

**UNIVERSITY OF TIMISOARA  
FACULTY OF LAW**

**UNIVERSITY OF PÉCS  
FACULTY OF LAW**

**JOURNAL OF EASTERN-EUROPEAN CRIMINAL LAW  
No. 2/2015**

**Edited biannually by courtesy of the Criminal Law  
Departments within the Law Faculties of the West University  
of Timisoara and the University of Pécs**



# The edge of rationality: permitted risk in the criminal law

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## **Abstract:**

*Property and risk management are closely related, and due to the tentative circumstances are often unforeseen and unpredictable. Criminal liability incurs after a bad decision resulting in harmful consequences.*

*What do we mean by rational and irrational risk? This cannot be described by exact, general definition, it is case sensitive and can only be decided upon through proper analysis. This essay deals with the issues of permitted risk exempting culpability, on a theoretical level.*

**Keywords:** *risk management, culpability, criminal liability.*

The social and economic changes of the present require great adaptability and quick response from economic players who are in decision making positions. Property and risk management are closely related, and due to the tentative circumstances are often unforeseen and unpredictable. Criminal liability incurs after a bad decision resulting in harmful consequences. Based on its ultima ratio nature, criminal law could only be applied as a last resort, when an act's extent to which it endangers society requires governmental authority. Risk taking – in case of successful result – is useful and important for the society, since it creates space for development. The overextension of the criminal liability contradicts this by promoting risk-averse, cautious behavior. Society's development and survival cannot be imagined without breaking down the walls of humanity's own comfort zone.<sup>1</sup> What do we mean by rational and irrational risk? This cannot be described by exact, general definition, it is case sensitive and can only be decided upon through proper analysis. The irrational economic and financial behavior always starts way before the conduct of criminal acts. Often it depends on contingency, when the dubious behavior becomes an act of criminal law.<sup>2</sup>

However the courts specified a few landmarks from which the extent could be outlined. Criminal law does not cover the whole scale of irrational risk at all, it merely includes those risks and speculations that threatens the society in a way that it demands the application of ultima ratio.

Risk related decisions have had a growing impact on the technical – economic and civilization development of the society, should they result in failure it could provide a basis for criminal liability. The fear from criminal liability promotes risk-avoidance, even when society's interest would demand brave and bold decisions to be made. The objectives of criminal law is not hindering this progress, but rather protecting the public interest. The study primarily deals with the risk involved in business decision making that due to the unstable economic situation could eventually be risky and often

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<sup>1</sup> Erdősy Emil: *A megengedett kockázat a büntetőjogban*, Akadémiai Kiadó, Budapest, 1988, 10. p.

<sup>2</sup> Kallós Erzsébet: *Hűtlen kezelés vagy ésszerű kockázatvállalás?*, Cégvezetés, 2003, 4. no. 30. p.

dangerous. It sheds light on the border between rational and irrational decision making, what is allowed risk, and the point where criminal law intervenes.

## 1. The definition of risk

Risk is a measurable uncertainty, with which the outcome probability of threats can be measured.<sup>3</sup> Therefore with risk we can specify the outcome probability of a certain disadvantage in some form. The definition of risk can be hardly separated from the personal action, which is the conscious selection from the uncertain outcome possibilities, therefore mere wager. Decision making that involves risk is the source of economic development, therefore taking the risk for a possible loss can result in the better off of the society.<sup>4</sup> The definitions of risk is therefore not a legal definition, it is not specified through legal methods.

When analyzing risk, from a legal and especially from a criminal law point of view, analyzing the human behavior is what makes the difference. Risk taking is an uncertain, but deliberate behavior, with which the risk taker plans to acquire some form of advantage. The danger and profit related to the risk can only be realized in the future, the outcome is uncertain. Rationality measures the size of the risk involved against the profit or advantage that could be accumulated based on which the actions of the risk-taker could be judged. On the action side the intention, while on the subjective side the psychic relation to the outcome of the situation – primarily negligence – should be examined. The purposeful attitude is always present in a decision making, the personal decision in this case is the selection from several possibilities. The probability of risk is considered by the decision maker, hence the known danger involved is a „*conditio sine qua non*” of the defined risk.<sup>5</sup> In order to analyze risk taking from a legal perspective, the objective existence of the danger must be also defined.

