Chapter 12

The Impact of Economic Policy on Economic Crime

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ABSTRACT

This study presents the parallelism of the characteristics of the economic crimes of the Central and Eastern-European countries participating in the project. That is, it notes aspects of criminal law that clearly show that such countries in the past decade employed (and still employ) similar regulatory principles, owing to reasons such as geographical proximity and others. This study provides an overview of the regulatory directions of the countries after World War II, which, from the Soviet sphere of interest, were common. We then review the main steps in the field of action against economic crimes, which can be perceived as stemming from democratization. Notably, most of the examined countries are European Union members, and more countries want to join. Therefore, among the countries, the integration process indeed reveals a similar legal and political background. Considering the limitations of the study, it was not possible to examine the changes in the regulations of each country in detail. Thus, we only tried to draw attention to the similarities of common processes and characteristics.

KEYWORDS

Central and Eastern Europe, Eastern Europe, economic crimes, criminal law, European Union

1. Conceptual issues

Economic crime, as a concept, can be interpreted in different ways. Even within a given country, different disciplines classify behaviors differently. Regarding substantive criminal law, the offenses in the (so-called) 'economic crimes' chapter of the state's criminal code are classified here. If the country has special criminal law specifically on this subject, the norms in that law can be considered economic offenses. According to one classification, the following levels can be distinguished:

- According to the concept in public opinion, each conduct in the course of which economic operators obtain some financial advantage that is considered to be unlawful is included;

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- Economic crime in the criminological sense is narrower than this; we can mean crimes committed in connection with the management, suitable for violating or endangering the course of lawful management;
- At the conceptual level of management-related crime, beyond the economic crimes regulated in the criminal code, some of the acts against property that take place in connection with the management, and specific acts against the integrity of the office, public life, and public order are included;
- In the narrowest sense, it covers only economic crimes regulated in the relevant chapter of the criminal code.[1]

2. Common historical background

After World War II, Europe saw unprecedented fundamental socio-economic-political changes. However, the changes did not affect only Europe but were of global significance, leading to bipolar world order. Notably, in this world order, the central and eastern parts of Europe came into the sphere of interest of the Soviet Union. This process had an obvious impact on political-socio-economic transformation and the accompanying transformation of the legal system. The former can be said to be traditional. German legal influences were less prevalent during the era of Soviet influence, as the identity of the legal basis, or at least its similarity, could not be dispensed with the same ideological base of the 'Eastern bloc.'[2] Of course, it would be a mistake to believe that ideological and legal 'harmonization' was unique to the Soviet sphere of interest: a similar process was felt in the case of the U.S.-led interest group. The question, of course, is how continuous this process was for the states, whether in the East or the West. Further, it could be the subject of separate investigations, perhaps even beyond the jurisprudence framework. The post-World War II social transformations, thus, brought with them a legal transformation, especially since several issues that could not be postponed had to be clarified through the law.

The primary basic expectation was the question of bringing the perpetrators of war and anti-people crimes to justice and laying the legal foundations for this process. Creating legislation to protect the new social order received special attention, understandably. In this context, and perhaps in the first instance, we must refer to the adoption of the rules on the economic order that are essential for the new political ideas to prevail, as the country had to be rebuilt from its ruins. The revision of the laws on the previous economy was (also) essential. Hence, as in the case of reconstruction

1 Tóth, 2006, pp. 404–406.

2 Of course, completeness also means that in Hungary, for example, pre-war legal institutions. at least as far as substantive criminal law is concerned, still prevailed at the level of the normative text. For example, the general part of the Csemegi Code (Act V of 1878) was still in force until Act II of 1950 and its special part until Act V of 1961 ('Socialist Criminal Code').

and the 'laying of the foundations of socialism,'[3] clarifying the relations of production and property was essential to determine who owns the means of production and, in general, to determine the forms of ownership.

