

Financial crime in economic affairs: case study of the Slovak Republic

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Abstract

This scientific study analyses in broader terms the financial crime in economic relationships. It introduces concrete facts and processes connected with financial crime that represents the global phenomenon of these days and has significant devastating effects on the economy, society and trust in the legal system. The financial crime has various forms that are more and more sophisticated in the digital era. The study contains updated data about the financial crime in Slovakia and identifies factors having impact on the financial crime. The aim of this study is to contribute to the expert discussion on current economic problems and to point out the responsibility in the management of companies. From among the scientific methods of knowledge we have also used the analytical and descriptive method to approach and analyse the legal situation. By comparative method we introduce different views on the legal regulation and the interpretation of examined notions. The contribution of this study for the theory and practice is pointing out on the undesirable social phenomenon with not only national, but also international dimension.

Keywords: *business, crime, economic crime, managerial responsibility.*

JEL Classification: K14, K22

1. Introduction

The economic crime represents with regard to its gravity, extent of caused material damage as well as incalculable immaterial loss, international character and the link with organised crime, the serious problem for the criminal policy.

When looking back at the change of social structure it is necessary to point out one basic fact. The individual definitions of criminal offences in the field of economy were established, interpreted, but in particular applied during the specific period in such a way that they would provide unconditional protection of the principles of socialist economic system. This, of course, has led to an overestimation of the importance of criminal law in protecting the economy. The institute of socialist

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social ownership of means of production was considered not only *de facto* but also *de iure* as the basis of the economic system of that period. This fact was reflected in the criminal law itself and resulted in the definition of the crime of article 132 - *Theft of socialist property*. The reason for the introduction of this definition of crime from the side of legislator was to provide for enhanced protection in respect of property in the socialist ownership. This institute was abolished, and all forms of ownership were only equalised after the change of social system.⁵

It that circumstances it should be noted that, in particular, the new socio-economic and political conditions have created a relatively broad scope for the emergence and application of still unknown, i.e. new forms of committing crime. These included, in particular, money laundering, drug trafficking, new forms of blackmailing and economic crime. This phenomenon subsequently manifested itself not only in the public and economic life of whole society, but also in the business itself. For more than 15 years many amendments to the Criminal Code have been adopted to respond to that situation that accompanied the recodification process of the criminal law as such for more than 15 years. The recodification process was accomplished by adopting the new Criminal Code⁶ by the Law no. 300/2005 Coll.

The scientific study opens a debate on socially responsible entrepreneurship and the introduction of prevention measures to eliminate financial crime. Modern economic crime is a major threat to international economic relations and the world economy as a whole. The scientific study opens a debate on socially responsible entrepreneurship and the introduction of prevention measures to eliminate financial crime. Modern economic crime is a major threat to international economic relations and the world economy as a whole.

2. The aim and methodology

The objective and main aim of our study are the legal relationships and the system of measures adopted with the aim to prevent anti social activities in the form of financial crime. We have chosen several partial objectives in the interest of achieving our main goal:

1. to clarify the basic terminology of economic crime,
2. to find out if there are multiple views on the concept of economic crime,
3. to examine appropriate legal instruments applied in the conditions of the Slovak Republic,
4. to analyze the influence of European and international law on the creation of Slovak criminal law
5. to draw conclusions based on specific data on the tendencies of economic crime,
6. to confirm or to refuse the view that the process of detecting and investigation of crimes in the economy is characterised by realization complexity.

⁵ Fedorovicova, *Zamyslenie*, 1190-1194.

⁶ Law no. 300/2005 Col. Criminal Code as amended.

With regard to the characteristics of this study we apply the scientific methods of knowledge. The result of this activity is new knowledge which is organised into a certain system. On the basis of this, as well as on the content and scope of the study aimed at financial crime in economic relations, we will also focus on the use of the logic method. When processing the researched issues, we consider appropriate to use the method of abstraction. Another necessary method with a view to successfully process the given problematics is the method of logical analysis. The used synthesis method consists of dividing the whole into individual parts and then joining them together, which in practice represents a process in which the individual elements are combined and joined in order to form a new object. From among the scientific methods of knowledge we have also used the analytical and descriptive method to approach and analyse the legal situation. By comparative method we introduce different views on the legal regulation and the interpretation of examined notions. Finally, based on scientific knowledge of valid and effective law and legal theory, we have used the doctrinal interpretation not only as university teachers, but also as practitioners in some parts of the study.

3. Economic crime in general

There are many opinions of authors related to the problem of economic crime, all having common denominator. It is a prohibited anti-social activity *threatening or damaging the economic order, the system of economic and legal relations, including their subjects*. Economic crime means intentional (directly or indirectly) socially dangerous conduct as defined in the Specific Part of the Criminal Code that damages or endangers the economic order, the system of economic or related legal relations, their functioning, rights and legitimate interests of the subjects of these relations.⁷ As it is further mentioned by Chmelík and others “*one of the oldest definitions of the notion of economic crime is known from American criminal sociologist Edwin Sutherland, who describes the economic crime as the acts of “white collars” who are persons of high social status*”. On the other side, there is also crime committed by “blue collars” who are criminals from the “underground” or the crime committed by people from lower classes “small persons”.

Kadeřábková considers “*as economic crime the intentional illegal economic acts, through which the financial or other prospect was gained to the detriment of concrete economic entity (state, company, trust, natural person, etc.). The content of this definition is expressed in concrete terms in the specific part of the Criminal Code and in certain criminal forms including the elements of the criminal offence of embezzlement or fraud.*”⁸

The economic crime represents at present a frequent phenomenon in economic relations, not only in Slovakia, but also in the world. “*The economic crime can be defined as social-pathological phenomenon that includes intentional illegal acts having non-violent form, through which the offenders gain undue financial or*

⁷ Chmelík, *Úvod do hospodárske kriminality*, 25.

