

The Jurisprudential Evolution of Corruption Offenses in Spain: Before and after the Economic Crisis

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Abstract : The period of economic boom generated by the housing bubble created a climate of social indifference to the problem of corruption. This resulted in the persecution and conviction for these criminal offenses being low. After the economic recession, social awareness about the problem of corruption has increased. This has led to the Spanish citizenship requiring the public authorities to try to end the problem in the most effective way possible. In order to respond to the continuous social demands that require an exemplary punishment, the legislator has made changes in crimes against the public administration in the Spanish Criminal Code. However, from the point of view of criminal law, the social change has not served to modify only the law, but also the jurisprudence. After the recession, judges are punishing more severely these conducts than in the past. Before the crisis, it was usual for criminal judges to divert relevant behavior to other areas of the legal system such as administrative law and acquit in the criminal field. Criminal judges have considered that administrative law already has mechanisms that can effectively deal with this type of behavior in order to respect the principle of subsidiarity or ultima ratio. It has also been usual for criminal judges to acquit civil servants due to the absence of requirements unrelated to the applicable offense. For example, they have required an economic damage to the public administration when the offense in the criminal code does not require it. Nevertheless, for some years, these arguments have either partially disappeared or considerably transformed. Since 2010, a jurisprudential stream has been consolidated that aims to provide a more severe response to corruption than it had received until now. This change of opinion, together with greater prosecution of these behaviors by judges and prosecutors, has led to a significant increase in the number of individuals convicted of corruption crimes. This paper has two objectives. The first one is to show that even though judges apply the law impartially, they are flexible to social changes. The second one is to identify the erroneous arguments the courts have used up until now. To carry out the present paper, it has been done a detailed analysis of the judgments of the supreme court before and after the year 2010. Therefore, the jurisprudential analysis is complemented with the statistical data on corruption available.

Keywords : corruption, public administration, social perception, ultima ratio principle

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