Based on historical experience, the legislator principle considered important is declared and defended. The legislature has defined some specific forms of this protection and did not forget to provide criminal protection for the highly esteemed economic-philosophical declaration. In the exemplary Soviet Union, the Legislative Decree of 7 August 1932 on the Preservation of the Property of State-Owned Enterprises, Kolkhozes (Collective Farms), and the Consolidation of Social Property provided special criminal protection on crimes against social property. Legislative activity on criminal law subsequently intensified: the Legislative Decree of 4 June 1947 on criminal liability for the looting of state and social property indicated that the Soviet legislature still followed in the footsteps of the 1932 Act.[4] After World War II, countries in the Soviet sphere of interest followed a similar path. In Hungary, the Criminal Code was amended in 1948, and the first independent norm concerning collective property was adopted in 1949. In Albania, a law on enhanced protection of social property was enacted in 1949, which included criminal protection. In Czechoslovakia, a criminal code enacted in 1950 punished conduct that attacked national property and the property of popular cooperatives. In Romania, also in 1950, a special law was adopted to protect social property, which further extended the scope of criminal law protection, as all property that promotes the achievement of a community goal was given priority. In Bulgaria in 1951, the German Democratic Republic in 1952, and Poland in 1953, special legislation was enacted to increase the protection of social property.[5]

Moreover, of course, similar steps have been taken in other areas of economic policy aimed at criminal law protection. The differing legislative approaches in each state yielded somewhat different results but have not questioned socialist commitment. In an ever-easing international environment, the regulation of the states concerned hinges on the fact that criminal liability for economic crimes is an important (and the only most serious and ultimately applicable) part of the legal liability system for economic governance. Legal consequences, such as economic sanctions, and forms of personal liability can be effectively applied against behaviors that violate the discipline of management. Therefore, in the field of economic life, criminal liability must be considered only regarding those acts with a detrimental effect that are particularly dangerous to society, for which economic sanctions or other forms of liability are no longer sufficient. The primary aim was to link criminal liability only to conduct whose detrimental effects extend beyond the circumstances, scope, and significance of the given economic entity and are detrimental to the national

3 The original preamble of Act XX of 1949 on the Constitution of the Hungarian People's Republic.

4 Notably, the Act ordered to punish the crimes against state property more severely than the delicts committed against the property of the kolkhozes or the property of the cooperatives.

5 Gyarmathy, 1954, pp. 18–22.

economy's interests, inducing disadvantages. For example, for a long time, foreign exchange management regulations have been in force in criminal law, but customs offenses have also received special attention.

The process of political transformation that induced a period of regime change in Central and Eastern Europe in the 1989–1990 period was felt in the late 1980s. In this period, together with the political-social transformation, the democratization process also induced a change in the attitude toward the economy. The policy, based on the former centralized socialist economic philosophy, shifted to the mechanism of the market economy, which brought with it economic crimes designed for socialist conditions that no longer served to protect the economy but hindered the process of transformation. This situation is explained by the fact that the pre-existing rules were ordered to punish partly behaviors considered natural in a market economy. Thus, if the legislature had left the previous legislation unchanged, it would have hindered the development of a market economy. Of course, 'classic' economic crimes like tax fraud persisted and likely adapted to the requirements of the age. Meanwhile, the new economic environment required new crimes not typical of the previous social order (e.g., stock market and securities-related crimes).[6] However, it would be a mistake to believe the transition went smoothly, as the democratization in each state was different and adapted to the social conditions of that state.

With the dissolution of the Soviet Union, the political and economic guidance that served as the basis for the previous unified approach also disappeared. Regarding the latter, privatization of the former state-owned means of production also occurred at different rates and with different solutions. Hence, the criminal treatment of the emergent abuses also differed per country. Meanwhile, there remained (perhaps even more so) an approach that had characterized the criminal law of some Central and Eastern-European countries as early as the 1970s and 1980s: a new norm of criminal law was created for certain behaviors of the economic sphere only if they could not be addressed by other legal means.

