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INSURANCE FRAUD AS A FORM OF ECONOMIC CRIME AND THE METHODS FOR COMBATING IT

ABSTRACT: Dealing with the topic of economic crime in insurance is very complex and therefore challenging. One of the first challenges concerns the definition of economic crime. Namely, economic crime represents a multi-layered phenomenon which must, in terms of the definition of the basic features, be adapted to the specific requirements of a given society. One of the forms of economic crime, which is very common in practice, certainly refers to abuse in the field of insurance. The most common, and at the same time the only form of economic crime in the field of insurance foreseen by law, is insurance fraud. After the conceptual determination of economic crime as well as its basic features, this paper presents a review of the key issues related to the topic of the paper, which includes the phenomenological definition of insurance, the importance of the existence of insurance, insurance fraud as a form of economic crime, as well as the methods for combating it.

Keywords: *economic crime, insurance fraud, the Law on Insurance, the Criminal Code, Republic of Serbia.*

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1. Introduction

Economic crime as a specific group of criminal activities represents a significant threat to the development of society as a whole, not only its economic segment. The consequences of which are far-reaching. This problem is all the greater if it is viewed from the aspect of insurance being one of the crucial pillars of the functioning of the global financial system. Therefore, it is very important to show the forms of economic crime, from the field of insurance, and point out the consequences it can have in a broader, civilizational context. In addition, it is important to consider the ways and methods of opposing these criminal activities.

When talking about economic crime, there is one problem that should be pointed out at the very beginning. It is reflected in the fact that even today there is a great academic debate about what criminality actually represents. Some authors “define economic crime in a broader sense and define it as a set of economic crimes that represent an attack on the material existence of a person, while in a narrower sense they consider it to be any attack, that is, an offense against state intervention in the field of economy” (Banović, 2001, p. 6).

According to Stevanović and Cvetković (2019), “the theoretical concepts mainly differed in relation to the protective subject, the manner and extent of activities for the execution of certain acts that can be grouped around the concept of economic crime, then the consequences, but also other elements of criminal law that were taken as a starting point. point in defining the concept” (p. 48). Therefore, in domestic and foreign theory and practice, “there have been many attempts to define economic crime with one general definition, but the adoption of a single, general definition has never occurred. One of the reasons for the lack of uniformity in the scientific definition of the concept of economic crime is the great phenomenological diversity, conditioned by the diversity of cultural, economic, and legal aspects in different eras, within the areas of different countries and continents” (Carić & Matijašević Obradović, 2017, p. 23). At this point, Bošković (2009) points out that, “the content of the concept of economic crime is not static and it cannot be defined once and for all time, which is quite logical, considering the dynamism and adaptability of economic crime to newly emerging socio-economic and political relations, within which they find the conditions for their survival and development through new forms of appearance” (p. 13).

The modern definition given by Banović (2002) defines economic crime as, “a set of all tortious behaviors (actions or omissions) that arise in economic

relations and in connection with those relations, by legal and natural persons, who, as the subjects of those relations, have the appropriate powers towards the property on which those relations are based, and which tortious behavior directly damages that property and injures or endangers economic relations” (p. 28; Matijević & Marković, 2013, p. 391).

Commercial crime, especially contemporary, “can manifest itself in a large number of forms. The fact is that it strives for greater organization and the establishment of control over legal economic operations” (Tanjević, 2018, p. 260).

One of the most important features of economic crime is self-interest. In this sense, Škulić (2017) states that, “it is particularly important to consider this feature, given the fact that in most cases, torts in the field of economic crime are committed out of self-interest” (p. 70).

Another important feature is stealth. It is also called latent stealth. Banović (2017) states that it, “refers to the victim’s lack of awareness that he has been harmed, and that the consequences are often not obvious to him” (p. 169). Stealth is especially present, “when perpetrators appear as officials or when they are in some way involved in the execution itself. This is a matter of so-called “actual immunity” of the perpetrator” (Stevanović, 2015, p. 304). In particular, this is the case “with large economic enterprises”. Namely, very often such companies will not be sanctioned with an economic tort because they are of essential importance for the functioning of society. On the other hand, companies that employ few workers, have low revenues and are not crucial for the state’s survival and functioning will very often be subjects of the repressive apparatus” (Stevanović & Cvetković, 2019, p. 50).

