.

Results, discussion. The dynamic development of market relations, the consistent integration of the Republic of Kazakhstan into the global economic space, and the regular emergence of new financial-digital instruments require adequate and flexible legal regulation.

³ Constitution of the Republic of Kazakhstan: the Constitution was adopted by the national referendum on March 15, 2026 [Electronic resource]. – Access mode: <https://adilet.zan.kz/eng/docs/K2600000000>.



The institution of criminal liability for offenses in the sphere of economic activity serves as a vital element in ensuring the state's economic security.

The current state of Chapter 8 of the Criminal Code of the Republic of Kazakhstan (CC RK) is the result of a long evolution. Studying the historical trajectory of this institution (retrospective analysis) makes it possible not only to understand the legislator's logic, but also to identify systemic patterns necessary for the further improvement of the state's Criminal Law policy.

Within the framework of this article, the examination of the historical path of criminal liability for offenses in the sphere of economic activity covers the period from 1959 (Soviet period) to the present, considering that in the modern sense, the Criminal Law and, accordingly, the theory of domestic criminal law as an independent branch of the national legal system began to take shape and develop in 1959.

Undoubtedly, the development of criminal law during earlier periods of Kazakhstan's development (the pre-Soviet period and the Soviet period prior to 1959) is also important and holds special interest for researchers; however, this could serve as the basis for a separate comprehensive study.

Given that the development of any area (sphere) of legislation as a branch of law passes through distinct stages, this article focuses on these specific phases.

The Soviet Period (Criminal Code of the Kazakh SSR of July 22, 1959) as the Starting Point for the Formation of the National Criminal Law System of Kazakhstan. On January 1, 1960, an independent Criminal Code dated July 22, 1959, was brought into force in Kazakhstan for the first time, marking the beginning of the creation of the fundamental principles of Kazakhstani Criminal Law.

The Criminal Code of the Kazakh SSR of July 22, 1959, was created as a code of a socialist state that did not permit political, ideological, or economic pluralism.

In its original version, the tasks of the Code were defined as the protection of the Soviet social and state system, socialist property, the person and rights of citizens, and the entire socialist legal order against criminal infringements.

As the renowned Soviet and Russian legal scholar B.V. Volzhenkin rightly noted: “One of the main legally protected objects was the socialist economic system, characterized by the primacy of socialist property, centralized management of the economy based on state plan assignments, the virtual absence of competition, and administrative methods for solving economic problems” [1; 38].

The 1959 Criminal Code contained a dedicated Chapter VI entitled “Economic Crimes”.

In addition, several elements of crimes infringing upon the procedure for conducting economic activity were provided for in Chapter I (“State Crimes”) among the so-called other state crimes (smuggling (Art. 64), manufacturing or uttering counterfeit money or securities (Art. 73), and illegal operations involving currency transactions (Art. 74)⁴ [1].

Analyzing the elements of economic crimes under the 1959 Criminal Code, as well as under the codes of other Soviet republics, “Soviet criminologists unanimously asserted that the generic object of economic crimes was the socialist economy (variations: the socialist procedure for conducting the Soviet economy; the proper functioning of the socialist national economy; public relations that arise in the course of economic activity and express the interests of the development of the national economy, etc.)” [1; 39].

At the same time, the most common approach to systematizing economic crimes in legal literature was classifying them according to the spheres of economic activity in which they were committed.

Thus, the following categories were identified:

⁴ Уголовный кодекс Казахской ССР: от 22 июля 1959 г. (утратил силу) [Electronic resource]. – Access mode: https://adilet.zan.kz/rus/docs/K590002000_.



- general types of economic crimes (private entrepreneurial activity, commercial brokerage);
- crimes in the field of industry (manufacturing sub-standard products, illegal use of a trademark, etc.);
- crimes in the field of agriculture (violation of veterinary rules, violation of rules established for combating plant diseases and pests, etc.);
- crimes in the field of natural resource usage (illegal logging, illegal hunting, illegal engagement in fishing and other aquatic harvesting trades, etc.);
- crimes in the field of finance (forgery of postage stamps and transport tickets, violation of rules for mineral exploration and extraction);
- crimes in the field of trade (speculation, defrauding customers and clients).

During that period of social relations, the primary protected object was the Soviet economic order based on the state plan.

The concept of “entrepreneurship” or “private initiative” was absent in Soviet law or was interpreted exclusively as a negative, anti-social phenomenon.

Activities that constitute the foundation of a market economy today (trade, brokerage, foreign exchange operations, private production) were treated as crimes against the economic system under the 1959 Criminal Code of the Kazakh SSR.

Characteristic elements of crimes under the 1959 Criminal Code of the KazSSR included:

- Speculation (Art. 168 of the CC KazSSR): The purchase and resale of goods or other items for profit (enrichment). The legislator penalized citizens for seeking to profit from price differences, which directly contradicted the nature of free trade;
- Private Entrepreneurial Activity and Commercial Brokerage (Art. 144 of the CC KazSSR): Engaging in private entrepreneurship using state, cooperative, or other public forms was recognized as a dangerous infringement on planned discipline;
- Illegal Operations Involving Foreign Currency Values (Art. 74 of the CC KazSSR): The state foreign exchange monopoly was protected with exceptional severity, up to the application of the death penalty under aggravating circumstances;
- Padding and Other Distortions of State Statistical Reporting (Art. 151-1 of the CC KazSSR): A specific crime element protecting the accuracy of state statistics and accounting data, alongside other types of economic crime elements.

