The concept and typical forms of economic crime

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Abstract:

There are different concepts of economic crime by each sciences and it shows resemblances with other types of crimes. The colloquial definition embraces every crimes, infringements, unethical attitudes, which results in gaining unlawful economic benefits by the economic actors. The Criminal Code gives a guide for the criminal law's definition. In criminology it has a wider range than in the criminal law. The vernacular often use "white-collar crime" as a synonym for it. Distinguishing economic crime from crime against property is extremely hard since both types of crime violate the financial relations.

Keywords: economic crime, crime against property, white-collar crime, corruption.

1. The definition of economic crime

It is an extremely hard task to define economic crime, since the term is used with a different meaning not only by each social sciences (sociology, economic etc.), but also by different branches of criminal sciences, and the colloquial language also uses it differently.

The colloquial definition of the economic crime embraces every crimes, infringements, unethical attitudes, which results in gaining unlawful economic benefits by the economic actors.

The public opinion considers – besides the actual criminals – the following people as economic criminals for example a millionaire businessman who takes advantages of loopholes, and also a buffet entrepreneur who offers beer above the market price at a holiday resort, even though none of them can be called to account for criminal liability, since their conducts don't accomplish a crime.¹

The Criminal Code gives a guide for the criminal law's definition of economic crime.² Since the new Hungarian Criminal Code came into effect in 2012³, the regulated offences against the economic interests are spread and placed in different Chapters within the Code. There are statement of facts with economic nature in the Chapter XXXI

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¹ Pusztai László, *A gazdasági bűnözés*, [Economic crime] In: Kriminológiai ismeretek – bűnözés – bűnözéskontroll, Gönczöl Katalin - Korinek László - Lévai Miklós (editors), Corvina, Budapest, 1996. 186. p.

² Varga László, *Gazdasági rendszer – gazdasági bűnözés*, [Economic system – economic crime] Belügyi Szemle, 2002/10. p. 7.

³ Act C of 2012 on Criminal Code.

(Criminal offences against economic sanctions imposed under international commitment for reasons of public security) and besides this in the Chapter XXXVI among the offences against property there has been appeared expressly economic statement of facts such as economic fraud. There are several separated Chapters where the former specifically economic crimes can be found: criminal offences relating to counterfeiting currencies and philatelic forgeries (Chapter XXXVIII), criminal offences against public finances, money laundering (Chapter XL), economic and business related offences (Chapter XLII), crime against consumer rights and any violation of competition laws (Chapter XLIII). Eventually, illicit access to data and crimes against information systems (Chapter XLIII) have become also separated. In a wider sense, the renewed crimes of corruption (Chapter XXVII) also belong to the economic crime.⁴

The definition of economic crime in criminology has a wider range than the criminal law's concept. It is realized in the economic process or closely related crime form to this process which violates or endangers the prudent management, fair and legal frames of economy.⁵ Among crime against property the following crimes can be mentioned: embezzlement, fraudulence, misappropriation, and among the corruption crimes: bribery and influence peddler.

Economic crime also shows resemblances with crime against property. The crime against property violates a static state, the current property relations, (for example when a passer-by's money is stolen), while economic crime does violence to a dynamic process, which is committed in the course of utilizing property⁶ (for example when a bank manager gives loan for an entrepreneur for a certain percentages of the required loan amount (15-20%) while he violates loan granting and property management regulations and knows that the entrepreneur doesn't have proper credit standing hereby he causes particularly large pecuniary disadvantage.

Distinguishing economic crime from crime against property is extremely hard, since both violate the financial relations, but economic crime is related more to the economy and especially to the production process, while crime against property breaches the actual property relations.⁷

The vernacular often use "white-collar crime" as a synonym for economic crime. The "white-collar crime" as a teminus technicus⁸ derives from American criminology in the 1930s. According to Edwin H. Sutherland, who is the father of this term, it is a crime committed by a person of respectability and high social status in the course of his occupation.⁹ The name seems appropriate because it grabs a formal feature (white collar), which indicates the underlying content "dazzlingly". The white-collar criminals

⁸ Kránitz Mariann, *A "fehérgalléros bűnözés" Magyarországon az ezredfordulón*, [The white-collar crime in Hungary] In: Kriminológiai és Kriminalisztikai Tanulmányok XXXVI., (Irk Ferenc – editor), Országos Kriminológiai és Kriminalisztikai Intézet, Budapest, 1999. p. 39.

⁴ Tóth Mihály, *A fehérgalléros bűnözés; a gazdasági bűnözés*, [The white-collar crime; economic crime] In: Kriminológia – Szakkriminológia, Gönczöl Katalin - Kerezsi Klára - Korinek László - Lévay Miklós (editors), Complex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft., Budapest, 2006. p. 406.

