



MASARYK UNIVERSITY  
FACULTY OF LAW

# Selected Aspects of Economic Criminality in the Czech republic

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# Definition of economic criminality

- what is economic criminality and what crimes may be subordinated under this term?
- statistics of the Ministry of Justice
  - only crimes included in the 6th chapter of specific part of the Criminal Code entitled „economic criminality crimes“
    - e.g. tax fraud, counterfeiting and altering money, unlawful business activity
- statistics of the Police of the Czech republic
  - crimes included in the 6th chapter of specific part of the Criminal Code entitled „economic criminality crimes“
  - selected crimes includes in the 5th chapter of specific part of the Criminal Code entitled „crimes against property“
    - e.g. theft, embezzlement, fraud (insurance, credit, grant)



- crimes directed against the economic system and its operation
- all crimes of offenders who are active in the economic life of society
- all crimes occurring in the field of economics
- crimes that harm or threaten economic life of society
- unlawful acting which was achieved financial benefits at the expense of a particular economic entity
- unlawful acting leading to legitimisation of proceeds of crime



# The characteristics and fundamental causes of economic criminality

- flexibility of economic criminality - ability to adapt to social, political and economic changes
  - the influence of social environment
  - the influence of legal framework
  - the influence of morality
- high latency of economic criminality



# The influence of social environment

- before 1989
  - the State was monopoly owner o all property
  - all the industrial and agricultural enterprises were state-owned or at least under its strict control
  - all land, forests, as well as banks, insurance companies etc. were state property
  - in the former Czechoslovakia does not exist almost any private enterprise with the exception of some services



- after 1989
  - in a very short time took place the absolute change in the structure of ownership
  - privatization of state property - the State began to sell its property to everybody who had money to buy it
  - property restitution - the State returned to the original owner or their inheritors property nationalized or confiscated after 1948 (Communist putsch)
- where people took the money, when there was no private enterprise in our country through which they could obtain it
  - some people have large financial resources from illegal business on the black market



- banks were willing to lend money to anyone for anything
  - banks did not investigate the reality of business plan and did not investigate real value of pledge
  - I can mention a collection of precious stones which where in the end worthless
  - it was an public secret that 10% of the loan granted was left in the bank
  
- after the society expanded the use of payment cards and Internet banking appears phishing etc.
  
- computer technologies are very cheap and the costs living of youth are increasing
  - a simple solution is to counterfeit money



# The influence of legal framework

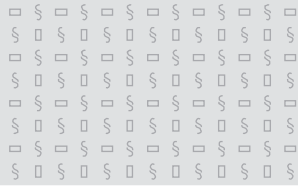
- return to a market economy should naturally be accompanied by the appropriate criminal and non criminal legal environment.
- changes in ownership, under which there was a massive transfer of assets, took place so quickly, that the legal regulation was not able to respond it and if yes it was with considerable delay
- legal regulation from that time lacks the complexity and interconnection and is unclear
  - it was created through method of trial and error
- newly adopted legal regulation was not generally well-elaborated in order to accurately and clearly communicate their intent and purpose





# The influence of morality

- for an economic criminality is significant that is not characterized by violence and does not cause defensive reactions of victims who often are not known
- it is often tolerated by society and taken for granted, what belongs to
- businessman who is able optimally minimize tax base and trick the State on taxes is considered as successful.
- “Who does not steal robs own family”
- generally, everyone stands up against corruption but corruption in healthcare is generally tolerated.



# The high latency

- the question is how high that latency is
- the actual level is only subject of speculation influenced by our knowledge and ideas



# Statistics of Economic Criminality

- average percentage of economic criminality on total discovered criminality is about 10%
- at first glance, it seems that economic criminality is really not so important and does not mean any danger to society.
- average percentage caused by economic criminality on damage caused by total discovered criminality is about 50%
- at second glance it is clear that economic criminality is very important part of total criminality and represents a great threat to society

# Statistics of the Police of the Czech republic

Discovered criminality	2009	2010	2011	2012	2013	2014
Other criminality	263 371	268 301	257 763	249 975	249 038	252 957
Percentage of economic criminality on total discovered criminality	11,73	10,62	9,44	8,94	9,05	8,89

# exchange rate: 28,- CZK is about 1,- EUR

Damage in thousands of CZK	2009	2010	2011	2012	2013	2014
Other criminality	10 061 383	11 261 743	10 855 658	9 650 912	9 304 996	9 527 148
Percentage of damage caused by economic criminality on damage caused by total discovered criminality	56,51	47,32	61, 57	60, 34	58, 72	58.02