Sanctions for these crimes carried a heavy punitive orientation: long terms of imprisonment, confiscation of property, and mandatory internal exile. Thus, the repressive apparatus of the 1959 CC KazSSR was aimed at suppressing any manifestations of market relations.

Interestingly, during the period when the 1959 Criminal Code of the Kazakh SSR was in effect, the legal regulation of criminal liability for offenses in the economic sphere underwent a greater number of changes than any other chapter of the code. This is due to the fact that when faced with certain negative phenomena, threats, and risks in economic activity (which grew in number as the crisis of the socialist system deepened), the state primarily attempted to resolve them through administrative rather than economic measures, including repressive ones.

The 1997 Criminal Code of the Republic of Kazakhstan: A Transitional Stage and Adaptation to the Market

With the collapse of the USSR, the adoption of the Declaration of State Sovereignty, and subsequently the 1995 Constitution of the Republic of Kazakhstan, the foundation of the state changed fundamentally. In particular, the 1995 Constitution enshrined the equal status of state and private property (Paragraph 1 of Article 6) and freedom of entrepreneurial activity (Paragraph 4 of Article 26). This widespread transition to market relations in Kazakhstan created an urgent need for an entirely new Criminal Law.



This became the Criminal Code of the Republic of Kazakhstan dated July 16, 1997, which entered into force on January 1, 1998⁵.

Fundamental innovations of the 1997 CC RK:

1. Terminological and Conceptual Shift: The term “economic crimes” (*хоз. преступления*) was replaced by Chapter 7 (“Crimes in the Sphere of Economic Activity”). For the first time, the legitimate rights of entrepreneurs were protected by law.

2. Full Decriminalization of Certain “Outdated” Soviet Crime Elements: Criminal liability for speculation, private entrepreneurship, and violation of the state currency monopoly was abolished.

3. Criminalization of New Market Delicts (Violations): The legislator introduced liability for acts infringing upon fair competition and the financial system:

- Illegal entrepreneurship and illegal banking activity;
- Pseudo-entrepreneurship;
- Intentional, fraudulent, and fictitious bankruptcy;
- Tax evasion by organizations and individuals;
- Money laundering and concealment of illicit property;
- Manufacturing or uttering counterfeit money or securities, among others.

The 1997 Criminal Code accomplished its goal of adapting the legal system to the “wild” market of the 1990s. Over time, however, its drawbacks became evident: an excessive punitive bias toward business, frequent adjustments to damage thresholds (large and particularly large scale), and ambiguities in statutory language.

As noted by S.M. Rakhmetov, a prominent scholar of Kazakhstani criminal law: “During the relatively short period the 1997 Criminal Code was in effect (from 1998 to 2015), amendments and additions were made to its provisions by 80 Laws of the Republic of Kazakhstan. Only 48 out of 95 articles of the General Part (50.5%) and 27 out of 298 articles of the Special Part of the Criminal Code (9%) retained their original wording” [2].

Modernization and Humanization (Period of 2011-2014)

During this period, the state adopted a course toward decriminalizing economic offenses that did not pose a high degree of public danger, as well as reducing the repressive weight of the law on law-abiding entrepreneurs.

In this regard, S.M. Rakhmetov stated: “By the Law dated January 18, 2011, the following articles were excluded from Chapter 7 of the Criminal Code (Crimes in the Sphere of Economic Activity): Art. 195 (Persistent Evasion of Accounts Payable Settlement); Art. 197 (Persistent Violation of the Procedure for Conducting Public Bids, Auctions, and Tenders); Art. 201 (Bribery of Participants and Organizers of Professional Sports and Commercial Entertainment Competitions); Art. 223 (Defrauding Consumers); Art. 225 (Registration of Illegal Nature-Use Transactions). Sanctions under 29 articles were modified toward lighter penalties for crimes in the sphere of economic activity” [3, p. 60].

Thus, from 2011 to 2014, the legislation of Kazakhstan underwent several stages of consistent humanization:

1. Implementation of Economic “Compensators” of Punishment: For the majority of economic crimes, the legislator prioritized financial sanctions (multiple fines).

Exemption from Criminal Liability upon Compensation of Damage: A mechanism was introduced under which a person who has committed an economic criminal offense for the first time (for example, under Article 221 of the Criminal Code, “Monopolistic Activity”) is exempted from criminal liability if they voluntarily compensate for the damage caused and pay a fine to the budget.

⁵ Code of the Republic of Kazakhstan dated July 16, 1997 № 167. Expired by the Code of the Republic of Kazakhstan dated July 3, 2014 № 226-V [Electronic resource]. – Access mode: https://adilet.zan.kz/eng/docs/K970000167_.