The objective danger is not equal to the risk, because it requires the action taker's behavior that provokes the danger itself.<sup>6</sup> The law will closely examine this behavior, and analyze it from criminal, civil, or labor law point of view. The edge of responsibility can be specified based on the ratio between the assumed risk and the expected return, the social benefit. When specifying this, ensuring the possibility for development and innovation shall not be excluded. Sanctioning failed decisions could hold back any further initiations, moreover the rational risk-taking. Eörsi Gyula described, that even individuals with the right to independently make decisions demand a „liability-free sphere”, where they have the possibility to take risk.<sup>7</sup> Legislation should not establish these borders too tightly.

Even economics does not find the „unbounded”, irrational risk-taking necessary or socially effective. The economic decision makers must be continuously warned in a similar way for the fact that economic decisions are made in uncertainty. There is no fix, stable environment, the economic and market relations continuously change, there could always be unexpected situations.<sup>8</sup>

<sup>3</sup> Knight, F.H., *Risk, uncertainty and Profit*, Sentry Press, New York, 1964.

<sup>4</sup> Knight, F.: *Risk, uncertainty, and profit*, Boston, USA: Hart, Schaffner & Marx; Houghton Mifflin Company. 1921. 313 p. In: <http://www.econlib.org/LIBRARY/Knight/knRUP.html> (2015. 10.02.)

<sup>5</sup> Erdősy Emil: *Megengedett kockázat a büntetőjogban*, Akadémiai Kiadó, Budapest, 1988. 24. no.

<sup>6</sup> Erdősy E. i.m. 28. p.

<sup>7</sup> Eörsi Gyula: *A gazdaságirányítás új rendszerére áttérés jogáról*, Budapest, 1968, 247. p.

<sup>8</sup> Medvegyev Péter: *Néhány megjegyzés a kockázat, bizonytalanság, valószínűség kérdéséhez, Hitelintézeti Szemle*, 2011.X. cl. 4., no. 314. p.

Based on this, the law understands risk as the probability of a harmful outcome, where the probability of the damage is uncertain, only its probable extent could be defined.

By interpreting the definition of risk, „hazard” was also mentioned. Hazard is often mentioned alongside risk, in addition the definitions written in the criminal law do not specify any difference. Hazard is a situation that involves a negative (harmful) outcome, and it lies between the probability of this outcome and its impossibility of occurrence.<sup>9</sup> However, as the way I see the two definitions are not equally the same. The difference could be explained by the levels of uncertainty. While the „hazard-type” uncertainties exist without perpetrators, the „risk-type” uncertainties occur along the choice of action to be taken. In other words, hazard is given, while risk is born in decision making situations.<sup>10</sup> Endangering behaviors however can also be evaluated from a criminal law perspective. From this point of view, the behavior provoking a hazardous situation is similar to the risk-taking behavior. I will explain this analysis further below.

## 2. Interpreting risk in the criminal law

Analyzing the levels of risk, and setting the borders for rationality are only needed when criminal liability is being questioned. Risk in the sense of criminal law assumes that the criminal act is carried out, and the hazardous behavior threatening the society is realized.

If the outcome of risk-taking is positive, and provides benefit for those involved with it, there will be no need for criminal law analysis.<sup>11</sup> However the lack of any realized damage does not necessarily equal the lack of criminal liability. Even if the consequences of a wrong, irrational decision are evaded, it does not exclude the attempt for criminal action.

The conditions of criminal liability are covered in the Criminal Code. Defining the connection between risk-taking and criminal conduct must be based on these.