Before starting the analysis of insurance fraud as a form of economic crime, a brief overview of the phenomenological determination of insurance will be made.

2. Phenomenological determination of insurance

Insurance can be defined, “as a science that deals with the study of the effect of risk realization, its consequences, as well as the study of ways to prevent and reduce the possibility of risk occurrence.” The primary function of insurance is to create a situation of security, both for individuals (natural persons) and for companies (legal entities). In its essence, insurance represents the association of all those who are exposed to the same dangers, with the aim of jointly bearing the economic consequences” (Ostojić, Lutovac & Matić, 2016, p. 48).

Insurance can also be defined as, “an economic activity that accumulates funds for the purpose of protecting people and things from the harmful consequences of extraordinary events, *i.e.*, eliminating the consequences of the occurrence of such events” (Ostojić, Lutovac & Matić, 2016, p. 48).

The concept of insurance “can be viewed from three points of view: economic; legal and technical. The economic point of view is expressed by the goal to be achieved. This refers to insurance tasks: indirect and direct protection of the insured, *i.e.*, his property as the primarily purpose, followed by development, the social role, and others. The legal point of view implies the regulation of numerous legal relationships that arise in insurance. This begins with the conclusion of the insurance relationship and ends with the final payment of compensation. The technical point of view refers to the regulation of the development of insurance if it is viewed as a mechanism for assessing the severity of risks. In addition, this refers to equalization in space and time, premium calculation, *etc.*, all with the use of the most modern statistical-mathematical and other methods” (Šulejić et al., 2006, p. 3).

In theory and practice, it is possible to make a division of insurance according to a large number of criteria. It is necessary to mention that not a single division is final. The reason for this lies in the fact that insurance is a changing category, as well as in the fact that very often new forms of insurance are created” (Bjelić, 2002, p. 136). However, some of the numerous criteria for insurance division are as follows: “subject of insurance (personal insurance and property insurance); method of determining coverage (insurance against all risks and insurance against specified risks); method of origination (voluntary and mandatory insurance); place of risk manifestation (land, sea and air insurance); number of insured persons (individual and joint insurance); the nature of the insured (insurance of legal entities and insurance of natural persons); degree of state intervention (social insurance and market insurance); method of risk equalization (insurance, reinsurance and market insurance); the origin of the need for damage compensation (damage and total insurance) and the type of insurance (life and non-life insurance)” (Spajić, 2019, pp. 53-54).

However, “very often the topic of discussion is the type of insurance, *i.e.*, division into life and non-life insurances. Some authors single out this criterion as the main one and call it the criterion of balancing insurance operations and determining business result” (Andrijanić & Klasić, 2002, p. 61).

According to the provisions of the Law on Insurance (2014), a division was made into life and non-life insurance. Article 8 stipulates that the types of life insurance are: “life insurance, marriage and birth insurance; annuity insurance; previous life insurance related to units of investment funds;

supplementary insurance with life insurance; tontine, which represents insurance in which the insured parties agree to jointly capitalize their contributions and divide the thus capitalized property between those insured persons who reach a certain age, *i.e.*, between the heirs of deceased insured persons; insurance with payment capitalization”.

Article 9 defines the types of non-life insurance, which include: “accident insurance, voluntary health insurance, motor vehicle insurance, rail vehicle insurance, aircraft insurance, vessel insurance, goods in transit, property insurance against fire and other hazards, other property insurance, motor vehicle liability insurance, aircraft liability insurance, vessel liability insurance, damage general liability insurance, credit insurance, suretyship insurance, financial loss insurance, legal defense expenses insurance, travel assistance insurance”.

3. The importance of having insurance

Insurance can have different effects on society, “through the manner of changing who bears the costs of losses and damage. On the one hand, it can increase fraud; on the other hand, it can help societies and individuals prepare for disasters and mitigate the effects of disasters on both households and societies” (Zweifel & Eisen, 2012, p. 268).

