

### **LEGISLATIVE SHAPING OF CRIMINAL OFFENCES AGAINST THE ECONOMY**

Before focusing on the legislative shaping of criminal offences against the economy, it seems reasonable to define first the notions of economic crime law and economic crime. Although there is no uniform definition, it can be nevertheless said that economic crime represents one of the most important problems of contemporary society, regardless of its socio-political system. After the World War II, the notion of economic crime has got a universal meaning. An increased interest in dealing with economic crime and a lack of uniform definition of this notion have led to different names given to this phenomenon and consequently to some confusion. So we have different terms to designate economic crime, such as: a crime of barons, delinquent capitalists, white collar crime, occupational crime, business crime etc. Among all these terms, the most common has become a white collar crime, yet it has to be pointed out that notions of economic crime and white collar crime are not at all synonyms, because they have beside some similarities also certain differences. There are different definitions of economic crime and economic crime law, yet it is necessary to make a distinction between sociological, criminological and criminal law meaning of these concepts. The formulation of criminal offences against the economy in legislation is a subject to various factors, among them it is also under the impact of characteristics of economic crime, so it seems reasonable to examine more closely the principal features of this crime.

Economic crime, which is the object of economic crime law, has certain characteristics. First of all, it is a phenomenon which is very changeable. This characteristic requires a law which is flexible and adaptable to changes. Economic crime law necessarily consists of blanket dispositions. On the one hand these dispositions enable a possibility to adapt automatically a given norm to the changed situation, but on the other hand they can represent an obstacle to the formulation of precise dispositions. There is also a risk that an automatic adaptation of a criminal law norm results in an excessive widening of the zone of criminality. The second characteristic of economic crime is that it is a general phenomenon, regardless of the social system of a given country. In some regimes, economic crimes can turn into political crimes which are not treated as privileged criminal offences but rather more severely. On the one hand, economic crimes are linked with the economic system and changes within it and on the other hand, economic system is closely linked with the political system. Every country has the interest to regulate its relations in economy in a way to meet the needs of the

ruling structure, but in democratic societies it has nevertheless to be reached by certain social consensus. A fast development of economy and globalization is typical for the contemporary world. Countries have to decide how to conform to these changes or how to intervene. This intervention can be narrower or broader, depending on the world market and international division of labour. European Union can also exercise an impact with their conventions and economic measures. It seems that economic measures are more efficient. As already mentioned, economic crime is also under the impact of political system. With regard to political differences, there are also differences in enacting criminal offences as well as in deciding what will be the objects of criminal law protection. In spite of political differences, there are certain criminal offences which are common to all legislations, such as for example, counterfeiting of money, smuggling etc. All legislations provide to their economic system also a criminal law protection. In this regard, an important role is played also by the science. New theoretical findings have brought also new perspectives on the liability of legal persons.

A common characteristic of economic crime (regardless of differences in political systems) is the interest (class) nature of these provisions - they try to protect the interests of a ruling group. One of the features of economic crime is its direction against the economy or against the values on which rest a contemporary market economy. In general, motives for the commission of these acts are not political since these acts are rather motivated by a desire to gain profit (property) and they do not constitute the elements of criminal offences. What is typical however, is a tendency to inflict damage to economic subjects or even to the entire country. Descriptions of criminal offences are such that the perpetration of an act constitutes a violation of regulations on economic management. By enacting more violations and lay down them as criminal offences, it would be possible to reach a larger area of economic activity. It seems nevertheless important to take care to not make provisions too casuistic. The enactment of economic criminal offences has to be in conformity with the needs of economic policy. In these criminal offences it is necessary to take strictly into account the subjective elements of these offences. Negligence as an element of a criminal offence is very rare in economic crimes. With regard to the blanket character of norms and a large number of regulations, the issue of mistake, either a mistake of law or mistake of fact, is neither to be neglected. What is further characteristic for economic crimes is a great similarity with other violations in economy, for example with minor offences. In some cases it is possible to make a distinction between one and other category on the basis of their elements, and sometimes on the basis of the seriousness of consequences. Sometimes it depends also on the attitude of the lawmaker who decides who will be invested with the power to prosecute. A particularity in this field is also a liability of legal persons. There are

certain criminal offences in which are held liable beside natural persons also legal persons. A liability of legal person is slowly but definitely paving its way also through international instruments.

What is equally characteristic for economic crimes is a relative severity of sanctions. Penalties which are prescribed for these acts in criminal codes are relatively severe and the same applies to the imposition of sentence. For the formulation of criminal offences against the economy we do not have any special rules. The same as in other criminal offences, it is important to meet as much as possible the prerequisite of *lex certa*, although we are often dealing in these offences with blanket dispositions. Criminal offences against the economy have to be formulated in a way to fit the needs of economic policy and to protect those objects of criminal law protection which are immanent to the socio-political system of a given country. Criminal offences or any other criminal acts against the economy have to fit exactly the needs of the country whose economic system they are protecting.

#### *Literature*

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### **THE PATIENT'S CONSENT AS A NEWLY DEFINED JUSTIFICATION GROUND – DOGMATICALLY COMPULSORY OR A POLITICAL MISTAKE?**

Inside the system of the justification grounds, that is grounds on excluding unlawfulness, Slovenia experienced a true little revolution in the past years. The institute of victim's consent was redesigned in a rather radical way in the Slovenian criminal legal theory as well as in the newest Slovenian Criminal Code, the so called CC1, adopted in the parliament in 2008 (entered into force on November 1<sup>st</sup> 2008).

After the great political turnover at the end of the 20<sup>th</sup> century, Slovenia's authors started to argue, that the self-determination and the autonomy of the patient, but mainly the patient's consent should be worth a much more critical criminal legal analysis, than they ever got before in this part of the world. This happened under obvious influence of foreign, especially German criminal legal systems. A hunt for the best possible dogmatic redefinition of the role of the patient's consensus in substantive criminal law started.