⁸ Kaderabkova, *Hospodárska trestná činnosť a její projevy*, 124.

*other benefit to the detriment of the damaged entity (State, legal person, company, or, in rare cases also natural person)."*⁹

The financial crime is connected with economic crime. It damages or endangers private, public and state interests in the field of economy with the specific impact on the internal stability of the State. In a broader context, it represents the unlawful conduct, the criminal offence that involves concentration, distribution and misuse of funds. *"The economic crime according to Baláž represents the summary of criminal offences committed under the provisions of the Criminal Code, in which the offender and the damaged person are in a legal relationship based on commercial, civil, labour and other law, violating the economic relations governed by generally binding legal regulations and ensuring the benefit for the offender or for other entity."*¹⁰

Klimeková considers the economic crime as the specific kind of crime causing the economic damage to the State, entities as well as to the natural persons, by infringing the laws, principles and habits applicable in economic relations. *"From the point of view of previous definitions and recommendations adopted at the level of the European Union, the concept of economic crime could be considered as a broader range of investigated facts than economic crime."*¹¹

3.1 The concept of economic crime in the legal order of the Slovak Republic

Despite the importance of this phenomenon, economic crime has not been yet clearly defined in the legal system of the Slovak Republic. *"Nor does it have a conceptually uniform, and thus generally respected content in either criminal law theory or criminology."*¹²

Law no. 300/2005 Coll. - the Criminal Code as amended (further referred to as "Criminal Code" or "CC") provides for the protection for economic interests of the Slovak Republic in particular in its Fifth Chapter named Economic Criminal Offences. If we were to identify economic crime with economic crimes, based on the current systematics of the Criminal Code, many of the crimes would not be included in economic crime, even if they belong to it. This chapter does not include many criminal offenses, which undoubtedly have characteristics of economic crime, nonetheless, they are included in other chapters of the specific section of the Criminal Code. In particular they are for example several criminal offenses against property, criminal offenses against the environment, criminal offenses of corruption, but also criminal offense endangering health with harmful food and other objects (article 168), endangering health with unauthorized medicines, medical devices and equipment (article 170).

⁹ Simunová, *Criminological View on Economic Crimes*, 59-69.

¹⁰ Baláž, *Ekonomická kriminalita*, 56.

¹¹ Klimeková, *Hospodárska kriminalita v. SR*. 251.

¹² Mencerová and Tobiášová, *Možnosti trestnej zodpovednosti*, 1276-1285.

The inconsistency of terminology in relation to economic crime is also reflected in the statistics of the Slovak Republic. For example, the Slovak Police in its statistics¹³ includes under economic crime (without specifying a clear criterion for classifying crimes in this category) the following crimes: tax evasion, theft, currency protection, threats to the foreign exchange economy (likely to be currency crimes), corruption, embezzlement, fraud, violations copyright. On the other hand, the statistics of the Ministry of Justice of the Slovak Republic is based on the systematics of the Criminal Code.

As we have already mentioned, there is no legal definition of these terms and the question is whether they are synonyms or terms of different meanings. According to Prokeinová “*economic crime represents a broader dimension, since it includes not only the economic offenses covered by Chapter V of the Special Part of the Criminal Code, but also property offenses covered by Chapter IV of the Special Part of the Criminal Code. Moreover, she mentions even being confronted in the scientific literature with the view that the offence of corruption is considered as part of economic crime.*”¹⁴ According to the definitions and legal texts adopted at the level of the European Union, economic crime is also considered, for example, cartel offenses, fraud, abuse of the economic situation by transnational companies or environmental offenses.¹⁵

Unlike property crimes, economic crimes, make up only a small part of the total number of crimes that were detected. Their latency is high, and the proceeds generated therefrom represent relatively large profits for their perpetrators compared to property crime. Economic crime has grown mostly with privatization processes, with the re-introduction of free market mechanisms after the fall of communism and its perpetrators exploited legislative loopholes

The introduction of criminal liability of legal persons is justified because we know cases of so-called “white horses” who are appointed as executives in the company for financial reward and in these circumstances it is very difficult and sometimes impossible to track down the actual perpetrator, who is to be held criminally responsible for the unlawful conduct.

Financial crime is increasingly affecting a growing percentage of the population. Is becoming an everyday problem for all of us, and therefore there is a need to raise awareness of the criminal liability of economic managers and, in particular, the prevention in order to prevent infringements of economic relations¹⁶ regulated by Slovak generally binding regulations.

3.2 Entrepreneurship and unfair business practices

Economic crime represents the unwanted phenomenon of economic relations and it endangers business and entrepreneurship including all of its procedures, it affects the integrity of employees, as well as it damages the reputation

¹³ Crime statistics in the Slovak Republic.

¹⁴ Prokeinová *Ekonomická kriminalita*, 1309-1315.

¹⁵ Council of Europe.

¹⁶ Safta, *Integrity in the business environment*, 812.

of the company.¹⁷ What is more important, it also causes considerable damage to various entities. The biggest increase of economic crime is recorded in the area of entrepreneurship.

According to Darabos “*there is no unified view of economic literature on entrepreneurship.*”¹⁸ It is understood as a human activity aimed at achieving an equilibrium in the economy, or as a purposeful human activity carried out to meet the entrepreneur's own needs through meeting the needs of others. In foreign literature (Nguyen, Polach and Voznakova) “*however, entrepreneurship is not linked to profit but rather to success.*”¹⁹ This success may also be an effort to self-fulfillment in areas in which a person in employment could not realize, or, respectively an entrepreneur satisfies his or her needs by satisfying the needs of his or her customers.

