

RELATIONSHIP BETWEEN CRIMINAL POLICY AND ECONOMIC POLICY¹

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Abstract: „In the state policy, two main areas of the state authority are usually highlighted - domestic and foreign policies, each having its tasks, objectives and priorities. The criminal policy is constituent part of the state domestic policy. It should be pointed out that the objectives, tasks and priorities determined and achieved by the state authority are not once and forever designated. They are established, but also changed with consideration of social development, intention to realize various interests and needs of state, and situations occurring in foreign-and domestic-policy spheres. They can also be modified either in the case of achievement of previous objectives and tasks or determination of impossibility of their implementation to different reasons or social circumstances.”³ Criminal policy can be tackled traditionally in two ways: as a science and as a part of a general policy promoted by the central government. The notion of criminal policy was used for the first time by German criminal law specialist Feuerbach at the beginning of the XIX century, and the first work on this concept was the Handbook of Criminal Law and Criminal Policy of German jurist E. Henke, issued in Berlin in 1823. However, the concept of criminal policy was used with greater frequency in legal, political and sociological language only at the beginning of the twentieth century and towards the middle of it.⁴

Key words: criminal, economic policy, relationship

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³ R.E. Dzhansarayeva, L. Bissengali, A.A. Bazilova, M.E. Akbolatova and M.K. Bissenova: Problems of Formation of the Concept of Criminal Policy of State in the Theory of Criminal Law (In: Middle-East Journal of Scientific Research 14 (4): 508-515, 2013. 508. p.)

⁴ Constantin Tănase: Some Considerations on Criminal Policy and Crime Prevention (http://evidentacercetare.univ-danubius.ro/Surse/Set_012/GGzerDL14p.pdf 139. p. 05-03. 2018.)

EXPOSITION

It is a fact that criminal law is only the last resort, it can be an “ultima ratio” in the economic life and as a means of conducting behavior is justified only in the fight against the most serious infringements. We can point out as a fact— as our preliminary research demonstrates — that the effectiveness of economic criminal law is significantly lower than the effectiveness of the general criminal law.

It seems reasonable to assume that "people who are threatened with strict punishment for a certain behavior will obviously refrain from doing it. However, in the scientific examination of the issue, it turned out that the opposite is the true: in those people who are at risk of mild punishment will evolve the antipathy against the banned behavior.⁵ To this we can add the opinion of Cesare Beccaria, the father of criminal law in 1764, according to which not the strictness of the punishment, but the inevitability of the punishment, has a deterrent effect. The tools of the Criminal law are just an *ultima ratio* in economic law, furthermore we can even state that criminal sanctions are largely ineffective in economic law.⁶

As a nature of the economic law is nothing else but the law of game rules, so that is the reasoning that can change the economical criminal law. The earliest formal model of criminal offending in economics can be found in Becker’s seminal 1968 paper, Crime and Punishment: An Economic Approach. The crux of Becker’s model is the idea that a rational offender faces a gamble. He can either choose to commit a crime and thus receive a criminal benefit (albeit with an associated risk of apprehension and subsequent punishment) or not to commit a crime (which yields no criminal benefit but is risk free). The expected cost of committing a crime is a function of the offender’s probability of apprehension, p , and the severity of the sanction that he will face upon apprehension, f . To be more specific, the individual can be said to face three potential outcomes each of which delivers a different level of utility: 1) the utility associated with the choice to abstain from crime, U_{nc} , 2) the utility associated with choosing to commit a crime that does not result in an apprehension, U_{c1} , and 3) the utility associated with choosing to commit a crime and which results in apprehension and

⁵ Elliot Aronson: A társas lény KJK-Kerszöv Jogi és Üzleti Kiadó Kft. Budapest, 2001. 28. oldal

⁶ Visegrády Antal: A jog hatékonysága Budapest, 1997. 68-69. oldal

punishment, Uc_2 . In such a formulation, the individual chooses to commit a crime and only if the following condition holds:

$$(1 - p)Uc_1 + pUc_2 > Unc \quad (1)$$

That is, crime is worthwhile so long as its expected utility exceeds the utility from abstention.⁷

The role and weight of economic criminal law is appreciated during and after crises.

Nowadays, we are living in an era where the tightening of criminal law is essential for the resumption of economic growth and halting the loss of living standards.

Nowadays, more and more politicians have demands for the enforcement of criminal liability and the tightening of legislation.

The economic crisis was not the lightning bolt from the blue, but as a result of mistakes made by management levels said Alexander Dobrindt of Hamburger Abendblatt. "The task of this policy is to clearly identify those responsible and to overcome the consequences. It also includes criminal liability."⁸

Criminal policy cannot be regarded as an independent science yet, it is just an independent part of criminal science. It is a part of the general policy of the state, including legal policy. The collective concept of answer strategies for already committed crimes. Criminal policy directs criminal legislation (for example, creating legal acts of new offenses, raising or decreasing punishment etc.), but has only a moderate role in law enforcement.

The task of the state power is protecting the interests of society and ensuring social cohabitation. The not negligible means of achieving this task connected to the area of criminal law. The conditions and the way in which these instruments are used are defined by criminal law. The task of criminal policy is the elaboration of the aspects whose criteria are applied when applying criminal law.⁹

Criminal policy is always a dynamic activity that is geared to a quantitative, qualitative change in crime and to a sense of social certainty, and is therefore constantly changing dynamic activity, whose

⁷ https://eml.berkeley.edu/~jmccrary/chalfin_mccrary2014.pdf (05.03.2018.)

