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CHARACTERISTIC PHENOMENA OF ECONOMIC CRIME IN LEGAL THEORY – FRAUD IN THE FIELD OF INDUSTRY AND PRODUCTION

ABSTRACT: Economic crime is a constant and rather dynamic negative social phenomena which skillfully adapts to the social-economic and political situation in society. Fraud in the field of industry and production is a characteristic and a conspicuous form of economic crime in the legal doctrine. The motive behind committing fraud is typically personal gain, with perpetrators utilizing their positions in business or official authority within a state or public institution to obtain an illegal advantage in the form of money or goods. This paper, focusing on the subject, begins with defining the term and describing the characteristics and main classifications of economic crime. This part is followed by an in-depth analysis of a characteristic form of economic crime in legal theory, specifically fraud in the field of industry and production. Despite adequate legislation at both the European and national levels, current control systems in the field of industry and production may be perceived as insufficient to prevent fraud in a timely manner. Besides, the modalities of committing fraud in this sphere have continuously evolved and adapted to current business circumstances and the legal framework, which is why the perpetrators very often succeed in evading detection and sanctioning of the committed fraud. Considering the transnational nature of fraud in the field of industry

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and production, it has become evident that security procedures need to extend beyond national frameworks and include international measures.

Keywords: *economic crime, fraud, industry and production, business.*

1. Introduction

Criminal behaviour is determined by various factors. The social setting, education, science and culture are the structural components of social consciousness, which, directly or indirectly, forms the affinities of every individual. Through social consciousness, “a community and society take their stand to the phenomena of personal and social pathology. Social consciousness shapes the moral, religious and custom-related norms of reaction to the phenomena of delinquency, whereas the incrimination or decrimination of certain forms of such behaviour is just a legal expression of the differentiated stands of social consciousness when those issues are concerned (Bošković & Marković, 2015, pp. 145-146). A major determinant in this process is cultural identity as “it provides individuals with what is peculiar to the human species and doubly so: as a generic culture, i.e. the manner in which human beings have been organized, and as a differential culture, i.e. a historical specification of the former and an interpretation of the general (human) way of living” (Miljković, 2015, p. 158). Whether someone will commit a crime very often depends on the circumstances surrounding that person, on their way of living, on their personal or family circumstances, on their health condition, financial situation or emotional state and on other circumstances” (Matijašević & Zarubica, 2021, p. 29). In accordance with the aforesaid, the criminal behaviour of an individual or a group, in any sphere, may be, in principle, determined“ as the socially most difficult deviation” (Rašević & Jakovljević, 2022, p. 179).

Looking backwards, every form of human activity so far has been exposed to various concealed or direct attacks or detrimental influences. Not a single field of activity could have been protected in full, either through business rules or through current legal solutions. In accordance with the aforesaid, the business field as well has been exposed to various frauds or detrimental impacts. In time, the methods of perpetration have changed and so has the circle of potential perpetrators, but in principle, the exposure of this field to various manipulations and frauds has not declined.

Historically speaking, “from the Roman law, through the medieval criminal code to the modern criminal laws of the 18th and 19th century,

certain types of behaviour, such as: curbing competition, manipulations with various goods (accumulating or removing goods for the purpose of price increase), especially manipulations with food staples and grain, breaching price regulations, bankruptcy, money counterfeiting, etc., were regarded as impermissible and, in their essence, corresponded to the impermissible types of conduct which are today called economic crime (Banović, 2002, p. 14).

In foreign literature, one of the most frequently quoted definition of economic crime has been provided by Edwin Sutherland, the president of the American Sociological Association, who, in his presidential address of 1939, when describing economic crime, introduced the concept of “white collar crime”. Sutherland describes white-collar criminality as being “expressed most frequently in the form of misrepresentation in financial statements of corporations, manipulations in the stock exchange, commercial bribery, bribery of public officials directly or indirectly in order to secure favorable contracts and legislations, misrepresentation in advertising and salesmanship, embezzlement and misapplication of funds, short weights and measures and misgrading of commodities, tax frauds, misapplication of funds in receiverships and bankruptcies” (Sutherland, 1940, p. 2., quote taken from: Banović, 2022, p. 15).