The Constitution of the Slovak Republic²⁰ in its article 35 paragraph 1 guarantees everyone the right to choose his or her profession as well as the right to conduct entrepreneurial or other gainful activity. As it follows from the Slovak Constitution everyone, this right applies to everyone, i.e. to any natural or legal persons irrespectively of the nationality. Subsequent paragraph 2, however, enables to lay down terms or restrictions on certain professions or activities by the laws only.

The constitutional right for entrepreneurship or to do business, respectively, represents in terms of modern theory of law the constitutional guarantee of freedom to pursue an economic activity at free discretion. This right is granted to anyone. Through the right to do business the possibility to pursue the economic activity, where there is or there is no economic competition, is guaranteed.²¹ This opinion of the Constitutional Court was later “*supplemented by the view that the constitutional guarantee of the entrepreneur to carry out business and other gainful activity does not include his or her protection against the competitor's entry into the chosen economic activity, nor the guarantee that the entrepreneur will succeed in his or her activity*”.²²

Possible failure of the entrepreneur in his or her activity represents a business risk which must be borne by the entrepreneur himself or herself. This fact is also confirmed by the legal definitions of doing business and entrepreneurship. The business can be carried out through several legal forms. The main legal regulation having the status of *lex generalis* in this respect is the Commercial Code.²³ The provision of article 2 of the Commercial Code is crucial from the point of view of commercial law concepts, because it includes the definitions of the most important notions, such as entrepreneurship and the entrepreneur. As entrepreneurship it is considered the activity related to the activities performed by an independent

¹⁷ Pawera and Jancikova, *An issue of age in the labour market in Slovakia*, 93-99.

¹⁸ Darabos, *Particularity*, 29-39.

¹⁹ Nguyen, Polach and Voznakova, *The role of...*, 569-89.

²⁰ Constitutional Law no. 460/1992 Coll. Constitution of the Slovak Republic as amended.

²¹ Decision of the Constitutional Court of Slovak Republic no. ÚS 7/96 of 27th February 1997.

²² Lalik, *Slovak Constitutional Court*, 467-473.

²³ Law no. 513/1991 Coll. the Commercial Code as amended.

entrepreneur in his or her own name with the aim to gain profit or for the purpose of achieving a measurable positive outcome as regards the successful operation of a registered social enterprise under the separate legal regulation. The concept of entrepreneurship thus defined presupposes the fulfillment of several prerequisites, which must be fulfilled cumulatively. The absence of any of them represents the reason for that the activity in question cannot be regarded as entrepreneurship or doing business.²⁴

The provision of article 2 on the Law on Self-Employed Persons positively defines the notion of entrepreneurship as a systematic activity operated independently, on own behalf, under own responsibility, for the purpose of making a profit or for the purpose of achieving measurable positive social impact in the economic activity of a registered social enterprise under a special legal regulation, and under requirements as stipulated by the Law on Self-Employed Persons. Under this provision the entrepreneurial activity of the self-employed person is expressed in a narrower legal framework than the entrepreneurship defined by the Commercial Code. In addition to the five characteristics necessary to meet the definition of entrepreneurship/ doing business under the Commercial Code, the Law on Self-Employed Persons stipulates another prerequisite, which is the fulfillment of the conditions laid down in this Law.²⁵ It follows from this, that the entrepreneurship of Self-Employed Person represents narrower notion as doing business according to the Commercial Code.

Furthermore, Article 55 paragraph 2 of the Constitution of the Slovak Republic establishes in a legally binding manner the interest of the Slovak Republic to protect and promote competition. Further to the decision of the Constitutional Court of the Slovak Republic²⁶ the provision of article 55 paragraph 2 of the Constitution of the Slovak Republic stipulates in a legally binding way the interest of the Slovak Republic to protect and promote economic competition. Since Article 55 paragraph 2 of the Constitution of the Slovak Republic represents the constitutional standard in conjunction with Article 2 paragraph 2 and Article 152 paragraph 4 of the Constitution of the Slovak Republic, this standard imposes an obligation on all state authorities of the Slovak Republic to behave in such a way as to protect and promote competition in relevant social relations. As it further follows from this decision of the Constitutional Court, in its Article 55 paragraph 2 of the Constitution of the Slovak Republic does not guarantee the individual right for economic competition, nor the right to participate therein. This provision simply formulates the principles of economic policy of the Slovak Republic. These include the promotion and protection of a competitive economic environment and the creation of legal remedies and safeguards against restrictions of competition, which are marked as illegal by the law.

However, doing business is not only about personal freedom and potential

²⁴ Bencsik et al., *Formal and Informal Knowledge Sharing in Organisations from Slovakia and Hungary*, 25-42.

²⁵ Funta, *Discount*, 277-85.