The basis of a criminal act is a human behavior, that either takes an active or a passive form. Risk-taking primarily manifests from action, but omission can never be excluded. Delaying a decision can also cause negative consequences, providing the basis for criminal liability. Although in case of criminally measuring risk-taking not the form of behavior is crucial but the effect and direction of action.<sup>12</sup> This is nothing else, but the threat and harm to the social values and interests. The risk taker may not be certain regarding the outcome at the time of making the decision, however still accepts the uncertainty. The risk taker is not fully aware of the circumstances of the decision, but is aware of the probability of a negative outcome. The greater the uncertainty factor, less rational the decision is, and it is more likely that the risk-taking was irrational and unreasonable. It is proved, that the applied probability measures in process analyses are empirical rather than just given methods. In other words the individual concludes a decision following an empirical process.<sup>13</sup> Based on this, we can examine how and based on what the individual measured the level of rationality. How the objective and

<sup>9</sup> Földvári József: *Egység és a halmazok határesei a büntetőjogban*, Budapest, 1962. 11. p.

<sup>10</sup> Bonss, W.: *Bizonytalanság, kockázat és veszély. Replika*, 1998. IX. cl. 31.–32. no., 49. p.

<sup>11</sup> Erdősy Emil (1988) i.m. 32. p.

<sup>12</sup> Erdősy Emil. (1988) i.m. 66. p.

<sup>13</sup> Bélyácz Iván: *Kockázat, bizonytalanság, valószínűség. Hitelintézeti Szemle*, 2011, X. cl., 4. no, 300. p.

subjective reasons influenced the individual and what was the objective probability for the positive outcome of its action.

However this question will be more important in examining guilt.

Behavior, as the *conditio sine qua non* of the criminal act, is realized in the decision related to the risk taking. Endangering behaviors can be defined based on the situation itself. The danger can be abstract or remote, and concrete or in other words close danger.<sup>14</sup> Regarding risk taking, the more remote the involved risk is, the more rational it is, since a positive outcome is expected. It differs from endangering behavior due to being tendentious, since risk-taking deliberately causes a dangerous situation, the action is aimed at realizing a positive outcome. The decision can be rational even if the danger is closer, when the profit; the risk premium is so big, that the decision maker takes the bigger risk as well. By examining the sense of purpose, we arrive to the other element of the criminal act, the criminality.

The other connection point with criminal act is therefore criminality. Criminality is the psychic relation between the perpetrator and its action, for which he or she can be blamed for that action.<sup>15</sup> This is the actual psychic relation between the perpetrator's consciousness and its action threatening the society, that is carried out deliberately or in the form of negligence.<sup>16</sup>

When defining risk-taking the sense of purpose is also defined, therefore the action has to be carried out intentionally – whether as *dolus directus* or *dolus eventualis*. The aim of the risk-taker is to realize a positive outcome in the future, which he or she expects with probability. The extent of probability can be a measure for the target of the intention. According to Section 7 of the Criminal Code, from a criminal perspective deliberate intention is: „Whoever wishes for the outcome of its action, or accepts the consequences deliberately carries out the criminal act”. Based on this, intentionality has two forms, the *dolus directus* and the *dolus eventualis*. Either way the criminal act is carried out, the intention has to be related to the consequences as well. Risk-taking comes to criminal law when it threatens the social interests that must be protected. If the person is striving for a negative outcome, then an intentional criminal offense is realized, however it cannot be related to the definition of risk-taking, because, in that case the action is aimed at a benefit – social, or financial benefit - and an outcome that realizes it. Therefore direct intention is not acceptable in examining the risk-taking behaviors. In this case however purposefulness cannot be rated either, the purpose or target could only be the success that criminally cannot be examined. In case of the risk-taker only the *dolus eventualis*, or negligence could be examined. The risk-taker is aware of the probability of failure and knows it could occur. He or she measures this probability either well or badly, but either accepts it or hopes for the failure not to be realized. In addition to risk-taking, the individual does not have all the information and is not in total control.<sup>17</sup> In case of economic decisions, the basis for decision making is the awareness of information, as well as its credibility, hence in examining criminality the circumspection and thoroughness can be crucial. Criminal law will only sanction when the lack of thoroughness is expected behind the decision making, or when the person is responsible for the mistake.

