

LIABILITY FOR ILLEGAL EXECUTION OF ACTIVITIES ON PROVISION OF CONSUMER CREDIT (LOANS): CURRENT STATUS AND PERSPECTIVES FOR IMPROVEMENT

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Consumer lending services are among the most demanded in the financial market. The high socio-economic significance of the activities of entities providing consumer loans is increasing in the context of regional imbalances in the implementation of banking services and the focus of credit institutions on clients with a certain income and stable income. Solving the problems of the availability of financial services for citizens living in small settlements, as well as persons who cannot receive funds from credit institutions due to low income, negative credit history, lack of collateral, microcredit organizations increase the purchasing power of the population, maintain the standard of living socially vulnerable citizens, stimulate the country's economy, involving (through investment) low-income strata in economic processes, making tax payments. The increased requirements for professional lenders determined the expansion of the illegal financial services sector, supported by high consumer demand. In order to counteract the illegal activities of illegal creditors and protect the interests of consumers of credit services, the legislator established administrative and criminal liability.

The analysis of the current norms, which provide for liability for illegal activities for the provision of consumer loans (loans), carried out in the course of the study, made it possible to identify technical and legal flaws in the content of Art. 14.56 of the Administrative Code and enshrined in 2021 Art. 171.5 of the Criminal Code.

Having identified the problems arising in the implementation of Art. 14.56 of the Administrative Code in practice, the author proposes to exclude from the disposition of this norm the signs that specify the subject of an administrative offense (legal entity, individual entrepreneur). The inevitability of the liability of illegal usurers will be ensured by changing the approach to determining the moment when illegal professional activities for the provision of consumer loans (Art. 14.56 of the Administrative Code) are concluded from the date of the conclusion of the consumer loan agreement on the day the creditor submits executive documents for organizing the enforcement of court decisions on the collection of the corresponding debt.

Having determined the disposition of Art. 171.5 of the Criminal Code casually, with a triple reference-blanketness, the legislator not only deviated from the rules of legal technique, but also disoriented the law enforcement officer in the content of the criminal law prohibition. The author substantiates the proposals to state Art. 171.5 of the Criminal Code in a new edition, excluding the name of the violated law and detailing the signs of the subject of the crime. As crimi-forming signs, the composition covered by Art. 171.5 of the Criminal Code, it was proposed to determine alternatively: the large size of consumer loans (loans) issued by an illegal lender (over 2 million 250 thousand rubles); administrative punishment of a person under Art. 14.56 of the Administrative Code.

1. Introduction

Consumer lending services are among the most highly-demanded in the financial market. According to the Bank of Russia, in 2020 the number of active clients in the consumer credits (loans) segment increased by 835 thousand people, making it 5.7 million in total. While the total number of borrowers with lending obligations amounted to 41.9 million in the second quarter of 2021, the number of consumers of microfinance services grew by 2.26 million¹.

Domestic and foreign experts note the high socio-economic significance of the activities of entities providing consumer credits (loans), which is growing in the context of regional disproportion in the provision of banking services and the focus of loan institutions on quite well-off clients with a stable income [1, p. 26; 2, p. 62; 3, p. 49; 4, p. five; 5, p. 101; 6, p. 282; 7, p. 1022; 8, p. 35; 9, p. 594]. Solving the problems of accessibility of financial services for small town residents, as well as persons who cannot receive loans from loan institutions due to low income, negative loan history, lack of collateral, microcredit organizations not only increase the purchasing power of the population, maintain the standard of living of socially vulnerable citizens, but also stimulate the country's economy by paying taxes and involving (through investment) low-income strata in economic processes (for more details, see: [10, 11, 4]).

At the same time, the modern attitude of society towards the activities of entities providing consumer credits (loans) is quite negative. The image of an abominable old woman-usurer seeking to make money at the expense of people who find themselves in difficult life circumstances, created by F.M. Dostoevsky in the famous novel "Crime and Punishment", pales against the background of the modern idea of a microfinance organization, whose activities are associated with bonded interest rates, fraudulent schemes, extortion and

violent ways of knocking out debts.