⁵ Tóth Mihály, *Gazdasági bűnözés és bűncselekmények*, [Economic crime and offences] KJK-Kerszöv Jogi és Üzleti Kiadó Kft., Budapest, 2002. p. 22.

⁶ Gál István László, *Gazdasági büntetőjog közgazdászoknak*, [Economic criminal law for economists] Akadémiai Kiadó, Budapest, 2007. p. 86.

⁷ Tóth (2006) Op. cit. p. 405.

⁹ Adler, Freda.- Mueller, Gerhard O.W. - Laufer, William S.: *Kriminológia*, [Criminology] Osiris Kiadó, Budapest, 2000. p. 419.

commit crimes with their own economic, social or economic and social means of power, perpetrate behind these "bastions", consequently these means and "bastions" are perfect for covering up their actions. 10

Distinguishing economic crime from white-collar crime might encounter difficulties, since both types of crimes might play well for each other, but they might also mix with other crimes. Fraud is the most common form of white-collar crime for example typically credit and insurance fraud belong to the white-collar crime concept. Although not every types of frauds are considered to be white-collar crime like it is also a fraud when a bijou seller sells a common ring as a golden ring for an inexperienced old lady with good faith. Furthermore, not even every committed crimes by a white-collar criminal with high social and wealth prestige are regarded as white-collar crime – for example when a bank manager murdered his spouse because of jealousy. A crime is considered to be white-collar one when it is committed in the course of someone's occupation, profession for financial gain or in connection with them.

There are two conceptual criterions for determining white-collar crime: firstly, the perpetrator is disposed of public trust and social-financial legitimacy¹¹ (such as executive of a multinational company, high government officer etc.), secondly, the offender make use of his economic, social, political or professional power for committing a crime thus he is able to gain more favourable financial-power position for himself.¹²

2. The typical forms of economic crime

The state wants to control and regulate the economic processions with legal means. Although the legal regulation is often in a delay, since it might take some time (it could be years) till an economic solution is proved to be a violation against interests of the state such as in 1990s there were several pyramid games promised 300-500% profit and due to these pyramid games their investors went on bankruptcy. Legislator has enacted "organizing pyramid game" as a crime in the Hungarian Criminal Code only in 1996.

Economic is threatened by that the state wants to correct its defective economic policy with expanding the range of economic criminal law. This could reach a phase, when the largest risk is abiding by the law from the point of view of profitability, while the illegal conduct guarantees large income with small risk like after the change of regime some entrepreneurs accounted for the most absurd expenses as the costs of the undertakings.¹³

Economic crime is continually undergo a transformation as a very flexible crime form. It is always renewed and trying to find the loopholes. Economic crime is typically found in these areas:

 $^{^{10}}$ Kránitz Mariann, A "fehérgalléros bűnözés", [The white-collar crime] Főiskolai Figyelő, 2/1995. p. 145.

¹¹ Korinek László, *Bűnözési elméletek*, [Crime theories] Duna Palota és Kiadó, 2006. p. 298.: "...the while-collar crime means the committed offences by people with high social status. There are also high and higher within this, since they need executers and other assistants."

¹² Kránitz Op. cit. p. 145.

¹³ Finszter Géza, A büntetőjog alkalmazásának csapdái, [The traps of applying criminal law] Magyar Tudomány, 2001/8. p. 3., http://www.matud.iif.hu/01aug/finszter.html

2.1. Security related crimes

The regulations applied to security (or in other words investment papers) regulate the registry, the issue and the personnel and material conditions of the securities. The most typical crimes are the following ones: insider dealing and capital investment fraud.

The point of insider dealing is any person could gain unlawful financial benefits with the use of private financial information for example if somebody gets confidential insider information with regard to companies he could strike a very profitable deal thanks to these information.

Capital investment fraud (alias stock manipulation) is widespread on the prompt markets such as the exchange market. The brokers, who are interested in strengthening a certain stock, might influence their clients with misleading or even false statements and give them to believe that the price of the stock is going to rise or fall. Herewith they create artificial demand or supply for the specific stock and when it is turned out the change of the price index was only a false alarm the brokers has gained already a significant profit for themselves.