²⁶ Decision of the Constitutional Court of the Slovak Republic no. Pl. ÚS 13/97 of 19th June 1998.

financial gain, but also about the many risks and responsibilities assumed by a future entrepreneur. The subjective prerequisites of doing business include individual characteristics capable of realizing a certain type of business. They depend on a person, his or her ability, readiness, but also the motivation for doing business. It is extremely important for each entrepreneur to understand applicable legal regulations, finance, accountancy and taxes. Part of each entrepreneur's personality prerequisites is that in addition to education, he or she should have a sense of responsibility and respect for the truth. Article 265 of the Commercial Code includes the legal principle that the exercise of a right that is contrary to the principles of fair trade does not enjoy legal protection. As abuse of law can be understood as an effort, or the intent, respectively, of one contracting party to cause disadvantage to the other contracting party and to cause harm thereto.²⁷

According to Mitterpachova, Stevcek and Ivanco “*in business, we also deal with the notion of good manners (bonos mores) as the the civil-law concept*”.²⁸ However, it is a vague legal concept whose content and current meaning is complemented by judicial practice. The jurisprudence reviews and adjudicates the limits of good manners in a concrete dispute when the court ascertains and assesses the contradictions in particular circumstances of the business relationship with good manners. Good manners can be understood as certain undisputed minimum level of decency of all righteous people who respect the law. As it follows from the opinion of the Supreme Court of the Slovak Republic, good manners do not create the social normative system, but rather a measure of ethical evaluation of specific situation respecting the generally accepted rules of fairness, honest behaviour, etc. “*Good manners are defined as the sum of social, cultural and moral norms which, in historical development, attest to a certain immutability, reflect substantial historical tendencies, are accepted by a decisive part of society and have the nature of fundamental norms*”.²⁹

The diversity in doing business is also connected with the social responsibility, with the ability to recognise the criminal liability. According to article 2 paragraphs 1 and 2 of the Law on Criminal Liability of Legal Persons the criminal liability³⁰ for the act committed by legal person in the territory of the Slovak Republic, is assessed. Accordingly, the criminal liability is assessed in accordance with this law, when the criminal offence committed by a legal person established in the Slovak Republic or having its branch or headquarters in the territory of the Slovak Republic. However, hence the question arises, that any prohibited activity that is contrary to the law is committed by natural persons, especially intentionally. There are also types of acts that are committed through negligence or failure to comply with legal obligations. Current practice suggests that we have a number of legal frameworks that lay down the conditions for pursuing economic activity. Despite this fact the number of criminal offences related to economic crime is increasing. It

²⁷ Jašková, *Assessment of social development in Slovakia in the context of human resources*. 21-32.

²⁸ Mitterpachova, Stevcek and Ivanco, *The private Law*, 58-78.

²⁹ Števček and Ivančo, *The conception of civil procedure in the Slovak Republic*, 119-135.

³⁰ Law no. 91/2016 Coll. on Criminal Liability of Legal Persons the criminal liability.

is therefore appropriate to ask why management of economic operators cannot prevent this socio-pathological phenomenon, which involves such intentional unlawful acts of a non-violent nature. Company management is fully responsible not only for strategy and development of business activity, but also for business activity as a whole.

The economic crime of the company destabilizes the economic relations and degrades the good reputation of the company on the market. Given its increase and severity, it is important to find effective ways to detect it and to take measures to prevent it. We are of the opinion, that globalisation tendencies and changes in the current world of management require that the managers update their education through various supplementing forms of education with the aim to increase legal awareness especially in the area of financial and economic relations.

3.3 Slovak legal regulation related to economic crime

Financial crime is often perceived erroneously as a crime without victims. Even though the organised financial crime does not necessarily to have direct impact on individuals (although there are many examples of that when individuals suffer direct damage), in reality it has significant social impact as regards loss profit, loss of reputation and deterioration of public standards. A high level of such crime may discourage the creation of new businesses, discourage potential investors and distort competition.³¹

With the accession of the Slovak Republic to the European Union, the Slovak legislation was harmonized with the secondary legal acts of the European Union.³² As stated by Bencsik, Juhasz, Mura and Csanadi, “*it follows from the settled case law of the Court of Justice of the European Union that the fight against fraud, tax evasion and possible abuse is an objective recognized and supported by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax*”.³³ It is particularly important Noskova considers that European case law is also considered to be a particularly effective tool against fraud, tax fraud and possible abuse of purpose.³⁴

In addition to legal acts of the European Union, the Slovak Republic is also bound by its international obligations. These arose gradually, with several Slovak Republics taking over the defunct Czech and Slovak Federal Republics as one of the successor states. Within the framework of international cooperation, the Slovak Republic signed the Convention on Mutual Administrative Assistance in Tax Matters of the OECD and the Council of Europe of 1988 on 29 May 2013. The Convention is a multilateral legal instrument for international administrative cooperation in tax matters and an essential means of effective national tax

³¹ European Commission. Communication from the Commission to the Council and the European Parliament on the prevention of and fight against organised crime in the financial sector. 2004.

³² Raisova, Regaskova and Lazanyi, *The financial*, 29-48.

³³ Bencsik, Juhasz, Mura and Csanadi, *Formal and Informal*, 25-42.

³⁴ Noskova, *International Business Law*, 98-9.

administration in an internationally functioning economy. It entered into force for the Slovak Republic on 1 March 2014 in accordance with Article 28 (5). However, its provisions did not start to be implemented until 1 January 2015 in accordance with Article 28 (6).

We are of the opinion that, however, international law, consisting mainly of international treaties, has a fundamental influence on the researched issue. Under Article 7, paragraphs 2 and 5 of the Constitution of the Slovak Republic, promulgated and ratified international treaties as a formal source of law take precedence over laws. Therefore, in the conception and subsequent creation of the Criminal Code, the Slovak Republic had to take into account its international obligations.

Nonetheless, appropriate regulation by the legislator or other public authorities alone is not enough. In finding solutions to these problems it is necessary to take responsible approach by all involved subjects towards building fair economic relations. The universal legal norm regulating the financial crime represents the Criminal Code. In its creation from the systematic point of view, the issue of economic crime was incorporated into the Fifth Chapter of the Specific Section entitled Economic Crimes. This Chapter was further divided by the legislator into four separate parts.