A lot of crime in the area under consideration, i.e. the growth in the number of cases when consumer credits (loans) were obtained using stolen or lost documents, forged personal data, exacerbates the negative social attitude towards microfinance activities.

At the legislative level, a set of measures was implemented aimed at ensuring control over the activities of entities providing consumer lending services on a professional basis, as well as protecting the interests of consumers of these services. Increasing requirements for professional lenders determined the expansion of the illegal financial services sector, supported by high consumer demand. Recognizing the existing preventive potential of the state censure of illegal activities providing consumer credits (loans) in an administrative manner (Art. 14.56 of the Code of the Russian Federation on Administrative offenses), the legislator decided to expand the mechanism for protecting the rights of consumers of financial services, using criminal legal reserves. The Federal Law of June 11, 2021², the Criminal Code of the Russian Federation was supplemented by Art. 171⁵, providing for liability for the illegal implementation of activities providing consumer credits (loans). At the same time, the legislator corrected the signs of an adjacent administratively punishable act by amending Art. 14.56 of the Code of the Russian Federation on Administrative offenses³.

Our analysis of the available literature on the topic shows that the authors are mainly concerned with the issues of legal regulation of consumer lending (see, for example: [12, 13, 14, 15]) and protection of the interests of participants in loan relations (see, for example: [16, 17, 18]). The problem of the implementation of administrative

¹ Selection of Key Indicators of Microfinance Institutions for the 2nd Quarter of 2021: Information and Analytical Material of the Bank of Russia. URL: https://www.cbr.ru/analytics/microfinance/reveiw_mfo/ (date of access: 12/01/2021).

² Federal Law of June 11, 2021 No. 215-FZ "On Amendments to the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation". Collection of Legislation of the Russian Federation. 2021. No. 24 (Part I). Art. 4233.

³ Federal Law of June 11, 2021 No. 203-FZ "On Amendments to the RF Code of Administrative Offenses". Collection of Legislation of the Russian Federation. 2021. No. 24 (Part I). Art. 4221.

responsibility is limited to the study of the subject composition of Art. 14.56 of the Code of Administrative offenses of the Russian Federation (see, for example: [19, 20]) and the assessment of the state of legality in the field of microcredit (see, for example: [21, 22]). The novelty of the criminal act under Art. 171⁵ of the Criminal Code of the Russian Federation, explains an insignificant amount of doctrinal research (see, for example: [23, 24, 25]) and lack of established practice. It can be seen from the explanatory note to the draft law No. 237666-7⁴ that there has been an increase in administrative cases initiated on the facts of illegal professional activities providing consumer credits (loans) (in 2018 - 286, and in the first half of 2019 - 289). The stated figures actually “speak” about the occasional application of Art. 14.56 of the Code of Administrative offenses of the Russian Federation in practice, especially if we take into account the fact that the initiation of prosecution does not always entail the establishment of signs of an administrative offense in the actions of a person.

Having assigned an administrative prejudice as a mandatory feature of the offense under Art. 171⁵ of the Criminal Code of the Russian Federation and having defined a socially dangerous act casually, by means of polynomial references and references to other articles of criminal law and acts of a different law branch, the legislator, in fact, blocked the new criminal law ban.

The foregoing actualizes the need for a comprehensive analysis of existing norms providing for liability for the illegal implementation of activities providing consumer credits (loans), which will identify defects in legislative regulation and justify proposals for their elimination, which actually constitutes the purpose of this study.