2.2. Misleading consumers

Misleading consumers is a conduct¹⁴, when they defraud consumers with misleading or fake representation of essential feature of the goods for example a food product company bought semi finished products from South-Africa, Peru and red pepper's grist from Spain, which they sold as "red pepper from Szeged" and also used "Hungarian Product Award" and "Excellent Hungarian Food" labels on the packages with this they misled the consumers.¹⁵

2.3. Fraudulent bankruptcy

It might happen that the executive officer of business association diminishes the association's assets in case of imminent insolvency¹⁶. He might actually or fictitiously

¹⁴ Act C of 2012 on the Criminal Code Misleading Consumers "Section 417(1) Any person who conveys misleading information in a product presentation on the availability of special discounts or price reductions, or on a chance of winning is guilty of a misdemeanor punishable by imprisonment not exceeding one year. (2) Any person who before the public at large states false facts, or true facts in a deceptive way, or provides deceptive information on any essential feature of the product for the purpose of promotion, or if it involves goods of substantial quantity or value, is guilty of a misdemeanor punishable by imprisonment not exceeding two years. (3) The penalty shall be imprisonment not exceeding three years for a felony if the act defined in Subsection (2) is committed in connection with certain features or properties of the goods relating to its impact on health or on the environmental, or whether it is considered hazardous, dangerous or risky. (4) For the purposes of this Section: a) essential feature of the goods covers, aa) the components an specifications of the goods, and their suitability for a given function, ab) the place of origin, ac) the way they are controlled or tested and the results b) 'product presentation' shall mean retail sales activities carried out under travel arrangement or an event organized for this purpose."

¹⁵ http://www.kisalfold.hu/szeged_hirek/_milliora_buntettek_a_szegedi_paprika_zrt-t/2031706/

¹⁶ Act C of 2012 on the Criminal Code Fraudulent Bankruptcy "Section 404 (1) Any person who, in connection with the imminent insolvency of an economic operator covered by the Act on Bankruptcy Proceedings and Liquidation Proceedings, actually or fictitiously, diminishes the economic operator's assets: *a*) by concealing, disguising, damaging, deteriorating or destroying, or by making unusable such assets or any part thereof; *b*) by concluding a fictitious transaction, or recognizing a doubtful claim; or *c*) by other means, in contradiction to the requirements of prudent management; and thereby prevents the satisfaction of his creditor or creditors in part or in whole is guilty of a felony punishable by

reduce the assets of the association and thereby prevents the satisfaction of his creditor or creditors in part or in whole like when they sell company owned car of a great value at a very low price for an outsider.

2.4. Tax evasion

Any person, who makes a statement with untrue facts in order to encumber the establishment of his tax liability or conceals such facts (data) from the authority and with this misleading conduct he diminishes the taxation of the state. Most of the criminal procedures are launched because of the value-added tax refund¹⁷ for example when a trader, who sells materials for constructors, makes out fictive receipt for a private person, then he claims back the value-added tax of the materials from the tax authority.

2.5 Credit and insurance fraud

The credit and insurance frauds cause substantial or particularly considerable damage, are generally related to financial institutions and insurance companies.

The essence of the credit fraud is that the contractor provides fake or forged documents in order to get a favourable verdict for his credit grant, termination or changing the credit's conditions like when the contractor forges the company's balance data or hands in false document from the court registration.

Insurance fraud is when the insurance premium is paid without actual or legitimate damage claim for example when they imitate a car crash and then they claim more money than the actual damages from the insurance company.

2.6. Credit card fraud

The spread of the modern payment methods obviously brought that the criminals would manipulate cash-substitute payment instruments (such as cheques, credit cards

imprisonment between one to five years. (2) Any person who, in connection with an economic operator covered by the Act on Bankruptcy Proceedings and Liquidation Proceedings: a) engages in either of the conducts referred to in Subsection (1) to artificially induce the economic operator's insolvency, or to cause the perception of insolvency; or b) in the case of the economic operator's insolvency, engages in either of the conducts referred to in Subsection (1); with intent to prevent the satisfaction of his creditor or creditors in part or in whole is punishable in accordance with Subsection (1). (3) The penalty shall be imprisonment between two to eight years if: a) fraudulent bankruptcy is committed in respect of an economic operator of preferential status for strategic considerations; or b) the dimunition of assets, actually or fictitiously, is particularly substantial. (4) Any person who, following the order of liquidation, provides preferential treatment to any creditor in violation of the sequence of satisfaction specified in the Act on Bankruptcy Proceedings and Liquidation Proceedings is guilty of a misdemeanor punishable by imprisonment not exceeding two years. (5) The criminal offenses provided for in Subsections (1)-(3) are punishable if: a) bankruptcy proceedings have been opened; b) liquidation proceedings, involuntary de-registration or compulsory winding-up proceedings have been ordered; or c) liquidation proceedings had not been opened by derogation from the relevant statutory provisions. (6) Fraudulent bankruptcy shall be considered a criminal act if committed by a person who has powers to control the assets, or any part thereof, of the debtor economic operator, or has the opportunity to do so, and also if the contract for any transaction with the assets is considered invalid."