First Part in articles 250 to 258 of the Criminal Code contains criminal offences endangering market economy. We rank among most serious article 250 - Abuse of competition, article 251 - Illicit business, article 253 - Unauthorized production of alcohol, tobacco and tobacco products. By recodification of criminal law these criminal offences were included in Part 1 of Title V of the special part of the Criminal Code. The constitutive elements of the criminal offence of abuse of competition as contained in article 250 refers to the proper functioning of the competition in the market economy. One of its main tasks is the creation and protection of competitive business environment as well as freedom to do business. Thus, the the objective of this criminal offence is the protection of competition as enshrined in article 55 Constitution of the Slovak Republic. The objective element of this offence consists in abusing competition in that the offender harms the reputation of another competitor by unfair competition or by acts contrary to the law governing the protection of competition, and by this he or she causes considerable harm to another competitor or jeopardizes the running of his or her business.

Criminal offences against Economic Discipline are contained in articles 259 to 269a of the Criminal Code **and they are included into the Second Part of Fifth Chapter.** They are mainly the offences as the one included in article 259 Distortion of economic and trade register data. This provision protects the proper functioning of competition in the market economy. It mainly represents the protection against unfair competition, as well as against acts that is contrary with the special Law.³⁵ From the point of view of legal theory it represents the norm with referral to commercial law notions, mainly contained in articles 44 paragraph 2, article 41, articles 45 to 52 and article 55 of the Commercial Code. The offender of

³⁵ Law no. 136/2001 Coll. on Protection of Competition as amended.

this criminal offence with threatening effects can be anyone, it does not have to be the competitor. According to Burda and Trellova, “*the constitutive element of this offence thus includes both more serious way of acting, as well as further specific consequences of the offence. Article 264 Threats to business, banking, postal, telecommunications and tax secrecy, article 266 Machinations in public procurement and public auction, § 269a.*”³⁶

The aim of Third Part is, in articles 270 to 280, of the Criminal Code to protect society against crimes against the currency and against tax crimes. In terms of economic existence of the Slovak Republic, these are extremely serious crimes, for example article 270 - Counterfeiting, Falsification and Unauthorised Production of Money and Securities, article 274 - Counterfeiting, Falsification and Unauthorised Production of Revenue Stamps, Postal Stamps and Stickers, article 276 - Tax and Insurance Unauthorised Reduction, article 278a - Obstruction of Tax Administration. Provisions of Third Part thus protect the society and State before sophisticated crime. These provisions were also taken from the previous version of the Criminal Code after they have not been changed by the previous amendments to the Criminal Code. These provisions react to the protection of euro currency in criminal offence of Counterfeiting, Falsification and Unauthorised Production of Money and Securities, including its protecting features, or to the new forms of falsification and counterfeiting of money and its protecting features, or to the new forms of falsification and counterfeiting of money and its protecting fetures by the computer programs. Foreign stamps, official seals and closures, check marks, robbons and other measures of technical control measures for marking goods for tax purposes are also protected.

Provisions of Fourth Part on crimes against copyright and industrial rights correspond in their current form the domestic needs as well as international obligations binding on the Slovak Republic. The provisions of this Part were amended in order to correspond better to specific definitions of qualified criminal offences, including stricter criminal sanctions as required by the European Union. The extraordinary character of this Part is, however, evident in its content, as it only contains three criminal offences. They are article 281 - Infringement of Trademark, Geographical Indication and Business Name, article 282 - Infringement of Industrial Rights and article 283 - Infringement of Copyright.

Among less sophisticated economic crime, the criminal offence of theft, embezzlement and fraud is of particular importance. However, they are included in Fourth Part of the Criminal Code that is not further divided into sections and is named Criminal Offences Against Property. The Fourth Part protects property through numerous criminal offences. It has to be noted that this part represents the most often amended part of the Criminal Code. That is why, and also having in mind partial testing of effectiveness of these provisions in practice, it was possible to assume the most of these criminal offences included in this part into the re-codified Criminal Code that entered into force in 2005.

³⁶ Burda and Trellova, *Admissibility*, 55-81.

The construction of basic constitutional elements of the criminal offence of theft in article 212 of the Criminal Code as included in its paragraph 1 (appropriation of a thing of little value through its seizure) and in paragraph 2 (with specific enumerated forms regardless of the amount of caused damage) proved itself in practice. It has in particular its preventive effects, as its application in practice requires especially more intensive protective action of owners of land and forests, or ponds, respectively with intensive fish farming. In addition, there is no need to cause minor damage in cases of unauthorized collection of electricity, water, gas, heat, etc.

The offence of embezzlement is regulated, in essence, the same way (except for the exhaustive listed circumstances in paragraph 2) in article 213. In this offence the subjective element also represents the appropriation of the thing belonging to someone else, nonetheless, it does not have to be the entrusted thing. That is why this criminal offence has the same basic level of sanction. More aggravated forms of this offence include mainly the more serious way of acts, committing the offence in respect of protected person or committing the offence from the specific motion (e.g. on demand or for reward), as well as a person who should protect the damaged person or where the offence is committed by the bankruptcy estate administrator. Committing this crime by the criminal group, causing bigger damage or large-scale damage, or committing this crime during crisis situation are sanctioned by higher penalties as differentiated in specific paragraphs of this crime.