Economic crime is a constant and rather dynamic negative social phenomena which skillfully adapts to the social-economic and political situation in society. Throughout history, “economic crime has assumed different forms, but always had a specific character – from the aspect of the perpetrators, who were always privileged and powerful and/or exercised high offices in the socio-economic and political structures. It is the position, status and power of these perpetrators in society that render this type of crime “invisible” in a manner of speaking, which is why this type of crime has been marked as criminality of the “privileged”, who deviously take advantage of their own position to generate “immense personal wealth and power” (Nikoloska, 2014, p. 361).

According to Nicević and Ivanović, however, “economic crime in the sense of the criminal law and criminology, constitutes all the delicts (crimes, economic offences and economic misdemeanours) that threaten the normal organization, administration and functioning of the economic system (relations and processes) in a social community” (Nicević & Ivanović, 2012, pp. 93-94; Ivanović, 2009, p. 154).

Bearing in mind the subject of this paper, the paper will focus on the major classifications of economic crime, after which it will analyse in more

detail a characteristic phenomena of economic crime in legal theory – frauds in the field of industry and production.

2. Major Classifications of Economic Crime

There are different classifications of economic crime in legal theory. Taking into account the available classification criteria and by applying the generality principle, Šikman and Domuzin believe that “economic crime is dominantly manifested through the following forms: crimes against economy and the economic system, crimes against finances and the financial system, white-collar crimes and corporate crimes, organized crime in economic and financial transactions, corruption in economic and non-economic activities” (Šikman & Domuzin, 2013, p. 6; Jovičić & Šikman, 2013).

A classification of economic crime has been provided by Bošković and Marković as well. According to them, economic crime includes the following types: abuse of position and authority, financial frauds (counterfeiting, credit card frauds, tax evasion, intellectual property frauds, bank frauds, stock exchange frauds and other types of fraud – e.g. in trade in flats by means of establishing fictitious or actual agencies, in mediation in the regulation of visas or immigration or work permits or foreign citizenships, abuse in humanitarian fundraising and distribution of aid, taking grace period goods, resale of stolen cars and other industrial commodities, frauds at tollbooths on highways, bookmaking frauds, games of chance frauds, white collar crimes, corruption, trafficking and illegal trade” (Bošković & Marković, 2015, pp. 213-216).

According to the Council of Europe Recommendation No. R (81) 12 on Economic Crime, economic crime includes the following offences: “1. cartel offences; 2. fraudulent practices and abuse of economic situation by multinational companies; 3. fraudulent procurement or abuse of state or international organisations’ grants; 4. computer crime (e.g. theft of data, violation of secrets, manipulation of computerised data); 5. bogus firms; 6. faking of company balance sheets and book-keeping offences; 7. fraud concerning economic situation and corporate capital of companies; 8. violation by a company of standards of security and health concerning employees; 9. fraud to the detriment of creditors (e.g. bankruptcy, violation of intellectual and industrial property rights); 10. consumer fraud (in particular falsification of and misleading statements on goods, offences against public health, abuse of consumers’ weakness or inexperience); 11. unfair competition (including bribery of an employee of a competing company) and misleading advertising;

12. fiscal offences and evasion of social costs by enterprises; 13. customs offences (e.g. evasion of customs duties, breach of quota restrictions); 14. offences concerning money and currency regulations; 15. stock exchange and bank offences (e.g. fraudulent stock exchange manipulation and abuse of the public's inexperience); 16. offences against the environment.“

When speaking of the classification and forms assumed by economic crime, one should emphasize the fact that, in practice, there is no form of this type of crime existing by itself. Any classification can be conditional only and related to the doctrinal study of certain forms of manifestation. The most frequent forms in practice are mutually intertwined, involving several mutually intertwined perpetrators, who, most often, have excellent connections with people at certain influential positions in society and business. Consequently, the forms assumed by economic crime are difficult to detect and even when they have been detected, the procedure of collecting evidence is by no means easy for the acting investigative authorities. We shall hereinafter deal in more detail with one specific form of economic crime in legal theory.

3. Fraud in the Field of Industry and Production

Fraud in the field of industry and production is a characteristic and a conspicuous form of economic crime in the legal doctrine.

To put it more specifically, the field of industry and production “has always been and shall always be the object of various criminal attacks through the perpetration of specific criminal offences from the field of economic crime” (Carić & Matijašević Obradović, 2017, p. 112). These are, most often, “the criminal acts of abuse of office, embezzlement, negligence in business and impermissible production. The forms of criminality in industry and production are related to the main production activities and processes and are thus manifested accordingly” (Šikman & Domuzin, 2013, p. 7).