2. Raising the Damage Thresholds for Large and Particularly Large Scale Damage: Factoring in inflation processes and the actual volume of business transactions made it possible to avoid unreasonable prosecution of entrepreneurs for minor amounts of accounts receivable or tax arrears.

At the same time, Mark Button, Branislav Hock, and David Shepherd reasonably point out: “Despite an increasing number of international legal instruments emerging with the aim of mitigating economic crime, the primary responsibility for the enforcement of laws and regulations lies in the hands of nation states. By enforcement we mean investigations, prosecution, and the sanctioning of individuals and corporations for violations of economic crime laws and regulations” [4; 227].

A New Stage: The 2014 Criminal Code of the Republic of Kazakhstan and Modern Trends.

The adoption of the current Criminal Code of the Republic of Kazakhstan dated July 3, 2014⁶ marked a conceptual “reform” of domestic criminal law.

Chapter 8 (“Criminal Offenses in the Sphere of Economic Activity”) underwent a deep transformation:

- Introduction of a two-tier system of criminal offenses: The introduction of the institution of “criminal infractions” made it possible to transfer the least dangerous economic acts from the category of crimes to infractions, which excludes a criminal record;

- Decriminalization of certain provisions: A number of economic criminal offense elements were excluded from the Criminal Law, including the widely known (especially to entrepreneurs) article on “Pseudo-entrepreneurship” (decriminalized in 2017, with certain unlawful elements transferred to provisions governing the issuance of fictitious invoices);

- Countering new threats: The legislator shifted focus toward protecting the digital ecosystem and combating the shadow economy (e.g., criminalizing illegal actions with cryptocurrencies, issuing fictitious invoices, creating financial pyramids, etc.).

As reasonably stated in the Concept of Legal Policy of the Republic of Kazakhstan until 2030, “in light of modern challenges and threats, including those involving IT technologies, criminal legislation should be improved on a continuous basis, including by introducing a separate offense provision establishing liability for the use of artificial intelligence for criminal purposes”⁷.

Conclusion. Based on the foregoing, the retrospective analysis demonstrates that over the years of independence, the institution of liability for economic criminal offenses in Kazakhstan has evolved from rigid state paternalism and the prohibition of private initiative to the creation of a flexible system for protecting competition and entrepreneurial freedom.

Not infrequently, business freedom and the absence of proper oversight are perceived by some entrepreneurs as an opportunity to engage in large-scale fraud. As Petter Gottschalk wrote in his work “Partners in Economic Crime: Corporate Convenience by Cartel Membership”: “Sometimes several companies offered their products to the same customer to create an impression of competition among them. However, they had already agreed in advance who was to receive the contract. If Company A were to have the contract, then Company A presented an offer to the customer that was quite expensive. The customer waited for more affordable offers from the competitors. Instead, as agreed within the cartel, the competitors presented offers that were even more expensive. So, the customer had no other choice but to accept the offer from Company A. Sometimes in public construction projects, such as government buildings, several construction companies are involved in the work. However, they have agreed in advance how to share the work” [5].

A brief summary of official statistics regarding registered criminal offenses in the sphere of economic activity for the years 2008, 2015, and 2025:

⁶ Уголовный кодекс Республики Казахстан: от 3 июля 2014 г. № 226-V [Electronic resource]. – Access mode: <https://adilet.zan.kz/rus/docs/K1400000226>.

⁷ Об утверждении Концепции правовой политики Республики Казахстан до 2030 года: указ Президента Республики Казахстан от 15 окт. 2021 г. № 674 [Electronic resource]. – Access mode: <https://adilet.zan.kz/rus/docs/U2100000674>.



According to data from the Committee on Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan, 5,485 crimes in the sphere of economic activity were registered during the 12 months of 2008 (the earliest data available on the CLS&SR website); 8,857 cases of economic criminal offenses were recorded in 2015 (the first full year the 2014 Criminal Code of the RK was in effect); and 944 cases were registered in 2025⁸. Thus, official statistics on registered economic criminal offenses demonstrate an initial surge in such acts during the first year of the 2014 Criminal Code, followed by a subsequent decline in registration due to several specific reasons (large-scale humanization, business protection measures, specific geopolitical and geoeconomic conditions, etc.).

The modern criminal law policy of the Republic of Kazakhstan in the economic sphere is based on a balance of two vectors:

1. Humanization: The 2014 Criminal Code of the RK fixed a conceptual shift from a punitive model to a compensatory one. Imprisonment ceased to be the sole or predominant response measure to economic criminal offenses. The priority is to minimize the use of custodial sentences against entrepreneurs, provided there is full compensation for material damage.

2. Economic Security: Countering large-scale threats, such as the outflow (export) of capital abroad, money laundering, and the creation of financial pyramids.

Further development of domestic legal thought should focus on refining the conceptual framework of the Criminal Law, drawing a clear boundary between civil delicts and criminal offenses, and optimizing the institution of criminal infractions to prevent latent “pressure” on small and medium-sized business entities.

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