The basic construction of criminal offence of fraud as defined in article 221 of the Criminal Code remains preserved in its two present forms: in misleading or misleading others, with the intention of get enrichment for oneself or for others to the detriment of someone else's property and thus causing damage. The damage of someone else's property represents the material damage. It includes the reduction in property as well as loss of profit. That is why the amount of the damage may be a monetary amount, a thing, as well as act or failure to act having certain monetary value. The basic definition of this offence requires the minor damage caused. More severe sanction shall be imposed in respect of offender who commits this crime in its aggravated form of acting, in respect of protected person, on the basis of special motion or if damage of higher extent is caused. The highest sanction would be imposed on offender who commits this crime as a member of criminal group or causes bigger damage or large-scale damage or who commits this crime during the crisis situation. On the basis of basic definition of the criminal offence of fraud there are subsequent constructions of specific crimes of fraud, mainly credit fraud, insurance fraud, capital (investment) fraud and subsidy fraud. In these cases, the offender is liable to deceive a loan, insurance benefit or subsidy from another person, thereby causing him or her harm. More aggravated forms of this criminal offence require other elements to be fulfilled (that are more less identical with the basic definition of the criminal offence of fraud). It is only the criminal offence of subsidy fraud that differs in three basic features of the definition, in that it differentiates the subject, or the way of dealing with subsidy, respectively.

4. Development of economic and financial crime in the conditions of the Slovak Republic

In expert literature, but also in practice, we encounter the concepts of economic and financial crime. Recommendation of the Council of Europe no. R (81) 12 on Economic Crime defines the basic principles of economic criminality and recommends the States to cooperate intensively, including the definition of economic crime.³⁷ The recommendation defines several forms of economic crime. As examples are also included the unfair competition, tax offences, cartel offences, cheating of consumer or stock exchange crimes.

On the level of the European Union the notion of economic crime is only defined, which, however, includes both economic and financial crime. According to Šámal the financial crime can be defined as the specific part of economic crime that is labelled as one of the most important areas of economic criminality.³⁸ He defines it as the criminal activity aiming against the proper functioning of banking system, capital market and financial institutions, mainly banks, stock exchanges, investment funds and companies, pension funds, insurance and other financial institutions, that have significant role to play within the market economy, because they largely determine the dynamics of economics development.

From a material point of view, we can determine the forms of economic and financial crime

Economic crime	Financial crime
a) copyright	a) tax fraud
b) protection of trademarks	b) custom fraud
c) competition	c) insurance fraud
d) theft	d) money laundering
e) state aid	e) embezzlement
	f) misuse of structural funds
	g) counterfeiting

From the broad spectrum of criminal offences, we have chosen the tax fraud crimes, or criminal offences related to tax frauds, respectively. Criminal offence of tax fraud is construed as a prematurely completed offence, since it is sufficient to complete the unjustified claim for refund of value added tax, it means it is completed before the tax declaration is filed within the tax administrator and thus there is no difference from the point of view of accomplishment of this offence, whether the excessive tax refund has been paid from the State, or not. This affects the eventual fulfillment of the qualified elements of tax fraud offence. The attempt of crime is thus promoted to the completed crime. Tax fraud crimes represent the threat for

³⁷ Council of Europe, 1981.

³⁸ Šámal and Skvain, *Protective Detention in the Czech Republic*, 285-295.

public finance. Valid Criminal Code clearly defines the respective kinds of tax criminal offences:

- a. § 276 Tax and Insurance Evasion
- b. § 277 Failure to Pay Tax and Insurance
- c. §277a Tax fraud
- d. § 278 Failure to Pay Tax
- e. § 278a Frustrating Tax administration

In principle, it is the action of a taxpayer who fails to fulfill an obligation imposed by law. The question arises, whether the obligation is not complied with intentionally or not intentionally. In essence, it is irresponsible behavior of the taxpayer aimed at reducing or resetting his or her tax liability *vis a vis* the state. The universal elements of tax fraud are: intentional or not intentional infringement of legal regulations, financial loss in the state budget. Intentional acting or direct intent, respectively, are connected with intentional violation of law due to which the public interest protected by law is endangered within the meaning of article 15 of the Criminal Code.

For comparison, we also present the term tax fraud mentioned in Communication European Commission (2012, 351 from 27. 6. 2012) "Tax fraud is a form of deliberate evasion of tax which is generally punishable under criminal law. The term includes situation in which deliberately false statements are submitted or fake documents are produced. Tax evasion generally comprises illegal arrangements where liability to tax is hidden or ignored..." The content is compatible with the term tax fraud listed in the Slovak legal act.

In this context the direct causal link has to exist between the intentional behaviour (misleading, disguising acts, falsifying public documents) of tax debtor on one hand and the damage to public finances, on the other hand. It is appropriate to stress, that any taxpayer should have the required level of knowledge in the field of tax law, if he or she wishes to participate in economic relations and to conduct business. Non-intentional infringement of legal regulations can also be called negligent acts. According to article 16 of the Criminal Code as the negligent criminal offence can be regarded acting of the person who knowingly or non-knowingly infringes or threatens the interest protected by the Criminal Code, while relying on the fact that such a violation will not cause, respectively, he or she should have known or could have known it. A criminal offence committed by negligence is that where the offender:

a) knew that by acting in a manner defined in this Law he could infringe or prejudice an interest protected under this Law, but presumed without good reasons that no such infringement or prejudice would be caused, or

b) did not know that his act could cause such infringement or prejudice although, considering the circumstances and his personal situation, he should and could have been aware of it.

Case law of the Supreme Court of the Republic is rich in criminal offences of tax frauds. We have chosen the case clarifying also the intentional acting of perpetrator. In this judgement the Supreme Court of the Slovak Republic clarifies:

„From the point of view of fulfillment of constitutional elements of criminal offence, and thus from the point of view of form of fault, they require intentional acting of perpetrator - article 15 of the Criminal Code. The criminal offence in article 277 of the Criminal Code includes also the motivation and thus the principle of liability for fault applies, i.e. the principle of subjective liability. It means, that one of the conditions for criminal liability of offender is his or her fault, be it intentional or negligent. Fault also represents the expression of individual criminal liability; it means that every person is responsible in principle for what he or she has caused.“³⁹ For every infringement of the legal regulations the competent authority can impose financial or other sanction. In tax fraud also the sanction of imprisonment can be imposed.