3. The new common direction: Joining the European Union

In most Central and Eastern-European countries, the need to join the European Union rose during the social transition.[7] As a first step on the road to membership, the country concerned must meet the accession criteria. The European Council set the criteria at its summit in Copenhagen in June 1993 (hereinafter, 'Copenhagen criteria'). The Copenhagen criteria set out several democratic, economic, and political conditions for countries wishing to join the Union; the most important being the existence of a functioning

6 Molnár, 2009, pp. 9–11.

7 In 2004, Cyprus, the Czech Republic, Estonia, Poland, Latvia, Lithuania, Hungary, Malta, Slovakia and Slovenia; in 2007, Bulgaria and Romania; and, in 2013, Croatia joined the European Union.

market economy and the ability of a country to cope with competitive pressure within the EU and market forces.[8] The Copenhagen criteria do not impose a criminal law requirement on candidate countries. However, some expectations may include it if a country cannot achieve the goals by other means. Thus, a functioning market economy as a condition also does not impose a criminal law requirement; however, the protection of a market economy cannot be imagined without certain necessary criminal law provisions, as criminal law protection through the regulation of economic crimes also serves the functioning of a market economy. Finding the balance of the extent to which criminal law regulation is justified is already left to the state. However, the situation will change if the state joins the European Union. At that time, of course, the regulations binding on the Member States are also binding on the new member state.

4. The impact of the European Union on economic crime

For centuries, the substantial embodiment of state sovereignty, its seemingly inexhaustible bastion, was the need for criminal power and the exclusive opportunity to enforce it. However, this theory seems to be waning, as the entity created by the will of the member states demands increased room for maneuver in all areas of legislation. Criminal law is no exception,[9] although it should be noted that sometimes the member states want to resign this segment of sovereignty only after intensive, long, and persistent pressure.[10]

Even so, the European Union seems to be constantly challenged, requiring it to work together to meet goals in a united manner and show the strength of the community, unlike previous isolated efforts.[11] The solutions used in the previous framework of the member states, possibly through international conventions, no longer necessarily produce the desired result and do not solve new problems. World changes have called for the development of a new form of cooperation and the need to rethink old solutions that lead to integration in criminal law. Indeed, how is integrative cooperation is different from previous cooperation? Clearly, both are mainly aimed at meeting the challenges posed by international crime, but criminal justice integration will, hopefully, be a different form of cooperation that may be better suited to increasing law enforcement effectiveness.[12] However, such challenges already call for reactions that tear apart the traditional formulas for responses.

In our view, the trend can be seen in two directions: the threat to the interests of the Union[13] and the issues of individual member states. The latter is ignored by the

8 See EU enlargement policy.
9 Fromm, 2006, pp. 104–108; Vervaele, 2006, pp. 87–93; Kuhl and Killmann, 2006, pp. 100–103.
10 Valki, 1997, pp. 85–91; Jakab, 2006, pp. 3–14; Valki, 1999, pp. 1000–1007.
11 For an overview of the possibilities for judicial cooperation in criminal matters, see Farkas, 2001; Karsai, 2004; Udvarhelyi, 2021.
12 For previous efforts, see Farkas, 2004.
13 An example is fraudulent competition for budgetary resources.

Union, as the problems do not directly affect the EU but cause severe problems at the member-state level. Without joint action, solving these issues would be challenging, even impossible.[14] However, we must not believe that greater cooperation can only take place within the framework of the Union: an example is cooperation under the auspices of the Council of Europe. However, what is striking is that the legislation within the Union regarding quality and intensity represents a new chapter in cooperation.[15]

This change affects many areas of the Union. However, given the sovereignty conflict, it is strongly felt in criminal law, perhaps more strongly than in any other area.[16] The traditional approach to specific infringements is no longer sufficiently dissuasive; thus, how classical means, such as administrative sanctions, have been used is being transformed. However, the 'classical' means are being replaced by criminal sanctions in many cases. Hence, a kind of new silent reception can be observed: the range of instruments previously classified as criminal law permeates the sanctions belonging to other fields of law; thus, they show signs of criminal law. Therefore, it is not a question of trying to settle a conflict through criminal law but of preserving the field of non-criminal sanctions as a forum for problem-solving while interweaving them with elements of criminal law to be as effective as possible. This process must induce a change and expand the concept of criminal law in the traditional sense. Accordingly, a new approach emerges, which also means that the concept will necessarily expand or, perhaps, has already expanded. It seems clear that this process is at the crossroads of political and scientific debates, but we seem to be on the path to developing European criminal law. Although we often only taste the concept, it seems likely that, eventually, we will have to befriend it and welcome a new criminal law.[17]