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<sup>14</sup> Horváth Tibor: *Az élet, testi épség egészség büntetőjogi védelme*, Budapest, 1965, 34. p.

<sup>15</sup> Földvári József: *Magyar büntetőjog Általános rész*, Osiris Kiadó, Budapest, 2006, 112. p.

<sup>16</sup> Blaskó Béla: *Magyar büntetőjog Általános rész*, Rejtjel Kiadó, Budapest, 2013. 181. p.

<sup>17</sup> Erdősy E. (1988) i.m. 70. p.

In connection to risk-taking I must also mention the protection of society, thus the endangering nature of the act itself. According to Paragraph 2 of Section 4 of the Criminal Code: „That act or negligence threatens the society, which threatens or is against the rights of individuals as well as the social, economic and federal order of Hungary”.<sup>18</sup> The need for risk-taking can be reasoned with socially useful objectives. If the relation between the taken risk and the expected benefit justifies the decision, criminal law will not interfere. However we cannot ignore the outcome probability of the risk premium. If the probability is low, or if the negative outcome suggests bigger disadvantage, then the decision can be declared to threaten the society.

By defining the connection points between risk-taking and criminal conduct we arrive to an important question. When can be the action of the risk-taker accepted and legal, when does the criminal law not interfere?

### 3. Permitted risk, as an exclusion for culpability

Risk-taking permitted (justified) if the perpetrator is expected to reach the socially beneficial goal within optimal circumstances. If the probability for achieving this is realistic, the risk can turn the situation to unwanted, to be socially harmful. In these cases the danger can be judged based on the reasonable and acceptable balance between the risk taken and the expected social benefit, so that the action could still be justified.<sup>19</sup> The outcome probability of the social benefit shall always be judged based on the information available at the point of decision making. Often the social and economic changes cannot be foreseen and measured on the spot. In order to judge an action, the objective foreseeability shall be examined. The subjective characteristics of the individual are related to the culpability.

The risk-taking attitude<sup>20</sup> cannot be an excuse for a wrong decision, even if the great expected return had justified it, if the individual's risk-taking exceeded the objectively acceptable level.

Permitted risk is a reason for excluding culpability, that is, the action is not punished due to the lack of a conceptual element of the criminal act. Legal literature extends the definition with the criteria of social necessity, scale and safety besides the objective foreseeable result. Researching and experimenting usually involves risk, and uncertainty occasionally causes damage (harm). Research and development, and therefore the progress of society would be greatly hindered, if the consequential damage would involve not only financial and ethical losses, but criminal consequences as well.<sup>21</sup>

Therefore in case of risk-taking the goal should be aimed at the better-off of the society.

The sense of purpose is therefore aimed at realizing this positive value. And if the decision is the only tool to achieve this, then the necessity cannot be questioned. The advantage however cannot be an advantage measurable only by the individual. The realized benefit must be of positive value to part of society, in order for it to be accepted and justified by the law.<sup>22</sup>

<sup>18</sup> Act of C 2012 Criminal Code.

<sup>19</sup> Blaskó B. (2013) i.m. 255. p.

<sup>20</sup> Vasvári Tamás: Kockázat, kockázátészlelés, kockázatkezelés 2015. In: <http://www.researchgate.net/publication/278411082> (2015. 10.10.).

<sup>21</sup> Blaskó B. (2013) i.m. 255. p.

<sup>22</sup> Békés Imre: A gondatlanság a büntetőjogban. Budapest 1974. 311. p.

The Criminal Code does not include the permitted risk as exclusion for culpability that can be assumed from the definite elements of the criminal act.

Theoretically, risk was first related to luxuria within the criminal law. For a long time permitted risk-taking was covered in the sections of culpability (negligence).<sup>23</sup> The basis for this was that a person acting with conscious negligence acts for the sake of the possible outcome, while naively takes the risk for causing this result.<sup>24</sup> According to the creators behind this idea, we cannot say that there is no threat to the society when a negative outcome is eventually realized. Therefore excluding responsibility can only be done if the lack of culpability is justified.<sup>25</sup> Talking about the lack of culpability could be justified; if we analyze the circumstances of the decision making, and we check the individual's goal, as well as all the information that was available at that time.