¹⁷ Jávorszki Tamás, Az áfa-visszaigénylés mint az áfacsalásokat lehetővé tevő kriminogén tényező, [The value-added rax refund as a criminal factor making tax evasion possible] Belügyi Szemle, 2002/10. p. 52.

etc.). One of the most common credit card frauds are committed with new technical devices (so called skimmer devices). With these devices they can obtain our credit card numbers and our PIN codes.¹⁸

2.7. Cybercrime

The globalization of the technology has brought new crime forms – inter alia cybercrime $^{-19}$ since most of the data storage and transfer are computer based both in the state and private sectors.

Cybercrime²⁰ is diverse.²¹ The illegal hacking, which violates the data protection regulations and information systems, is extremely dangerous. The illegal acquisition of information with the help of computers and new devices might cause substantial damage for the economic life. Any user could meet the misuse of financial transactions on the internet, so called e-banking²² offences. For committing these types of crimes advanced information technology knowledge is required.

The spread of e-commerce also increases the danger of becoming an injured party of these offences. The safety of the electronic signatures or the spread of wireless services doesn't seem to be fully convincing. Unfortunately there are cons as well of the development of technology, especially in regard with the youth ("pedophile industry").²³

Offences against copyright are often committed with the help of computers and information systems.

¹⁸ For more about credit card fraud see further in: Tóth Dávid, A készpénz-helyettesítő fizetési eszközökkel kapcsolatos bűncselekmények büntetőjogi szabályozása, [The criminal law regulation of cashsubstitute payment instrument related crimes], In: Kecskés Gábor (editor), Doktori Műhelytanulmányok. Széchenyi István Egyetem Állam- és Jogtudományi Doktori Iskola kiadványa Győr, 2015. pp. 226–237.

¹⁹ Nagy Zoltán, Az informatikai bűncselekmények, [Cybercrime] Magyar Tudomány, 2001/8. p. 1., http://www.matud.iif.hu/01aug/nagyz.html

 $^{^{20}}$ Act C of 2012 on the Criminal Code Breach of Information System or Data " Section~423~(1)~Any~person~who:

a) gains unauthorized entry to an information system by compromising or defrauding the integrity of the technical means designed to protect the information system, or overrides or infringes his user privileges; b) disrupts the use of the information system unlawfully or by way of breaching his user privileges; or c) alters or deletes, or renders inaccessible without permission, or by way of breaching his user privileges, data in the information system; is guilty of a misdemeanor punishable by imprisonment not exceeding two years. (2) The penalty shall be imprisonment between one to five years for a felony if the acts defined in Paragraphs b)-c) of Subsection (1) involve a substantial number of information systems. (3) The penalty shall be imprisonment between two to eight years if the criminal offense is committed against works of public concern. (4) In the application of this Section 'data' shall mean facts, information or datum stored, controlled, processed and transmitted in information systems in all forms which allows them to be processed in information systems, including those programs designed to execute certain functions by the information systems."

²¹ Nagy Zoltán, *A számítástechnikai rendszer és adatok elleni új bűncselekmények*, [Crimes against computer systems and data] Belügyi Szemle, 2002/11-12. p. 30-35.

²² Heine, Günter, *E-Banking, Die einzelnen Rechtsgeschäfte. Berner Bankrechtstag*, BBT Band 9, Institut für Babnkrecht an der Universität Bern, Hrsg.: Wolfgang Wiegand, Stämpfli Verlag AG, Bern, p. 109-131.

²³ Parti Katalin, A számítógépes bűnözés és az internet, [The cybercrime and the internet] Kriminológiai Tanulmányok 40., (szerk.: Irk Ferenc), Országos Kriminológiai Intézet, Budapest, 2003. p. 187.

2.8. Economic corruption crime

Economic corruption crime doesn't mean only the committed offences by the economic actors, but also the committed corrupt crimes²⁴ by the state (except executive power and government bodies), non-governmental organizations and associations also belong to the concept.²⁵ It is typical of corruption crimes there are at least two parties against each other in the corruption relation, on the one hand, the one who gives or promises unlawful advantage, on the other hand, which requests or receives unlawful advantage. In the first scenario it accomplishes the active corruption and in the second one the passive corruption.²⁶

Accepting a bribe is most often occurred during privatization, 27 procurement procedures, construction industry investments and pocket penalize for example when a head of a firm invite tenders and tell the contractor he is going to win the tender if he gets 10% of the contract price.