2. Administrative liability for the implementation of illegal activities providing consumer credits (loans)

⁴ Explanatory note to the draft Federal Law of July 28, 2017 No. 237666-7. For more details, see: Passport of the draft Federal Law No. 237666-7 "On Amendments to the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation (on the introduction of liability for the illegal exercise of professional activities in the provision of consumer loans)". SPS "ConsultantPlus". Law Enforcement Review 2023, vol. 7, no. 1, pp. 103–112

2.1 Problems of implementation of Art. 14.56 of Administrative Code of the Russian Federation

In 2013, adding Art. 14.56 to the Code of Administrative offenses of the Russian Federation, the legislator established administrative liability of persons engaged in professional activity of providing consumer credits (loans), which violates the Federal Law of December 21, 2013 No. 353-FZ “On Consumer Loan”⁵ (hereinafter referred to as the Law on Consumer Loan).

At the same time, the contradiction inherent in the norms of the Law on Consumer Loan regarding the specification of persons entitled to carry out professional activities connected with provision of consumer credits (loans), actualized in practice the issue of determining the subject of an administrative offense under Art. 14.56 Administrative Code of the Russian Federation.

In this connection, having defined in paragraph 5 of part 1 of Art. 3 of the Law on Consumer Loan, professional activity of providing consumer credits (loans), as “the activity of a legal entity or an individual entrepreneur of providing consumer credits (loans) ...”, and in Art. 4 defining a similar concept, indicating among professional lenders only legal entities: loan organizations and non-loan financial organizations in cases determined by federal laws on their activities (today these are pawnshops⁶, microfinance organizations⁷, agricultural and loan consumer cooperatives⁸), the legislator raised the question of the admissibility bringing to justice individual entrepreneurs, expressly referred to in Art. 14.56 of the Administrative Code of the Russian Federation.

Judicial practice has followed the path of

⁵ Federal Law of December 21, 2013 No. 353-FZ “On consumer credit (loan)”. Collection of Legislation of the Russian Federation. 2013. No. 51. Art. 6673.

⁶ See: Federal Law of June 19, 2007 No. 196-FZ “On Pawnshops”. Collection of Legislation of the Russian Federation. 2007. No. 31. Art. 3992.

⁷ See: Federal Law of July 2, 2010 No. 151-FZ “On Microfinance Activities and Microfinance Organizations”. Collection of Legislation of the Russian Federation. 2010. No. 27. Art. 3435.

⁸ See: Federal Law of July 18, 2009 No. 190-FZ “On Credit Cooperation”. Collection of Legislation of the Russian Federation. 2009. No. 29. Art. 3627.

imputation of Art. 14.56 of the Code of Administrative offenses of the Russian Federation to individual entrepreneurs, based on the fact that these persons are not among the entities entitled to carry out professional activities in providing consumer credits (loans), and, therefore, not having the appropriate permission, act illegally⁹. Scientists, supporting this approach, proposed to eliminate the contradictions between Art. 4 and paragraph 5, part 1, Art. 3 of the Law on Consumer loan, excluding from the latter norm the reference to individual entrepreneurs [18, p. 48].

However, among the illegal participants in the financial market there are persons registered as individual entrepreneurs (as a rule, for the implementation of the main activity: 46.90. Wholesale non-specialized trade; additional activity: 64.92.3. Activities providing cash loans secured by real estate, but not providing consumer lending services (such persons, by law, cannot be subjects of these services), but providing consumer credits (loans) to citizens on behalf of an individual. The activities of such moneylenders are beyond the jurisdiction of Art. 14.56 of the Code of Administrative offenses of the Russian Federation, since they act on behalf of an individual whose illegal nature is not covered by this rule. And given that only legal entities can be subjects of consumer credits (loans), moneylenders cannot apply for an appropriate license, which excludes their liability under Part 2 of Art. 14.1 of the Code of Administrative offenses of the Russian Federation for "... carrying out entrepreneurial activities without a special permit (license) ...". But even in cases where it is possible to establish and prove the illegal nature of the activities of a person acting as a "professional" creditor, another problem arises - it is impossible to bring the guilty person to justice under Art. 14.56 of the Code of Administrative offenses of the Russian Federation due to the expiration of the statute of limitations (one year), which in practice is calculated from the date of conclusion of the consumer loan agreement.