An eclectic example of the process of Europeanization of criminal law is the approach to competition law at the Union level.[18] Considering these legal instruments, the legislator has provided the acting bodies with an arsenal of tools for their effectiveness that almost rivals the tools provided in the criminal procedure standards of the Member States. Hence, many questions can be raised, either concerning the guarantee system otherwise provided in criminal procedure law or from other aspects.[19] However, this momentum vividly characterizes the trends. We do not even have to go abroad for the example of the convergence of the two fields of law. The Hungarian legislature grants some powers to the competition authority, and the Criminal Code reflects the fact that the two fields of law have entered into a closer union than perceived.[20] This process forces both criminal lawyers and legislators accustomed to

14 It could be, for example, cross-border trafficking in human beings.
15 Hecker, 2007, pp. 84–89.
16 Szalayné Sándor, 2004, pp. 27–35.
17 The concept of European criminal law is understood in the narrowest sense as the criminal law norms of the European Union. Farkas, 2001, p. 12.
18 Beyond competition law, there is a strong emphasis on other areas, such as criminal consumer law. Madai, 2007; Madai, 2014.
19 Klip, 2009, pp. 151–287.
20 See, for example, paragraph 420 of the Hungarian Criminal Code (Agreement restricting competition in public procurement and concession proceedings).

traditional dogmatics to rethink the boundaries of criminal law. In this context, the statement that concepts previously developed by criminal lawyers in each member state are based on their approach or even compelled by the legislator may take on a new meaning. This change can often make it essential to fill these concepts with different content. A specific and undoubted position to consider in this context may also be that differences in criminal law between the member states may affect competition law, which has a distortive effect on competition.[21] This situation is another relationship between the two areas of law.

As noted, the European Union influences the legislation of the member states in various areas, which can only be achieved if the interests of the Union justify it. Thus, the power to legislate in criminal matters remains in the hands of the member states on matters where there is no common EU direction. This option provides the states with a relatively wide margin of maneuver in cases where they want to enforce their internal legislative ideas in light of the socio-economic situation, which requires criminal law regulation.

Today, we must consider the following EU rules on substantive criminal law regarding economic crime:

- Directive 2013/40/EU of the European Parliament and the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA[22] (the Cybercrime Directive);
- Directive 2014/42/EU of the European Parliament and the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union;
- Directive 2014/57/EU of the European Parliament and the Council of 16 April 2014 on criminal sanctions for market abuse (the Market Abuse Directive);
- Directive 2014/62/EU of the European Parliament and the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law and replacing Council Framework Decision 2000/383/JHA;
- Directive (EU) 2017/1371 of the European Parliament and the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law;
- Directive (EU) 2018/843 of the European Parliament and the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing;
- Directive (EU) 2018/1673 of the European Parliament and the Council of 23 October 2018 on combating money laundering by criminal law;
- Regulation (EU) 2018/1805 of the European Parliament and the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders;

21 Albrecht, 2000; Ligeti, 1998.
22 Justice and Home Affairs (JHA) Council.

- Directive (EU) 2019/713 of the European Parliament and the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413 / JHA.

It is important to emphasize that the above key EU elements focus on economic crime in the broadest sense, but the Directive on the protection of the European Union's financial interests has a special place, which, given its role, is the subject of a separate inquiry. However, regulation is classified as an economic crime, as it penalizes behaviors that negatively affect the Union's revenues and expenses. Thus, within the framework of the dogmatic interpretation of the member states, it primarily sanctions tax fraud-type behavior.

Furthermore, for example, confiscation rules do not explicitly penalize certain specific behaviors but focus on the recovery of property resulting from (but not limited to) organized crime offenses given their economic weight. Therefore, effective common rules on this issue make it possible for law enforcement authorities to take effective action in this area in cross-border cases. Meanwhile, we must note that the legislature of the member states has the option (beyond EU rules) to formulate criminal offenses in its criminal code. They may serve to comply with European Union law and, in the event of an internal claim by a member state, cover behavior that occurs in that Member State but is not covered by EU law. Such solutions may also bring the criminal law rules of the Member States, otherwise partly different in content, closer together. However, the presentation of the related policy obstacles and the challenges from dogmatic differences would be significantly beyond the scope of this study.

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