Broader social implications when talking about the importance of having insurance can be grouped into seven categories:

- providing safety and security (insurance provides coverage for sudden loss. For example, in case of life insurance, financial assistance is provided to the insured’s family after his death);
- generating financial assets (insurance generates assets by collecting premiums. These funds are invested in government securities and shares. These funds are profitably used in the industrial development of a country to generate more funds and are used for the economic development of a country);
- life insurance encourages savings (insurance not only protects against risk and uncertainty, but also provides an investment channel);
- promotion of economic growth (insurance generates a significant impact on the economy by mobilizing domestic savings. Insurance turns accumulated capital into productive investments);
- medical support (medical insurance is one of the insurance policies that is adapted to different types of health risks. The insured receives medical support in case of a health insurance policy);

- risk distribution (insurance facilitates the spread of risk from the insured to the insurer. The basic principle of insurance is to spread the risk among a large number of people. A large number of people obtain insurance policies and pay a premium to the insurer. Whenever a loss occurs, it is compensated from the funds of the insurer);
- source of collective funds (large funds are collected by premium. Therefore, insurance has become an important source of capital formation)’ (Chand, 2013).

4. Insurance fraud as a form of economic crime

Out of the group of criminal acts that make up economic crime, it is possible to single out only one that can be implemented and is implemented in the field of insurance. It is a matter of insurance fraud.

Insurance fraud is, “any act committed for the purpose of fraud during the insurance process itself.” This happens when the claimant tries to obtain some benefit or advantage, to which he is not entitled, or when the insurer deliberately withholds a certain benefit. According to the Federal Bureau of Investigation (FBI), the most common fraud schemes include premium diversion, benefit collection, asset diversion, and workers’ compensation fraud. Actors in these schemes can be: insurance company employees or claimants” (FBI, 2010). Another problem “are fraudulent insurance claims.” They are filed with the intent to defraud the insurance provider. This type of fraud has existed as long as insurance has existed as a commercial business” (Manes, 1945, p. 39). In general, it can be concluded that false claim reporting is one of the most common forms of fraud (Dragojlović & Spaić, 2020, p. 490).

The main motivation for committing criminal acts, “committed in the field of insurance, is financial gain. In this sense, there is an equal possibility that these crimes will be committed by both the insurer and the insured” (Manes, 1945, p. 39). According to the Coalition Against Insurance Fraud, “the causes vary, but they usually center around greed and fraud protection failures. Those who commit insurance fraud often see it as a lucrative, low-risk venture. For example, drug dealers who get involved in insurance fraud view it as safer and more profitable than working on the streets. Compared to punishment for other crimes, court sentences for insurance fraud can be light, thereby reducing the deterrent effect of the sentence” (Coalition Against Insurance Fraud, 2016).

Another form of fraud is, “overinsurance, in which someone insures property for more than its real value” (Manes, 1945, p. 39). This allows the fraudster to make money by, “obtaining an insurance payout that is greater

than the value of the property. In addition, very common forms of insurance fraud are reframing an uninsured claim to make it an insured event and exaggerating the value of loss” (Burbach, 2016).

In practice, it is very difficult to evaluate profit obtained in this manner. In many cases, insurance fraud goes undetected.

One of the important facts that should be mentioned is associated with the very nature of insurance fraud. Namely, insurance fraud can be divided into serious and light fraud. Serious fraud is defined as a situation in which a person deliberately plans or invents a loss (*e.g.*, collision, car theft or fire) that was covered by an insurance policy, in order to gain ownership of the compensation. Sometimes it happens that criminal rings are involved in serious fraud schemes. In these situations, it is often possible to see multimillion-dollar thefts. Light fraud, which is much more common than serious fraud, is sometimes called opportunistic fraud. This type of fraud consists of policyholders exaggerating otherwise legitimate claims. For example, when involved in a car accident, the insured may demand more compensation than is actually necessary” (Viaene & Dedene, 2004, p. 315).

An important question is also who can commit insurance fraud. It should be emphasized here that there are insurance frauds committed by citizens, while it also happens that employees of insurance companies, intermediaries and other employees also commit fraud (Dragojlović, 2019, p. 677).