Realizing his invulnerability, an illegal participant in the financial market concludes consumer loan agreements with individuals, deriving income in the form of interest for the use of funds provided on a loan and a penalty for violating the terms of repayment of loans. In the event of improper fulfillment by the debtors of their obligations to return the borrowed funds, the "creditor" goes to court, recovering from the defendants not only the amount of the principal debt, interest for the use of the funds provided on loan, a penalty for violating the terms of the loan agreement, but also the amount awarded by the court on the basis of a claim for indexation of overdue debts. At the same time, the appeal to the court occurs after a year from the date of conclusion of the loan agreement, when the supervisory authorities lose the opportunity to bring the perpetrator to justice under Art. 14.56 of the Code of Administrative offenses of the Russian Federation, since the statute of limitations has expired.

As a result, unscrupulous subjects of the financial market extract profits amounting to millions of rubles, the financial situation of citizens in need is aggravated, the level of debt load of individuals increases, which creates a threat of an economic crisis. The state executive system is "under pressure", collecting debts from defendants, while there are no grounds for bringing perpetrators to justice.

The identified problems remained unresolved even after the changes made to Art. 14.56 of the Code of Administrative offenses of the Russian Federation in connection with the establishment of criminal liability for illegal activities providing consumer credits (loans) (Article 171⁵ of the Criminal Code of the Russian Federation). Retaining, in fact, the content of illegal actions covered by Art. 14.56 of the Code of Administrative offenses of the Russian Federation, the legislator significantly tightened the sanctions and supplemented the norm with part 2, which provides for a more severe punishment for a repeated administrative offense if the actions of the perpetrator do not contain signs of a criminally punishable act.

The foregoing allows us to predict the low efficiency of Art. 171⁵, which was added to the

⁹ See: Appeal ruling of the Krasnodar Regional Court of September 27, 2016 in case No. 33-26046/2016; Resolution of the Saratov Regional Court dated April 21, 2016 in case No. 4A-248/2016// SPS "ConsultantPlus".

Criminal Code of the Russian Federation in 2021 and codified administrative prejudice as a mandatory feature, The implementation of the new norm will be blocked by the “dead” Art. 14.56 of the Administrative Code of the Russian Federation.

2.2 The ways to solve the identified problems

In our opinion, the prompt solution of the problems that arose during the implementation of Art. 14.56 of the Code of Administrative Offenses of the Russian Federation could be achieved through the following changes.

Firstly, we should exclude from the disposition of this norm the signs that specify the subject of an administrative offense (the sanction codifying penalties for legal entities is also subject to adjustment). The implementation of this suggestion will not only ensure the inevitability of administrative responsibility, but also create conditions for the application of Art. 171⁵ of the Criminal Code of the Russian Federation, since only individuals can be subjects of criminal liability, and administrative prosecution of legal entities will remove them from the jurisdiction of a criminally punishable act.

Secondly, we should change the law enforcement approach to determining the moment of termination of the offense under Art. 14.56 of the Administrative Code of the Russian Federation. Based on the fact that in par. 3, part 1, art. 3 of the Law on Consumer Loan, a lender is defined not only as an economic entity that provides and has provided a consumer loan, but also as a person who has acquired the right to claim against the borrower. Professional activities in the microfinance market also cover the actions of a person aimed at recovering debt and interest from debtors in court under the concluded consumer loan agreements, as well as supplying further enforcement documents for the organization of enforcement.

The foregoing gives grounds for “postponing” the moment of the end of the illegal implementation of professional activities providing consumer credits (loans) (Art. 14.56 of the Code of Administrative offenses of the Russian Federation) from the date of conclusion of the consumer loan

agreement to the day the creditor presents executive documents to organize the enforcement of court decisions on the recovery of the relevant debt. This approach will create conditions for solving protective and preventive tasks of administrative legislation.

