

SIMILAR ASPECTS REGARDING THE INFRACTIONS WITHIN THE REGIME THAT IS ESTABLISHED FOR CERTAIN ECONOMIC ACTIVITIES

Popoviciu Laura Roxana

Univeristatea Agora, Facultatea de Drept și Științe Economice , Piața Tineretului nr.8, email: laura_popoviciu@univagora.ro, tel. 0741.144.832

Resume

The economic criminality represents the most dangerous component of the subterranean activities, coming in various shapes: regarding companies, the Register of Commerce, loyal competition, smuggling, corruption, in the activities regarding assurance companies and the surveillance of these activities, fight against the evasion, drugs production, distribution and consumption, trade with weapons, radioactive material, car thefts, prostitution, traffic with human beings, activities in the financial and banking field.

Usually, the crimes that violate the juridical norms in the economic field are numerous and various, because they cover the entire economic sphere, being stipulated in special laws. In this study, we have decided to focus and debate among those infractions regarding the economic activities that are stipulated in the Criminal Code.

Key words: economic activities, norms in the economic field, infractions, Criminal Code, sanctions.

The rules regarding the well unfurl of the economic activities are made through the juridical norms.

Usually, the crimes that violate the juridical norms in the economic field are numerous and various, because they cover the entire economic sphere, being stipulated in special laws. In this study, we have decided to focus and debate among those infractions regarding the economic activities that are stipulated in the Criminal Code.

So, the infractions regulated by the Romanian Criminal Code enter in a much-restricted area than the economic infractions, containing only those deeds that have, under the aspect of the social danger, a permanent character and regard the general interests of the national economy.

Their societies and governments place individual social-economic interests over the group, maintain strong rights to privacy, nurture strong private opinions (expected from everyone), restrain the power of the state in the economy, emphasize the political power of voters, maintain strong freedom of the press, and profess the ideologies of self-actualization, self-realization, self-government, and freedom. Their societies and governments place collective social-economic interests over the individual, may invade private life and regulate opinions, favor laws and rights for groups over individuals, dominate the economy, control the press, and profess the ideologies of harmony, consensus, and equality¹³³.

For real, the globalization of the economy supposes a globalization of the thinking and of the activities, and this means the capacity of understanding the world as a unique market, where is also great differences, where the laws and the conditions are different. A global thinking means the capacity of adaptation of the national and local particularities¹³⁴.

The economic criminality represents the most dangerous component of the subterranean activities, coming in various shapes: regarding companies, the Register of Commerce, loyal competition, smuggling, corruption, in the activities regarding assurance companies and the surveillance of these activities, fight against the evasion, drugs production, distribution and consumption, trade with weapons, radioactive material, car thefts, prostitution, traffic with human beings, activities in the financial and banking field.

In this way, the Criminal Code incriminates certain facts that violate the regime established for certain economic activities, accomplishing a sort of defence of the national economy against the deeds that represent social danger and affect the national economy, leading in certain cases to important damages.

The VIIIth Title of the Criminal Code, the special part, stipulate the following infractions: smuggling, theft at measurement, fraud regarding the quality of the merchandise, revealing the economic secrets,

counterfeit, distribution of the counterfeit products, un-loyal competition, violation of the dispositions regarding the import of waists.

The protection of the social relations that regard different fields of the national economy is accomplished through the conscious effort of the masses involved in the working field, by their management activities, developed by the state's institutions. The criminal law contributes also to the support of those barriers brought by the incriminated deeds in the regime that is established for economic activities¹³⁵.

The Criminal Code, and also any other law must admit and sanction any violation of its imperative stipulations, identifying in this way other efficient means used in the economic and social policies that could ensure a durable development of all countries.

By these means, the infractions linked to the deeds are considered as infractions in the economic field having a heterogeneous character. The infractions vary, and obviously the causes that generate them and the conditions that make them flourish are also very vast.

There is a very often used term in the field, that is of "business related criminality", a criminologist concept born after the criminologist literature used the phrase "the white collar crime". It was used for the first time by Edwin Hill in 1872 and established by E. H. Sutherland in the work called a „White collar crime" released in 1939¹³⁶.

Actually, the infractions in the business field present a series of particularities comparing with the classic infractions:

- these infractions, by their purpose usually followed by the offenders represent tendencies of illegal profits, as great as possible and as fast as possible;
- the criminality in the business field produce infractions that are very hard to quantify;
- the amplification of this phenomenon was observed especially in periods of economic crisis or in transition periods; - many times it is manifested with the contribution of many other persons (juridical or physical forms) that lead to the creation of organised groups (organised crime);
- in the prevention and the fight against these infractions a very important role is represented by the vigilant functioning of the surveillance elements;
- the involvement of women in these type of infractions is much common;
- the damage caused by the infractions in the business field has effects both over the public and private life and involves a series of consequences in numerous fields.