An analysis of our insurance companies’ practice, “which deal with mandatory vehicle-liability insurance, shows that all fraud in this area can be grouped into two basic groups, namely: fraud that occurs when taking over the vehicle for insurance and fraud that occurs during liquidating and collecting damage” (Radović, Aleksić & Petrović, 2003, p. 247).

In case of fraud when taking over a vehicle for insurance, “there is a possibility that the insurance company’s intermediaries, as well as the owners of motor vehicles, commit fraud.” Fraud also often occurs during the signing of the insurance contract, when data on vehicles of a lower category are entered in the third copy of the policy, which is used for debt relief. Therefore, correct data is entered in the first two copies of the policy, while data from other vehicles, for which a lower premium is paid, is entered in the third copy. Fraud also occurs through policy falsification, which are only discovered if an accident occurs” (Radović, Aleksić & Petrović, 2003, p. 247). Fraud also occurs when, “at the time of taking the vehicle to the insurance company, the employee does not inspect the vehicle in detail, nor check the chassis and engine number.” This fraud occurs with the help of insurance company employees” (Radović, Aleksić & Petrović, 2003, p. 247).

5. Countermeasures

Combating insurance fraud is directly dependent on prompt detection and response. In this sense, “fraud detection usually takes place in two steps.” The first step is to identify suspicious claims that are more likely to indicate fraud. This can be done using computerized statistical analysis or recommendations from claims adjusters or insurance agents. In addition, the public may provide information to insurance companies and law enforcement authorities regarding suspected, observed, or recognized insurance fraud committed by others. Regardless of the source, the next step is to refer these claims to investigators for further analysis (Bolton & Hand, 2002, p. 238). Further analysis is usually statistical analysis. Statistical detection, “does not prove that certain claims are false, it merely identifies suspicious claims that must be investigated further” (Bolton & Hand, 2002, p. 238).

In principle, “fraudulent claims can appear in two types: a legitimate but hyperbolized story, or an exaggerated or false story in which the damage never actually occurred” (Lincoln, Wells & Petherick, 2003).

When an insurance company’s fraud department investigates a fraudulent claim, “they often proceed according to two stages: pre-contact and post-contact. During the pre-contact phase, they analyze all available evidence before contacting the suspect. They can review submitted papers, contact third parties, and gather evidence from available sources. Then, during the ‘contact’ phase, they interview the suspect to gather more information and, ideally, obtain an incriminating statement” (Morley, Ball & Ormerod, 2006, p. 166).

In the Republic of Serbia, a significant part of preventive – repressive reactions to fraud that can be carried out in the field of insurance are provisions of criminal legislation that refer to the ways of sanctioning an already committed criminal offense, while also having a very significant preventive effect on the potential commission of future criminal offenses from this field. Namely, in the Criminal Code of the Republic of Serbia (2005), Article 223a defined the criminal offense of insurance fraud.

According to the provisions of the aforementioned article, “whoever, destroys, damages or hides the insured thing, with the intention of collecting the contracted amount from the insurance company, and then reports the damage, will be punished by imprisonment from three months to three years. The same penalty will be imposed on a person who causes himself such damage, injury, or health impairment, and then submits a claim to the insurance company, with the intention of collecting the agreed amount from the insurance company for

that physical damage, bodily injury or health impairment. If these acts result in property gain or damage that exceeds the amount of four hundred and fifty thousand dinars, the perpetrator will be sentenced from one to eight years in prison. If these acts result in property gain or damage that exceeds the amount of one million and five hundred thousand dinars, the perpetrator will be punished with imprisonment from two to ten years”.

Insurance fraud defined in this manner, “represents a much narrower term, because it refers only to an insured thing which, in order to collect the insured sum from the insurance company, can be hidden, damaged or destroyed.” It is not necessary to mislead the insurance company or to damage one’s own property, or that of others, for its existence. In this sense, insurance fraud could mean the act of unlawfully demanding the insured sum from the insurer based on a false insurance policy certificate” (Spaić, 2019, p. 149).

The criminal offense of insurance fraud, “can be committed by any person who has an insurance policy against the object of an action, which can be an insured movable or immovable thing in the first basic form, and in the second form the object of the action is the body of the perpetrator. Although in the other form the object of the action is the perpetrator himself, he is not a passive entity, but rather that is an insurance company, or any other person whose activity is the performance of insurance activities” (Spaić, 2019, p. 149).