The table below illustrates the number of prosecuted, accused and sentenced persons for tax crimes for the year 2019. The biggest number of offences were committed by the failure to pay tax and insurance.

**Tab. 1. Overview of tax offenses for the year 2019
(in the district of regional prosecutor's offices)⁴⁰**

	People withdrew	People charged	People arrested
§276 Tax and Insurance Evasion	210	122	106
§277 Failure to Pay Tax and Insurance	226	134	134
§277a Tax fraud	72	53	32
§278 Failure to Pay Tax	607	419	416

Resources : Statistical Yearbook on the activities General Prosecutors Office of the Slovak Republic 2019

4.1 Facts about economic crime

Within the framework of empiric part of this study we have obtained data on economic crime as published on web site of the Ministry of Interior of the Slovak Republic. Following table illustrates the concrete facts on economic crime including comparison of data from 2019 and 2018 which will be analysed further.⁴¹

Tab. 2: Overview of economic criminality 2019

Year	2019			2018		
	Detected	Clarified	Damage caused	Detected	Clarified	Damage caused
Economic Criminality	13 326	6 757	420 322	13 515	6784	284 000
Tax shortening	5 713	4 085	220 602	5 392	3 851	122 797

³⁹ Supreme Court of the Slovak Republic. *Case law of the Supreme Court of the Republic, no. 3Tdo 85/2017.*

⁴⁰ Statistical overview of crime in 2019.

⁴¹ Crime statistics in the Slovak Republic.

Year	2019			2018		
	Detected	Clarified	Damage caused	Detected	Clarified	Damage caused
Theft	21	18	159	16	13	190
Currency protection	1 125	33	78	1 160	45	167
Corruption	136	75		151		
Embezzlement	486	341	8 829	560		8404
Fraud	1 890	667	57 380	2157	843	69 346
Copyright infringement	48	14	2 146	46	10	181

Economic crime is rightly ranked as first with regard to the amount of financial damage caused. The numbers are surprisingly high. In 2019, the overall damage represented 420.322 million EUR. From this amount the damage in the field of taxes represented the amount of 220.602 million EUR. What is interesting, the number of detected cases is very low, and the rise of „copyright infringement” cases is high. It follows that detecting and clarifying a crime in the economy is relatively complex and is based on specific documentary evidence, expert opinions in the field of economics, theoretical knowledge as well as practical experience. It requires certain knowledge not only from the criminal law, but also from financial and commercial law.

The precondition for the successful detection of these criminal offenses is the fact that all relevant institutions act in conjunction with the sole purpose of clarifying the offense and preventing further criminal activity. Criminal offences committed in the field of economic area show a high degree of latency, which is primarily due to the relatively strong dynamics of development, especially in the field of information technologies, which is reflected in the constant occurrence of new forms as well as in the new ways of committing these crimes. In this context it is necessary to point out the fact that the financial crime is often connected with cross border and international crime.

4.2 Identification of factors having impact on financial crime

Economic crime is typical through its destabilisation of various factors of social life, such as economic relations, social relations, as well as legal relations. Specific role in economic crime is played by the personality of the perpetrator and his or her criminal law control and prevention. In searching for solutions and reaching higher level of detected crime rate in the field of economy it is necessary to analyse both objective and subjective factors that are determining this activity. Following factors are included:

- a) legal awareness,
- b) professional knowledge of offenders,
- c) insufficient prevention and control.

4.2.1 Legal awareness

Another significant factor affecting financial crime is the legal awareness of the person committing the crime. For a person doing business today, legal awareness is a fundamental condition to do business properly. The knowledge of law includes differentiating between lawful and unlawful acts. In general, the rule is that ignorance of the law is not an excuse, or, the rule of liability for any infringement of the law applies, respectively. Quite often the focus is put on the various competences and skills of persons who are active in the area of economic relations, however, not always we can find among these sets of key competences and skills legal awareness or legal literacy, or awareness, respectively. Galinski understands legal awareness *as link between valid (objective, positive) law and real behaviour of people*.⁴² In anglo-saxon system of law legal literacy is defined as *“The ability to understand words used in a legal context, to draw conclusions from them, and then to use those conclusions to take action.”*⁴³ Similarly, this notion is defined by the American Bar Association.⁴⁴ According to it *„The ability to make critical judgments about the substance of the law, the legal process, and available legal resources and to effectively utilize the legal system and articulate strategies to improve it.”* Trubek describes legal awareness broadly, when he defines it as *„a summary of opinions and ideas about the nature, functions and operation of the law that an individual has in society at a given time”*.⁴⁵

Based on these findings, we can conclude that the above definitions all have systemic features of compliance and these are a high level of knowledge of law and legislation and their correct application in practice. No less important is the fact that the knowledge of law and its correct application in everyday business relations forms inevitable part of legal awareness. Part of legal awareness represents also the ability - literacy to correctly interpret the relevant legal norm. Certain level of legal awareness represents the guarantee that the law would not be infringed, and thus it forms the essential conditions of effectiveness of the law, that is, the extent to which the legislator pursues the specific aims in composing the legislative norms. Urban holds the view that *„ knowledge of the law forms part of the legal awareness, however, it is certainly not true that a good knowledge of the legal rules in force is more important than a proper sense of justice”*.⁴⁶

4.2.2 Professional knowledge of offenders

No less important factor in financial crime represents the professional competence of the perpetrators.⁴⁷ From the analyzes of crimes in the field of economic relations so far, it is clear that they are very sophisticated, intelligent

⁴² Galinsky, *Financing of the education*, 55-66.