2.9. Money laundering

Money laundering is an activity²⁸, which aim is to make outwardly the illegally acquired money²⁹ legitimate, and then the "laundered" money can be spent in the legal economy.³⁰ Money laundering³¹ has several well-known techniques³² such as running a nightclub for covering, issuing invoices with higher price than the specific product's real market price during business transactions. There are some theories which consider that money laundering has become beyond its original meaning and it has come closer to other concepts such as organized crime.³³

²⁴ Kiss Patrik: *A korrupciós bűncselekmények néhány jogértelmezései nehézsége,* [Some legal interpretaion Problems of the Corruption Crimes] Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica, Tomus XXXII. (2014), pp. 305–309.

²⁵ Kránitz Mariann, *A korrupció utolsó huszonöt éve Magyarországon (posztumusz tanulmány)*, [The last 25 years of corruption in Hungary] Ügyészek Lapja, 2006/5. p. 35.

²⁶ Mezei Kitti, *Néhány észrevétel a korrupciós deliktumok hatályos szabályozásával kapcsolatosan,* [Some observations related to the effective regulation of the corruption crimes] Büntetőjogi Szemle 2015/3. szám, p. 95.

²⁷ Görgényi Ilona, Az Európai Unió elvárásai a vesztegetés kriminalizálása terén a kerethatározat előtt és után, [The expectations of the European Union related to bribery's criminalization before and after the framework decision] In: Györgyi Kálmán ünnepi kötet, (Gellér Balázs - editor), Bibliotheca Iuridica, az ELTE Állam.-és Jogtudományi Karának tudományos kiadványai, Libri Amicorum 11., KJK-Kerszöv Jogi és Üzleti Kiadó Kft., Budapest, 2004. p. 286.

²⁸ Gál István László, *A pénzmosás*, [Money laundering] KJK-Kerszöv Jogi és Üzleti Kiadó Kft., Budapest, 2004. p. 17.: "Money laundering is a method, which helps to make profits from crimes whiter and whiter through the world's bank systems and businesses."

²⁹ Kereszty Béla: *A pénzmosás*, [Money laundering] Magyar Jog, 1995/2, p. 65.

³⁰ Jacsó Judit, *A pénzmosás elleni nemzetközi fellépés eszközei*, [The international means against money laundering] Magyar Jog 2000/9, p. 555.

³¹ Adler, F.-Mueller, G.O.W.-Laufer, W. S. Op. cit. p. 509.

³² Gula József, *Pénzmosás*, [Money laundering] In: Csemáné Váradi Erika - Görgényi Ilona - Gula József - M. Nyitrai Péter - Sántha Ferenc (editors): Magyar Büntetőjog - Különös részi ismeretek, Főiskolai jegyzet (Görgényi Ilona - editor), Bíbor Kiadó, Miskolc 2003. p. 202.

³³ Gál István László, *A pénzmosás szabályozásának régi és új irányai a nemzetközi jogban és az EU-jogban*, [The old and new regulation of money laundering in the international an EU law] Európai Jog 2007/1. szám, p. 13.

3. The means of combating economic crime

Combating economic crime is an extremely complex social-economic-moral and crime pursuing task. 34

It is able to cause damage to the society twice: firstly, when it withdraws money from the legal economy, secondly, when it reinvests money.

The means against economic crime are the following:

- minimizing entrepreneurial cash flow
- reviewing the economic activity related relevant legal regulations and terminating the loopholes $\,$
- setting up special police units and prosecutor agencies for dealing with economic crime
 - making the difference of legal and risky economic activities unambiguous³⁵
 - enhancing the transnational economic cooperation of law enforcement agencies.

According to Oliver Heald³⁶, economic crime is more visible than ever before and the speed of technological advance, and new ways of doing business, makes the task of fighting economic crime ever more difficult. The traditional response to new types of crime is for governments to address them by making new law. However new laws usually involve creation of additional red-tape burdens for business. If businesses continue to treat compliance as an important issue, and take the initiative to find and prevent problems, this will produce a more effective response to the challenge of economic crime, and will reduce the need for governments to fashion laws which impose expensive obligations on the private sector.

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³⁵ Bencze József, *A feketegazdaság és az ellen való fellépés lehetőségei*, [The black market and the possibilities to fight against it] Belügyi Szemle, 1995. Különszám, p. 14.

³⁴ Gál (2004) Op. cit. pp. 23-31.

 $^{^{36}}$ Oliver Heald, Fighting economic crime in the modern world, 31st Cambridge International Symposium on Economic Crime. Cambridge, UK, form 1-8th September 2013.

https://www.gov.uk/government/speeches/fighting-economic-crime-in-the-modern-world

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