Other theories basically rule out the illicitly of the action when it comes to risk-taking. The lack of illicitly can be measured in the lack of threat to the society, therefore in achieving the target goal. The society is handed a greater benefit, than the loss it would suffer if the outcome is negative. Therefore the justified risk „already eliminates the criminal nature of the action on an objective basis (by striving for a socially beneficial goal) and criminality cannot be a question”.<sup>26</sup> It must be decided objectively, whether the risk-taking is justified, based on the circumstances at the point of conduct. When measuring the amount and probability of the achievable benefit and the expected loss we must take into account, that the level of justified risk is not the same in the different areas in life. Risk taken in economics the balance between values created must overcome that of the value risked losing in order for the decision to be seen rational.<sup>27</sup>

#### 4. Risk-taking in business life

A major field for uncertain decisions is the economics. In criminal law these actions include economic and financial offenses, related to property management.<sup>28</sup>

The obligation of property management is being principally regulated by other law fields (first of all the civil law, but other norms and regulations as well).<sup>29</sup> The violations of the obligations derived from the property management must be correlated to these norms<sup>30</sup>. The delicts related to property management activity, as well as crimes in accordance with economics, first of all the delicts against property, but also other crimes (f.e. bureaucratic delicts) could be part of this.<sup>31</sup>

Risk taking occurs mostly among decisions referring to property enlargement, because the purpose of risking is usually a kind of property benefit. Economic decisions

<sup>23</sup> Blaskó B. (2013) i.m. 256. p.

<sup>24</sup> Békés Imre, Földvári József, Gáspár Gyula, Tokaji Géza: Magyar büntetőjog. Általános rész BM Könyvkiadó Budapest, 1980. 186. p.

<sup>25</sup> Földvári József: *Magyar büntetőjog általános rész*, Osiris Kiadó, Budapest, 2002, 168. p.

<sup>26</sup> Nagy Ferenc: *A magyar büntetőjog általános része*, HVG-ORAC Lap- és könyvkiadó Kft. Budapest, 2008. 156. p.

<sup>27</sup> Erdősy E. i.m. 76. p.

<sup>28</sup> Wiener A. Imre: *Gazdasági bűncselekmények, Közgazdasági és Jogi Könyvkiadó*, Budapest, 1986. 105. p.

<sup>29</sup> Tóth Mihály: *A Few Remarks about Criminal Corruption in Hungary* Journal of Eastern European Criminal Law No.1/2014 77. p.

<sup>30</sup> Gál István László: *Economic Bribery as a Part of Economic Criminal Law and a Concomitant of Political Corruption*, Journal of Eastern European Criminal Law no. 1/2014 27.p.

<sup>31</sup> Tóth Mihály: *Gazdasági bűnözés és bűncselekmények*, KJK-Kerszöv, 2000 8. p.

arose always beneath insecure environment. This is a constant factor on such a market, where competitors are present as well, and other factors could also affect the outcome of decisions. Behind the decisions there can usually be found a person or a syndicate, but the result of them (either positive or negative) will end up at the organization. In case of failure the criminal liability of the decision maker could or must only be stated, if the purpose intends to be reached and the threatened interest are not commensurate with each other. The proportionality raises another question, namely what time or what period it must be examined, short term or long term? The virtually disproportioned risk taking or loss taking – if later turns into rational, and brings the expected success – is named as prohibited behaviour, or fits into the obligation of property management. The permitted risk as a reason for excluding culpability must be examined in the economic sector uniquely as well. If the benefit occurs later and the decision could transitionally be held as irrational, because it causes loss, the decision will not be illegal at the end, because it focussed on long term benefit.<sup>32</sup> Property disadvantage or even its appearance within a defined period is not enough to the objective unlawfulness to be stated. Important fields of examination are as well the mandate of property management or other data and targets which substantiates the decision.