3. Defects in the legislative definition of Art. 171⁵ of the Criminal Code of the Russian Federation

According to the explanatory note to the bill criminalizing illegal activity in providing consumer credits (loans), the purpose of expanding criminal law prohibitions is “to protect the rights of consumers of financial services, including the introduction of a more advanced legal mechanism to counteract the activities of illegal creditors providing consumer credits (loans)”¹⁰. Content analysis of Art. 171⁵ of the Criminal Code of the Russian Federation makes it possible to identify technical and legal shortcomings that can not only block the application of the new norm, but also cast doubt on the implementation of the goals set by the initiator of the reforms.

Excessive detailing of the criminal act in the disposition of Article 171.5 of the Criminal Code of the Russian Federation also rouses censure, as well as a reference to other articles of the Criminal Code of the Russian Federation and the norms of other laws. To understand the objective side of the corpus delicti enshrined in it, it is necessary to refer to the regulations directly specified in the norm, as well as to the provisions of the legislation regulating the activities of loan and non-loan financial organizations, local acts of an economic entity providing consumer credits (loans).

The above mentioned conglomeration of normative material, multiple references to other articles of the Criminal Code of the Russian Federation and acts of other law branches, not only make it difficult to understand the content of the criminal law norm, but are, in fact, a violation of the rules of legal technique that focus on the clarity and distinctiveness of regulatory prescriptions (see [26, 27, 28] for details).

In our opinion, the required clarity and capacity of penal prohibition can be ensured by

¹⁰ Explanatory note to the draft Federal Law of July 28, 2017 No. 237666-7. SPS “ConsultantPlus”.

refusing to specify the violated federal law in the disposition of Art. 171.5 of the Criminal Code of the Russian Federation and detailing the grounds for vesting the subject with the powers of the head of the organization - "a person who, by virtue of his official position, permanently, temporarily or by special authority, performs the duties assigned to him to manage the organization".

The blanket description of the disposition does not require an exact indication of violated normative acts, since the loss of legal force of relevant documents will block the application of the norm in question until the corresponding changes and additions are made. The universality of blanket disposition is ensured by defining a socially dangerous act through the term "illegal", as well as by specifying violations of regulatory requirements (for example, a person's lack of registration or a special permit (license) for banking activity constitutes illegal banking activity (Article 172 of the Criminal Code of the Russian Federation)).

In this part, more acceptable could be the wording of the related administrative offense under Part 1 of Art. 14.56 of the Code of Administrative Offenses of the Russian Federation, which establishes responsibility for "the implementation of activities providing consumer credits (loans), regulated by legislation on consumer credits (loans), including those the obligations of the borrower for which are secured by mortgage, legal entities or individual entrepreneurs who are not entitled to its implementation ...".

Considering the fact that administrative prejudice is laid down as a constructive feature of the analyzed composition (for more details, see: [29, 30]), the specialty of the subject is determined primarily by the fact of administrative punishment for a related tort, which, in our opinion, eliminates the need for legislative specification of the subject's features. Elimination of the addressee of the criminal law ban from the disposition of Art. 171⁵ of the Criminal Code of the Russian Federation must be accompanied by an adjustment of the features of the subject of the prejudicial composition, covered by Part 1 of Art. 14.56 of the Administrative Code of the Russian Federation.

Extending its action not to legal entities, but to heads of commercial organizations will ensure the inevitability of criminal liability for heads of economic entities that continue carrying out illegal activities in providing consumer credits (loans) after administrative punishment.