⁸ <http://www.abendblatt.de/politik/deutschland/article607692/CSU-fordert-strafrechtliche-Aufarbeitung-der-Wirtschaftskrise.html> (2012. augusztus 19.)

⁹ Földvári József: Kriminálpolitika Közgazdasági és Jogi Könyvkiadó, Budapest, 1987. 32-33. oldal

instrumental system is not determined by the quantitative and qualitative changes in crime but by the civilization level of society.¹⁰

Criminal policy prevails mainly in the field of legislation. Judicial power is an independent power; judges are only subject to the laws.

In the legal practice (at least in the constitutional state) criminal policy only as the will of the legislator can prevail, so the courts cannot be controlled directly.¹¹ From that reason, we do not mention the judiciary (criminal law) policy as a separate area within the criminal justice policy.

Economic policy is more practical than science, although it has a theoretical background for applied economics. It can be defined as the state's active intervention in the economy, a conscious, coherent and targeted action that affects production, consumption, exchange and capital formation. The main components of economic policy are:

- setting objectives, such as growth, full employment, balance of payments, reducing inequalities, price stability, sustainable (and sustainable) development;

- setting up a target hierarchy: some goals are incompatible, so a priority order has to be set up;

- analysis of relationship between objectives: economic policy takes into account the relationships that economists have identified between each target;

- choice of instruments: economic policy presupposes the use of instruments to achieve the objectives (monetary or fiscal instruments, etc.).¹²

CONCLUSION

The relationship between economic policy and criminal policy in the area of combating economic crime can be characterized by the fact that criminality policy should be more in keeping with economic policy considerations than vice versa. Badly elected criminal policy does not

¹⁰ Farkas Ákos: A kriminálpolitika és a büntető igazságszolgáltatás hatékonysága (=Tanulmányok Szabó András 70. születésnapjára Magyar kriminológiai Társaság Budapest, 1998. 81. oldal)

¹¹ Finszter Géza: Kriminálpolitika tegnap és ma (=Rendészeti Szemle 2006. 12. szám 77. oldal)

¹² Közgazdasági és Társadalomtudományi Kisenciklopédia Napvilág Kiadó Budapest, 2005. 165-166. oldal

necessarily help the development of the economy, economic policy and criminal policy considerations need to be carefully coordinated.

Criminal policy has to focus on other factors in economic policy terms, but criminal policy must focus on the medium- and long-term economic objectives of economic crime. Criminal law must show relative stability, but the regulation of economic crime often changes, and in these economic terms this is understandable. It is not advisable to use strict punishment, but it is essential to ensure the ultimate role of criminal law in the economy. This should be done even if we find that economic players doubt the effectiveness of an economic criminal law - often unjustifiably.

“Despite the fact that the criminal law provisions on the protection of fundamental economic interests can be considered part of the criminal law concept inherent in the traditional sense, the criminal law of modern capitalism has recognized the fact that the principles of criminal policy do not fully apply to crimes committed in connection with economic activity. There have been cases of breaches in the enforcement of the criminal law of both legislation and enforcement in relation to economic crimes. The reason to create the criminological category of white collar criminals, it was precisely the recognition that there is a group of offenders who are against the general objectives of criminal policy do not apply.”¹³

The common feature of economic policy and criminal policy is that they both have close relationship with social policy. The best criminal policy is good social policy (as Franz von Liszt has already recognized), that is to say, the fight against crime cannot be effectively tackled by means of criminal law. Crime is a social phenomenon and its repression can be carried out effectively by social means. At the same time, economic policy is also inseparable from social policy, as all economic policies have social consequences. Conversely, social policy measures have almost always had economic implications. Good social policy and a successful economic policy can, together, contribute to the reduction of crime, thereby enhancing the effectiveness of criminal policy.

¹³ Wiener A. Imre: Gazdasági bűncselekmények Közgazdasági és Jogi Könyvkiadó Budapest, 1986. 42. oldal

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ODNOS IZMEĐU KAZNENE POLITIKE I EKONOMSKE POLITIKE

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Apstrakt: U državnoj politici obično se ističu dva glavna područja državne vlasti - unutrašnja i vanjska politika, od kojih svaka ima svoje zadatke, ciljeve i prioritete. Kaznena politika je sastavni dio državne unutrašnje politike. Treba istaći da ciljevi, zadaci i prioriteti, koji su utvrđeni od strane državne vlasti nisu jednom i zauvijek određeni. Oni su uspostavljeni, ali su i promijenljivi s obzirom na društveni razvoj, namjeru ostvarivanja različitih interesa i potreba države, te od situacija u stranim i unutrašnjim prilikama. Takođe, se mogu mijenjati ili u slučaju ostvarivanja prethodnih ciljeva i zadataka ili utvrđivanja nemogućnosti njihovog provođenja iz različitih razloga ili društvenih okolnosti” (Džansarajeva i dr., 2013: 508). Kaznena se politika može tradicionalno posmatrati na dva načina: iz ugla nauke i kao dio opšte politike koju provodi Vlada. Pojam kaznene politike je po prvi put iskoristio njemački pravni stručnjak Feuerbach početkom XIX vijeka, a prvi je rad na

ovom konceptu bio Priručnik kaznenog prava i kaznenopravne politike njemačkog pravnika E. Henkea, koji je štampan u Berlinu 1823. godine. Međutim, koncept kaznene politike je bio korišten s većom učestalošću u pravnom, političkom i sociološkom jeziku tek od početka dvadesetog vijeka, tj. od sredine ovog vijeka (Tănase, 2018).

Ključne riječi: kaznena, ekonomska politika, odnos.