Risk-taking will not be culpable, if it falls under permitted risk. Nowadays there has been growing the importance of economic risk, its role in the modern ages is much more significant, as of among former societies. According to the economic science this points out very well the difference between two categories, danger and risk. In traditional societies the mankind had been incurred by a lot of danger factors,<sup>33</sup> while modernization and technical development gave the possibility of diminishing the number of danger factors in one hand and arose countless new risk factors in the other hand. The acceleration of production, the regulated market, the presence of stock-exchange, and globalization contains several risk factors which could threaten the successful decision making. Therefore insecurity is considered as constant factor of market decisions. Liability behind decisions has changed either, because the circle of possible risks has broadened too, property management tasks have changed, and profit maximalization requires much higher risk from the decision makers. The task of market actors is „beneath protecting the greatest possible benefits to reduce risks with the most efficient distribution of the available resources, means to maximize social benefit”.<sup>34</sup> Both the subject of the risk and the targeted benefit can be expressed with property value. The wrong property handling could threaten either financial or other property value and usually the risk level could be measured. In case of failure risk causes property disadvantage. Property disadvantage means according to the Criminal Code damage to one's property and lost income.<sup>35</sup> The property manager's obligation is namely not only to protect the value of the property, but also its enlargement. The rationality of those risks must be measured to this universal obligation either. The decisions within the general property management depending on the exact committal behaviour could be ground for statement of different delicts (f.e. speculation, fraudulence, misappropriation, defalcation, etc.). A possible reason for excluding culpability must be examined based on this.

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<sup>32</sup> Békés Imre, *Gondatlanság a büntetőjogban. Közgazdasági és Jogi Könyvkiadó*, Budapest, 1974, 312. p.

<sup>33</sup> Bernstein, P.L.: *Szembeszállni az istenekkel. A kockázatvállalás különös története. Panem könyvkiadó*. Budapest, 1998. 109. p.

<sup>34</sup> Zoltayné Paprika Zita: *Döntéselmélet*, Alinea Kiadó 2002, 458. P.

<sup>35</sup> Act of C 2012 Section 459 point 17.



The person entitled for property handling is obliged to examine several circumstances before making decision. During economical decisions the most important purpose is reaching the invested property as much profit as possible. This – by necessity – wear risk, therefore the decision maker must consider the importance of insecurity factors and their foreseeable consequences.<sup>36</sup> From the point of liability examination only those factors are considered importance, which the person could foresee objectively and possibly took into account during decision making. Other unforeseen dangers cannot be considered as risk-taking. The possible list of probable risks could be different either. The decision could be objectively wrong, – where risk-taking is irrational – but the mistake is not chargeable. It could be also wrong and chargeable and there are such cases where the loss is foreseeable but the risk is necessary and rational.<sup>37</sup>

### 5. The permitted economic risk in the criminal liability

The behavior corresponding to the characteristics of permitted risk counts an exclusion for culpability in criminal liability, hence cannot be seen as a criminal act. The current Criminal Code does not specify this legal measure. It can be applied when the perpetrator plans to achieve the socially beneficial goal in optimal circumstances.<sup>38</sup> If the balance between the risk taken and the expected social benefit is still acceptable, then the risk taken is justified according to the criminal law. The legal literature agrees on the fact, that the existence of permitted risk is accepted, but it is defined in different ways which liability criterias it excludes. Some opinions exclude that it threatens the society (not illicit), others exclude the culpability of the risk-taker.

According to opinions pro the non-illicit nature of it, the individual acts for the sake of society's development when he or she takes the risk, the targeted result is the public interest and the benefits of society.

Often sacrifices must be made in life to make progress, and law has to allow those acts that serve as ways of reaching these goals.<sup>39</sup> The socially beneficial level of the act defines whether it is within the permitted risk or exceeds it. According to some views the criteria for criminal liability regarding the risk-taker is based on background normative.<sup>40</sup> There is no misconduct as long as it happens for the society's better-off. Negative outcome that results despite the individual's prudent behavior cannot be illicit if carried out for the sake of a greater good.<sup>41</sup> This applies as long as the result cannot be objectively foreseen.