Systemic and structural analysis of Art. 171⁵ of the Criminal Code of the Russian Federation and Art. 14.56 of the Code of Administrative Offenses of the Russian Federation allows us to make a conclusion not about the criminalization of illegal activities in providing consumer credits (loans), but about the decriminalization of corresponding illegal banking operations. Literal interpretation of Part 2 of Art. 14.56 of the Code of Administrative Offenses of the Russian Federation, which establishes liability for "a repeated administrative offense provided for in part 1 of this article, if this action does not contain any signs of a criminally punishable act ..." indicates that the specified offense can be imputed to a person who continues to engage in illegal professional activities of providing consumer credits (loans) after bringing him to justice under part 1, Article. 14.56 of the Code of Administrative Offenses of the Russian Federation (obviously, this is how a sign of repetition in the actions of the offender should be established), while the perpetrator should not previously be punished under Part 2 of Art. 14.56 of the Code of Administrative Offenses of the Russian Federation, since it is precisely this prejudicial element that is incorporated into the structure of the offense covered by Art. 171⁵ of the Criminal Code of the Russian Federation, the absence of which must also be established during the implementation of Part 2 of Art. 14.56 of the Administrative Code of the Russian Federation.

Thus, according to Art. 171⁵ of the Criminal Code of the Russian Federation, a person illegally engaged in activities of providing consumer credits (loans) can be brought to justice under the following conditions:

- establishing the fact of bringing to administrative responsibility under Part 1 of Art. 14.56 of the Code of Administrative offenses of the Russian Federation (an element of the composition provided for by Part 2 of Art. 14.56 of the Code of Administrative Offenses of the Russian Federation);
- establishing the fact of imposing an

administrative penalty under Part 2 of Art. 14.56 of the Code of Administrative Offenses of the Russian Federation;

- by the time the criminal case is considered in court, the statute of limitations (1 year) for administrative prosecution should not expire under Part 1 of Art. 14.56 of the Code of Administrative Offenses of the Russian Federation (a constructive sign of the composition covered by Part 2 of Art. 14.56 of the Code of Administrative Offenses of the Russian Federation) and Part 2 of Art. 14.56 of the Code of Administrative offenses of the Russian Federation;

- the amount of granted consumer credits (loans) exceeds 2 million 250 thousand rubles;

- no signs of a crime under Art. 172 of the Criminal Code of the Russian Federation have been found in the actions of a person.

Our analysis of the draft laws accompanying explanatory notes, official reviews and conclusions on projects, acts providing for the introduction of a norm in the Criminal Code of the Russian Federation establishing responsibility for illegal exercise of professional activities in the provision of consumer credits (loans), showed that among the criminal-forming signs of the composition planned to be codified the following ones were to be included: a large amount of consumer credits (loans) provided by an illegal lender (over 2 million 250 thousand rubles), or an administrative punishment of a person who continues to provide consumer credits (loans) illegally. However, in the process of numerous amendments, the norm proposed for codification not only lost the planned content, but also acquired a complex structure, in violation of the rules of legal technique.

4. Conclusion

The foregoing determines the need for legislative elimination of the identified technical and legal flaws in the content of Art. 171⁵ of the Criminal Code of the Russian Federation and Art. 14.56 of the Code of Administrative offenses of the Russian Federation, setting out these norms in a new edition:

- the name of the violated law and the details of the signs of the crime subject should be

excluded from the disposition of Art. 171⁵ of the Criminal Code of the Russian Federation;

- the following features should be alternatively defined as crime-forming in the composition covered by Art. 171⁵ of the Criminal Code of the Russian Federation:

- a large amount of consumer credits (loans) granted by an illegal lender (over 2 million 250 thousand rubles);

- administrative punishment of a person under Art. 14.56 of the Code of Administrative Offenses of the Russian Federation;

- the signs specifying the subject should be excluded from the disposition of Part 1 of Art. 14.56 of the Code of Administrative Offenses of the Russian Federation, extending the specified composition to all violators of the Law on Consumer Loan, bringing to justice not "guilty" legal entities, but their heads;

- part 2 of Art. 14.56 of the Code of Administrative Offenses of the Russian Federation should be excluded.

When reforming the law, it is necessary to ensure a unified naming of related offenses, deleting the phrase "... including those borrower's obligations which are secured by a mortgage" from Art. 14.56 of the Code of Administrative Offenses of the Russian Federation.

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