⁴³ Canadian Bar Association, *Reading the Legal World*, 23.

⁴⁴ American Bar Association. *Commission on Public Understanding About the Law*. 5.

⁴⁵ Trubek, *Where the Action Is: Critical Legal Studies and Empiricism*, 592.

⁴⁶ Horvathova and Cajkova, *Framework*, 106-25.

⁴⁷ Mura, Gontkovicova, Spisakova and Hajduova, *Position of...*, 156-73.

perpetrators. Moreover, they have good personal and local knowledge of the problematics, as well as of general expertise. General criminal offences are mostly committed by repeat offenders or people with lower education, and in Slovakia also by people from marginalized groups. Since intentional crimes are mostly committed in the field of financial criminality, the nature of the matter suggests that they cannot be naive and inexperienced offenders. On the contrary, as Čentěš and others suggests, they are almost always offenders with higher dexterity in economic relations, who expect a profit from the crime committed.⁴⁸ He points out that mostly they are offenders pursuing the objective of gaining illegal profit in their economic and business activities, while they are taking every opportunity to pursue economic crime. Financial crime is becoming increasingly dangerous as fraudulent transactions take place "virtually" from one account to another while information technology is increasingly being used. The offenders have necessary knowledge in the field of information technologies, and they use it effectively with the aim of committing crime.

4.2.3 Insufficient prevention and controll

*Reducing the possibility of tax crime can be achieved by introducing appropriate measures at national, regional and local level.*⁴⁹ Besides legal regulation, prevention and promotion of legal awareness is necessary. The justification of taking preventive measures follows in particular from preventing and restraining the emergence and spread of crime and other anti-social activities. Training, education and counseling activities, especially aimed at young people and the general public, have an irreplaceable role in ensuring prevention of crime. Law defines explicitly the notion of prevention of crime as purposeful, planned, coordinated and comprehensive action focusing on the causes and conditions that trigger or facilitate crime and other anti-social activities, with a view to preventing, repressing and preventing them; this also applies to the prevention of other anti-social activity.⁵⁰ The objective of crime prevention is to increasing the awareness and to reduce risks of occurrence of these crimes, as well as their damaging influence both on individual and society.

Methods of preventive work should, in broader context, react on new threats and tendencies in the field of security and public order. The Slovak Republic as the Member State of the European Union is obliged to introduce the measures aimed at the fight against fraud in accordance with the recommendations and *acquis* of this transnational organisation. At the level of the European Union the Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010), was adopted. This regulation introduces the coordinated strategy to make fight against fraud more effective in the area of value added tax within the European Union. This system helps

⁴⁸ Centes and Krajcovic, *Consideration*, 1435-1449.

⁴⁹ Horecky, *Operation and actin*, 17-27.

⁵⁰ Law no. 583/2008 Coll. on Prevention of Crime and Other Anti-Social Activities.

the correct tax collection as well as the monitoring of correct application of value added tax in cross border transactions. Monitoring the tax entities is ensured by the Financial Administration of the Slovak Republic, with its main mission to effectively collect and manage customs and taxes. One of the instruments for monitoring represents also the index of tax reliability that is related to all tax entities registered for the income tax, which have incomes from business. It means legal persons with income from business and natural persons having both income from business as well as from the entrepreneurial activity.

Due to the fact, that tax entities misused the lacunas in legal regulations in the area of taxation, the new tax obligation for taxpayers within the meaning of article 78a of the Law on the Value Added Tax⁵¹ was introduced, as one of the instruments of the fight against tax evasions. The control report provides detailed information on the individual tax obligations of the taxpayer and on the individual deductions applied by the taxpayer for the given tax period.

5. Conclusion

Evaluating the results of our research, we are convinced that we have succeeded in meeting the set goals. We have analyzed a very current problem of international legal research. Part of our research was also to assess the impact of European and international law on economic crime. On the basis of the essential information and facts contained in this scientific study, it can be concluded that modern economic crime represents a serious problem in economic relations. The development of business in Slovakia after the year 1989 is accompanied also by negative phenomena in society, which is mainly the undesirable economic crime. Change of legal provisions together with taking measures aiming at its elimination has the pro-european dimension, nonetheless, the facts and evidence suggests, that economic crime is becoming increasingly sophisticated and that the number of crimes committed is increasing. There are various forms of economic and financial crimes in the Slovak legal systems. In our study we have focused on the tax crimes that are most frequent in the economic relations. Based on certain facts we identified facts having impact on the crime in economic relationships.

The object of our research was the legal relations and the system of measures aimed at preventing anti-social activity in the form of financial crime. In the interest of clarification of basic terminology, we have pointed out the fact that there are several opinions on the notion of economic crime as found out in the analysis of scientific literature. We have used the system of legal analysis in order to evaluate the appropriate legal instruments applied in the background and conditions of the Slovak Republic. On the basis of concrete data taken from the database of the Ministry of Interior of the Slovak Republic we have reached conclusions that economic crime has financial impacts as well as its rising tendency in spite of the fact that there is broader spectrum of legal regulations with pro-european dimension.

⁵¹ Law no. 222/2004 Coll. on the Value Added Tax as amended.

In concrete analysis these facts confirmed that the processes of detention and clarification of crimes in the area of economy are very complex to realize in practice. The contribution of this study for the theory and practice is pointing out on the undesirable social phenomenon with not only national, but also international dimension.

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