The lack of social threat „already eliminates (based on the socially beneficial target goal) the action's criminality on an objective basis, criminality cannot be reasoned”.<sup>42</sup> All

<sup>36</sup> Wiener A. Imre: *Gazdasági bűncselekmények, Közgazdasági és Jogi Könyvkiadó*, Budapest, 1986. 105. p.

<sup>37</sup> Wiener A. Imre (1986) i.m.

<sup>38</sup> Blaskó Béla i.m. 255. p.

<sup>39</sup> Erdősy Emil i.m. 136.p.

<sup>40</sup> Viski László: *Közlekedési büntetőjog, Közgazdasági és -jogi Könyvkiadó*, Budapest 1974. 356. p.; Viski László: *Veszélyeztetés, mint materiális bűncselekmény*, Állam- és Jogtudomány 1968. no. 1.; Wiener Imre: *A gazdasági vezetők büntetőjogi felelőssége, Közgazdasági és Jogi Könyvkiadó*, Budapest 1974. 266. p.

<sup>41</sup> Békés Imre i.m. 301.p.

<sup>42</sup> Nagy Ferenc: *A magyar büntetőjog általános része*, HVG-ORAC Lap- és könyvkiadó Kft. Budapest, 2008. 156. p.

views agree, that the threshold for permitted risk should be found in the legal norm, and misconduct should be measured against a concrete rule.

These opinions focus on the analysis of the actions, with the objective characteristics of the risk, they don't deal with the individual.

Views that exclude criminality examine the behavior and the criminality of the risk-taker. The basis of the theory is that we can hardly talk about non threat to the society when some form of negative outcome can eventually occur.<sup>43</sup> They examine the information that influenced the decision-maker in taking the risk, and how much the resulted loss was objectively foreseeable. In this way, excluding liability can only occur if there is no criminality at all. Based on the purposefulness, misconduct can be excluded regarding the risk-taker behavior. Decisions however cannot be generalized because of different situations in life. The probability of the negative outcome in economic decisions cannot be rationalized in advance. If the risk-taker acts responsibly, thoroughly and considerately then even despite the negative outcome its action does not become illicit and no criminality should be identified.

From the aforementioned theories, in my opinion the lack of threat to the society answers the theoretical question the best, since nowadays the legal measures behind business decisions cover the boundaries of individual actions sufficiently.

When analyzing wrong decisions, law enforcement can determine based on background rules and legal measures whether the action is within the permitted level of risk or exceeds it. <sup>44</sup> Regarding economic players we primarily apply the rules of the Civil Code, complying with these laws does not result in criminal liability. Decisions made within the market conditions are often wrong and result in losses. Judging failure – if it aligns with the criminal law – is based on legal measures in the fields of economy, where criminal law does not interfere.

### Summary

This essay deals with the issues of permitted risk exempting culpability, on a theoretical level. Game and the uncertainty behind the decisions and calculations are an essential part of business life. Shareholders of profit-oriented companies expect high level of income every year. The goal of property management is also to increase the wealth which can often be achieved only through risky decisions. Managing the risk is one of the most important tasks of businessmen. The purpose of criminal law is to protect the society, to set a limit to those human behaviors that violate or threaten the social coexistence. However, it doesn't wish to hinder the growth, the progress, and according to the ultima ratio principle it only intervenes when necessary.

Regulation of permitted risk allows making such decisions which aim at results of social benefit, but harmful consequences cannot be excluded either. This essay is examining the criminal evaluation of risk and risk taking and the reasons excluding liability.

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<sup>43</sup> Földvári József: *Magyar büntetőjog általános rész*, Osiris Kiadó, Budapest, 2002., 168. p.

<sup>44</sup> Belovics Ervin: *A Büntető Törvénykönyvben nem szabályozott büntetendőséget kizáró okok- II.* ,In: Ügyészek Lapja, 2007. no. 4. 9. p.