The motive for committing these types of fraud is one's own personal benefit and the perpetrator's decision to use their own position in business or their official authority within a state or public institution with a view to obtaining an illegal advantage in the form of money or goods.

According to Bošković and Marković (2015), “the usual and mass forms of appropriation in the field of business through the abuse of one's office (business position and professional authorities) take place in several characteristic fields of economic and financial activity. Some of these forms constitute system-based breaches of economic and financial activity norms, such as: causing market disturbances by concluding a monopolist position,

negligent work and deliberate causing of bankruptcy and inflicting damage on creditors, creating or keeping an impermissible value in money, goods, etc., forging documents on balance and flows, disclosing or obtaining a trade secret, producing banned goods” (p. 214).

Attaining success in market economy “has been conditioned with the rational use of production factors and capital and with the speed of capital flows in production. The focus is on accumulation, with a view to increasing production scope, constant investments and the rational use of invested capital” (Radosević, Carić, Bejatović, Marković, Matijasević & Jovanović, 2013, p. 104). In that sense, the main form of criminality in production is considered to be “the appropriation of raw materials, waste, defective products, finished products, tools and small inventory. One of the forms of appropriation is appropriation on the basis of the average calculation of permitted losses on goods and production norms. To put it more specifically, for each type of goods there is a percentage of permitted losses and the material waste norms, in order that the goods be produced. As the losses, i.e. expenses, are calculated on an average basis and the actual loss or costs depend on varying factors, a loss, in practice, may be around average, i.e. the costs of materials ranging within technical norms, but also being above or below the average level, i.e. the technical norm” (Banović, 2002, p. 63).

In the manner of their appropriation, according to Bošković (2009), “there are no significant differences – what is important is the various conditions and circumstances influencing the perpetrator. In this procedure of potential criminal activities in the form of appropriation of goods, emphasis is laid on the mutual intertwining of several persons, above all between those in charge of the production process and warehouse keepers and record keepers, which obstructs the process of detecting and proving illegal appropriation of goods” (p. 42). By the way, “appropriation of goods may result in a deficiency, on which occasion the basic documentation has been counterfeited. The essence of this type of attack is the following misrepresentation: to show in the documents that the quantity of the materials entering the production process is lower than the actual one, or that the quantity of the finished products leaving the factory is higher than the actual one” (Banović, 2002, pp. 64-65).

According to Đekić (2016), a typical industry fraud “entails the production and sale of low quality goods for which, through a false declaration, it is claimed that it is of high quality, whereby its price is increased – the product or service, on the basis of its declaration, being fictitiously included among high quality goods” (p. 783). Thereby “a conflict is created with the interests of consumers, who, naturally, want to obtain something stipulated with a

declaration in exchange for their money, instead of being deceived in the process of purchase. Such cases demand well-trained forensic teams, whose task is to prove the real quality of the product or service and to assess the amount of money that has been illegally taken from a consumer in terms of the price difference and the amount of the benefit that the business entity derived by performing such a criminal act” (Đekić, 2016, p. 783; Patrick, Jensen & Tinsley, 2015). Besides the aforesaid, the production process itself “has seen cases of negligent and unconscientious conduct which inflicts extensive damage either to production means, reproduction materials and other raw materials or to finished products” (Šikman & Domuzin, 2013, p. 7).

The forms of economic crime which are characteristic of the field of industry and production may also include:

- appropriation of tools and parts of machines and plants “covered with a false write-off and depreciation, fictitious exchange of tools, appropriation due to inadequate control” (Banović, 2022, p. 65). There are cases of “deliberately misrepresenting certain goods as out of date or defective for the purpose of selling them later for a fee or to one’s friends or relatives” (Bošković, 2009, p. 43);
- keeping unregistered employees and not keeping records of payments of earnings in the business ledger;
- “using working hours, materials and equipment of state-owned companies for private purposes on the part of certain employees and obtaining a fee for such purposes or services” (Bošković, 2009, p. 43);
- not recording a certain quantity of products and selling those products in an illegal market for cash later. Thus, “there are some characteristic forms of criminality that mainly result from “grey economy“. More specifically, certain companies evade tax by means of fictitious documentation and use the cash they obtain for purchasing certain reproduction materials and the necessary raw materials and thus, through the production process, a new product is created and is not recorded anywhere” (Šikman & Domuzin, 2013, p. 7).