In the attempt to make an analysis of the infractions regarding the economic field stipulated in the Romanian Criminal Code, we must underline the fact that the VIIIth Title of the Code regards the deeds having a character of permanence, affecting in a certain way the general interest of the national economy.

All the infractions that are stipulated in the Criminal Code present a series of similar aspects regarding the social relations that can represent the object of these infractions, active subjects, meaning the individuals that accomplish all the legal terms in order to commit these infractions and the passive subjects, meaning those that support all the negative consequences of the infractions in this domain.

Under the aspect of the objective side, meaning the manners in which these infractions are committed, these are usually done by action and under the aspect of the subjective side, meaning the psychic attitude of the offender towards its deed and towards its consequences. It must be mentioned that these types of infractions are committed only with intention, without being committed by quilt.

The juridical object of the infractions at the regime established for certain economic activities, similar to all the infractions belonging to this group, it is represented by the social relations regarding the well unfurl of the economic activities regulated by the law. In this way, considering these aspects, the infractions of the kind differ to other deeds that affect the same social values; these values are directed mostly against other values that are protected by the law and they belong to the same group of infractions¹³⁷. For example, the diversions, the undermining of the national economy, affect the national economy but they are directed mostly against the state's security.

Each of these infractions has also a special juridical object consisting in the social relations that regard a certain economic activity that is or not included in the law or regard certain interest related to the national economy. This is, compared different types of infractions, stipulated in the Criminal Code.

The material object. The infractions in the economic field have also a material object, because the incriminated action is committed in the case of these infractions almost always in direct relation with a certain good. For example the smuggling is done with goods that can not be the object of the common trade etc.¹³⁸.

The active subject, meaning the author of the infractions related to certain economic activities. Any individual can usually commit these infractions. There is a single exception in the infraction regarding the reveal of economic secrets that has as qualified active subject the public functionary (it can be committed only by a person that is familiar to the information that are revealed, due to its tasks).

These infractions could be committed with the participation of many other individuals, either by collaboration with the author, meaning that all the participants commit certain activities, instigation or complicity.

The objective side: the infraction in this group are composed by their main material element: the action.

In the same time, some of these infractions have alternative content, meaning there are many other manners in which the dangerous result can be obtained, each of these manners can be suspected to compose the material element of the infraction. These infractions can present different manners depending on the actual circumstances that surround the deed or the particularities that can represent the material object of certain infractions, this being considered to be actual manners of the infraction.

These actual manners have a great importance in determining the real degree of social danger of the deed and the proper individualisation of the punishment that is to be applied to the offender¹³⁹.

We also have to mention the fact that these infractions are usually dangerous deeds, because they endanger the social value that is protected by the criminal law. In certain cases, this specific consequence is accompanied by other serious consequences; the latter must represent a cause for the action, meaning they are manifested as a consequence of the committed action.

The subjective side: the infractions related to economic activities are committed with intention that can be either direct or indirect. Also, these infractions can be committed in certain situations, in order to achieve a goal, meaning the resell of the goods in terms of smuggling, deliberate confusion of the competition, in these situations the intention is clearly direct¹⁴⁰.

A very important particularity of these infractions is determined by their sanctioning.

Due to the fact that they present a much-reduced social danger comparing with the other infractions the sanctioning rules for these infractions are less severe.

The law has predicted within the sanctioning rules as criminal sanctions, usually prison with maximum limit of 7 years; only in situations that have serious consequences the limit is of 15 years.

In some cases, the law has stipulated also the fine, alternating with prison (in cases of counterfeit related to inventions and un-loyal competition).

The crimes in the business sector are a part of the general criminality, presenting specific particularities and being extremely large. It is regulated by a large legislation composed by special laws, some infractions are stipulated in the Criminal Code in relation with the business field and the economic activities.

Regarded from the point of view of the policy against criminal phenomenon, the state has the obligation to take all the legal measures, in order to maintain the economical and social structures in order to protect the trust of its citizens¹⁴¹.

Bibliography

1. Welford, R., Hills, J., *Business & Human Rights: a study of corporate risk*, Boston: Hong Kong: CUPEM, University of Hong Kong, 2004
2. Dongoroz V. and co. , *Explicații teoretice ale Codului penal român*, Vol. V, IInd edition, Editura Academiei Române, Editura All Beck, București, 2003
3. Voicu, C., Boroi A., *Dreptul penal al afacerilor*, Editura C. H. Beck, București, 2006
4. Toader, T., *Drept penal român, Partea specială*, Editura Hamangiu, București, 2007
5. Loghin, O., T. Toader, *Drept penal român, Partea specială*, Casa de editură și Presă Șansa, București, 1998