# Criminal Code Aspects of Economic Criminality

- the crime is considered as an act which formal elements are mentioned in Criminal Code (body of crime) + it has to be harmful to society
  - harmfulness of an act to society, is material corrective of the formal concept
    - the manner in which the act is committed and its consequences
    - the circumstances under which the act is committed
    - the person of the offender
    - the degree of his culpability and motives
- body of crime is complex of formal elements which has to be accomplish - basic and qualified



# Offender of Economic Criminality

- the minimum age of criminal liability is defined as 15 years of age
- a person has criminal liability the day after his 15th birthday
  - practical reason for it
- persons between 15 and 18 years of age are regarded as juveniles
  - relative/partial criminal liability - the intellectual and moral development
  - special law regulation related to juveniles is the Act on liability of the youth for wrongful acts and on justice matters of the youth
- the day after 18th birthday person has his absolute/full criminal liability
- in economic criminality we have usually offender with absolute/full criminal liability



# Acting

- outward manifestation of the offenders will
- act of commission - the will is manifested by physical performance
  - e.g. I give my tax return but I fill it in false information and that's why I cut (curtail) tax
- act of omission - the will is manifested by omittance
  - e.g. I am required to file a tax return and I do not do it





- consequence - the violation or endangering of an interest protected by the Criminal Code- in economic criminality its a damage and its amount
  - not insignificant - at least 5.000,- CZK
  - not small - at least 25.000,- CZK
  - significant - at least 50.000,- CZK
  - substantial - at least 500.000,-CZK
  - extensive - at least 5.000.000,- CZK



## ■ causality

- there is no criminal liability without relation between the offenders acting and the consequence
- the act of a offender is a cause of a consequence if this does not occur without the act of it the consequence is substantially different
- there is causality between damage and offenders acting



# Culpability

- there is no criminal liability without culpability
- the intention is required as a regular condition of punishability unless the Criminal Code expressly provides that the negligence is sufficient for committing a crime
- direct intent
  - the offender was aware that he could violate or endanger an interest protected by the Criminal Code and he wanted to cause such violation or endangering
- indirect intent
  - the offender was aware that he could violate or endanger an interest protected by the Criminal Code and if he caused such violation or endangering he agreed with its result



- wilful negligence

- the offender knew that he could violate or endanger an interest protected by the Criminal code but without adequate reasons he believed he would not cause such violation or endangering

- unwilful negligence

- offender did not know that his acting could violate or endanger an interest protected by the Criminal code although with respect to the circumstances and his personal situation he should and could have known it

- gross negligence (wilful or unwilful) - recklessness of offender to the interest protected by the Criminal Code

- in economic criminality most of the crimes are intentional



# Practical example - theft

- who unlawfully appropriates someone else's thing by seizing it and thereby causes damage which is not insignificant
- offender (who) - everybody who has age and sanity
- acting of commission - usurpation of thing
- consequence - damage which is not insignificant
- culpability is not expressed but the intention is required as a regular condition of punishability unless the Criminal Code expressly provides that the negligence is sufficient for committing a crime



# Criminal Procedure aspects of Economic Criminality

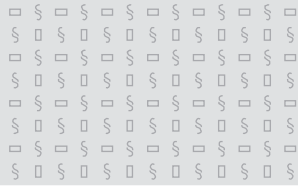
## Examination of accused in economic criminality cases

- it is necessary to know the case and to be prepared for examination
- white colour offender
- „top“ lawyers
- first examine an accused without a criminal past, or those whose share of crime is less
- what we can offer to accused who wants to cooperate?



## Plea bargaining (agreement on guilt and punishment )

- it has been promoted on the basis that it helps the police authorities to investigate organised crime and corruption in exchange for a lower or no sentence
- is possible for crimes punishable with less than ten years in prison
- is possible between the accused and the prosecuting
- a precondition for it is the declaration of the accused that they committed the act for which they are being prosecuted
- the agreement must also contain the execution of punishment or waiver of punishment and compensation for damage or nonmaterial damage, or the surrender of unjust enrichment, if agreed



## Examination of witness in economic criminality cases

- it is necessary to know the case and to be prepared for examination
- small criminal sensitivity
- fear of the witness to testify





# Summary

- economic criminality became a phenomenon, whose power is growing and does not have to be underestimated
- economic criminality has reached in recent years such proportions that not only destabilizes the legal consciousness of citizens, but also the entire national economy
- companies who are not willing to cope with competition, which benefits from the economic criminality and who are not willing to act on the edge of the law are in the competitive struggle forced out of the fair market.
- those who take over the monopoly position in the market after forced out, these subjects may indirectly affect the allocation of public contracts, subsidies, the amount of taxes, loans etc.



- the economic criminality is strongly spread through into the state administration
- the consequences of economic criminality have undeniable impact on the weakening of confidence of society in the ability of the functioning market economy and consequently on the political system which is bound with it



# Thanks for your attention

## Questions...???



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