The so-called “grey economy” is also manifested through “production by business entities that have not been authorized for production or have not been authorized for the production of a specific type of products; production in factories which do not meet the stipulated requirements; non-compliance with elementary technical and technological rules in the production of products and the use of low-quality, even detrimental raw materials and subsequent misrepresentation of the type, origin or quality of a product,

applying counterfeit labels of well-known manufacturers of similar products and putting the goods in the market with prices lower than the original ones” (Carić & Matijašević Obradović, 2017, p. 116).

What was emphasized before is that fraud in business activities attains its full dimension exactly because it is committed (or endorsed) by people with certain authorities in state bodies, institutions or organizations, as well as people at the leading positions in the business entities in which fraud is committed.

According to Bošković and Marković (2015), “the aforementioned acts of fraud occurs most often at the three basic levels of position, office and status: administration and management, control and performance (operative function)” (p. 215).

The most practicable type of abuse lies in the “merging of the aforesaid functions, although each constitutes a risky area of potential abuse. A concentration of functions, or the so-called conflict of interests may manifest itself as follows:

- horizontal concentration: merging of several functions of the same type, such as purchase, sale and storage;
- vertical concentration, such as executive and control forms of business activity;
- horizontal and vertical concentration: in various forms of merging, which enable concentration of the power of decision-making, control and execution” (Bošković & Marković, 2015, p. 215).

4. An Example from Practice – Fraud in the Food Industry and the Reaction of Institutions

The concept of business in modern industry, the food industry in this case, and the set of customer rights, is highly demanding for the companies operating in this field and puts a great deal of responsibility on their shoulders. Food quality and safety is an imperative and the application of the appropriate standards in this fields (ISO and HACCAP standards) is something on which the companies’ business activities are founded.

There are, however, many examples in practice pointing to various acts of abuse and fraud on the part of manufacturers in the food industry. On this occasion, we shall analyse one of such examples in more detail. This example puts in focus the timely and adequate institutional reaction, which by all means has a positive impact both on the special and the general prevention of such illegal activities.

Batrićević (2019) writes that “in January 2016, two Georgian companies exported roasted hazelnuts to the EU. Between 15% and 22% of those hazelnuts had been replaced with peanuts. That was because peanuts are relatively cheap, i.e. much cheaper than hazelnuts and their characteristics are such that, by being mixed with hazelnuts, they contributed to the increase of the quantity of the products, reducing its quality at the same time. The fraud was detected thanks to a complaint filed by a consumer from Germany, who developed an allergic reaction to the peanuts after consuming the product. An investigation showed that the manufacturer had been storing large quantities of peanuts without a declaration, together with hazelnuts and the hazelnut powder. After the German authorities were informed of the fact, the information was forwarded to the EU network for combatting food production fraud. Then the Georgian authorities were ordered to ban the companies involved in this fraud from exporting their products to the EU as long as the persons committing the fraud remain at the same positions. Not only did the aforesaid Georgian companies infringe upon the *acquis* deliberately and knowingly putting peanuts among hazelnuts without reporting it, in a quantity between 15% and 22%, but they also derived an illegal profit therefrom in an approximate amount of 400 \$ per ton and also created a risk to public health by causing allergic reactions among consumers. Nevertheless, this case represents an example of good cooperation between the EU and Georgian authorities. As soon as they received information on the complaint filed by the German customer, the Georgian authorities adopted, in an urgent procedure, a regulation intensifying the control of hazelnuts intended for exports. The Georgian authorities also conducted an investigation which confirmed that fraud had been committed in the two companies (which belonged to the same owner) and sanctioned the persons in charge for the fraud and also for forging tax documents (between two and four years of imprisonment). Besides, the EU member-states themselves intensified the control of import of the aforesaid products from Georgia” (pp. 195-196).

5. Conclusion

The analysis of the term, characteristics and the forms assumed by economic crime represents a very complex issue. Above all, in practice, the collection of all the important information on the types of economic crime requires a lot of effort, a multidisciplinary approach and a properly established methodological concept of investigative authorities' action. Consequently, the identification and the proper differentiation of forms of economic crime is a

rather significant previous issue in the process of tackling this phenomena. There are various approaches to the identification of the forms assumed by economic crime, but they mostly refer to the identification of some important elements first and only then to the identification of a specific form of economic crime.