Considering that the existence of this criminal act does not require the occurrence of consequences, “it belongs to formal (active) criminal acts”, this means that in order for this act to be considered complete, it is sufficient for any of the prescribed execution actions to be assumed and a request for collection of the insured sum to be filed. It is of no significance as to whether an insurance company made the compensation. Considering the sentence in its basic form, the attempt of this criminal offense is not punishable. If the perpetrator has not completed the act, there will be an incomplete attempt. A completed attempt is not possible, because by completing the criminal act activity, the criminal act is also completed” (Stojanović, 2017, p. 45).

As for the subjective element of the criminal offense of insurance fraud, “intent is necessary for the existence of a criminal offense, but in addition to intent, a certain intention is also required that could be assumed even if it was not specified in the legal description, because the motive and goal of the criminal offense is the collection of the insured amount from the insurance company, so assuming another act almost always means the existence of intention” (Spaić, 2019, p. 151).

5. Conclusion

Dealing with the topic of economic crime in insurance is very complex and therefore challenging. One of the first challenges lays in the definition of economic crime. Namely, economic crime is a multifaceted phenomenon that can be easily determined in principle. However, the problem arises when the political-social-economic patterns, characteristic of a country, get involved in that determination. Therefore, it is necessary to adapt the very concept of economic crime to the specific requirements of a given society.

Phenomenologically, economic crime is very diverse. One of the manifestations, very common in practice, is certainly abuses in the insurance field. The most common, and at the same time the only form of economic crime in the field of insurance foreseen by law, is insurance fraud.

This paper, after the conceptual determination of economic crime as well as its basic features, presented a review of the key issues related to the topic, which includes the phenomenological definition of insurance, the importance of the existence of insurance, insurance fraud as a form of economic crime, as well as methods for opposing the same.

Although its characteristics largely depend on the specifics of the form of the insurance subject, the common feature of all those characteristics is the fact that this type of fraud can be perpetrated by both the insured and the insurance company. The methods of confrontation also depend on the involved perpetrator. Thus, in case of an insured individual being the potential perpetrator, it can be said that the main method of opposition is embodied in preventive work. Via special bodies, services and departments, a detailed examination can be made in connection with the insured's claim for compensation so as to determine whether it is justified compensation or whether it is a question of fraud. In this way, by increasing the investigative capacity of insurance companies, they can significantly influence the incidence of fraud, which will consequently lead to a decrease in the rate of insurance fraud. On the other hand, if we are talking about an insurance company as a potential perpetrator, the matter is much more complex and mostly depends on the competent investigative bodies of the state or federal unit.

In addition, a good basis for opposition is a clear and unambiguous legal solution that will fully cover the essence of this matter.

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PREVARE U OSIGURANJU KAO OBLIK PRIVREDNOG KRIMINALITETA I METODE SUPROTSTAVLJANJA

REZIME: Obrada tematike privrednog kriminaliteta u osiguranju je veoma kompleksna i samim tim izazovna. Jedan od prvih izazova jeste u pojmovnom određenju privrednog kriminaliteta. Naime, privredni kriminalitet predstavlja jednu višeslojnu pojavu koja se u pojmovnom određenju i definisanju osnovnih obeležja, mora prilagoditi specifičnim zahtevima datog društva. Jedan od pojava oblika privrednog kriminaliteta, vrlo čest u praksi, svakako su zloupotrebe u oblasti osiguranja. Najčešći, ujedno i jedini zakonom predviđeni oblik privrednog kriminaliteta u oblasti osiguranja jesu prevare u osiguranju. U radu je, nakon pojmovnog određenja privrednog kriminaliteta, kao i njegovih osnovnih obeležja, učinjen osvrt na ključna pitanja u vezi sa temom rada, a koja uključuju fenomenološko određenje osiguranja, značaj postojanja osiguranja, prevare u osiguranju kao oblik privrednog kriminaliteta, kao i metode suprotstavljanja.

Ključne reči: *privredni kriminalitet, prevare u osiguranju, Zakon o osiguranju, Krivični zakonik, Republika Srbija.*

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