What can be perceived at first glance is the fact that economic crime is characterized by an exceptional versatility of forms. There are numerous definitions and classifications of economic crime. Not for a single one can be said for certain that it is completely accurate or definitive. This is confirmed by the numerous approaches of different authors of the legal and security theory, both the local and foreign ones. In addition to this characteristic, criminal acts in the sphere of economic crime are also characterized by a high degree of a detrimental impact on the national economy and also by the fact that the acts and their perpetrators are concealed. This is especially true when one bears in mind the most frequent type of perpetrators who are able to commit such a crime most easily, i.e. who have the best opportunity to commit an economic crime. As the paper has already emphasized, such perpetrators belong to the privileged classes of society and they exercise their actual or assumed influence, authorities and position to commit the crimes in this sphere.

Another characteristic of these crimes is a difficult process of detection of the victims, considering the fact that such crimes do not draw so much attention as the crimes of violence or other criminal acts in the sphere of conventional crime. All this points to the conclusion that the crimes, i.e. the criminality forms in the field of economic crime are extremely dangerous and may inflict extensive damage to the national economy and to the business activities of legal entities.

Considering the subject of this paper, the definition of the term and the description of the characteristics and the main classifications of economic crime are followed by an in-depth analysis of the characteristic form of economic crime in legal theory, namely fraud in the field of industry and production.

Despite adequate legislation at both the European and the national level, one may perceive that the current control systems in the field of industry and production have not been conceived enough to prevent fraud in time. Besides, the modalities of the commission of fraud in this sphere have been continuously modified, improved and adapted to the current business circumstances and to the current legal framework, which is why the perpetrators very often succeed in evading detection and sanctioning of the committed fraud. Fraud in the field of industry and production often having a transnational character, it has

become clear for a long time now that one should apply security procedures which, besides the national framework, should also involve the international one.

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KARAKTERISTIČNI POJAVNI OBLICI PRIVREDNOG KRIMINALITETA U PRAVNOJ TEORIJI – PREVARNE RADNJE U OBLASTI INDUSTRIJE I PROIZVODNJE

REZIME: Privredni kriminalitet je stalna i veoma dinamična društvena negativna pojava koja se vešto prilagođava društveno-ekonomskoj i političkoj situaciji u društvu. Prevarne radnje u oblasti industrije i proizvodnje su karakterističan i vrlo zapažen pojavni oblik privrednog kriminaliteta u pravnoj doktrini. Motiv vršenja ovih prevarnih radnji jeste koristoljublje i opredeljenje učinilaca ovih dela da iskoriste položaj u privrednom poslovanju ili službena ovlašćenja u državnim organima ili ustanovama da nezakonito prisvoje određenu korist u vidu novca ili materijalnih dobara. Imajući u vidu temu rada, nakon osvrta na pojam, karakteristike i najznačajnije podele privrednog kriminaliteta, detaljnije je analiziran karakterističan pojavni oblik privrednog kriminaliteta u pravnoj teoriji – prevarne radnje u oblasti industrije i proizvodnje. Iako postoji adekvatna legislativa kako na evropskom, tako i na nacionalnom nivou, može se uočiti da postojeći sistemi kontrole u oblasti industrije i proizvodnje još uvek nisu u potpunosti koncipirani tako da se prevarne radnje pravovremeno preveniraju. Uz to, modaliteti izvršenja prevarnih radnji u ovoj sferi modifikuju se u kontinuitetu, usavršavaju se i prilagođavaju trenutnim okolnostima privrednog poslovanja i aktuelnim zakonskim okvirima, tako da učinioci vrlo često uspevaju da uspešno

izbegnu otkrivanje i sankcionisanje izvršenih prevarnih radnji. Budući da prevare u oblasti industrije i proizvodnje često imaju transnacionalni karakter, odavno je postalo jasno da treba primeniti bezbednosne procedure koje ne uključuju samo nacionalni okvir, već i međunarodni.

Ključne reči: *privredni kriminalitet, prevarne radnje, industrija i proizvodnja, privredno poslovanje*

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