

PHENOMENOLOGY OF PUNISHABLE BEHAVIORS IN THE ECONOMY AND THEIR IMPACT ON THE SUCCESS OF THE ORGANIZATIONS

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Abstract

In the economic sphere success is measured by the economic parameters. Business profitability is utilitarian assumption of economic success. The success of organizations depends on the management. Therefore, the economic responsibility of management and business organizations is imperative. In addition to economic, there are other types of responsibilities in business: social, ethical and legal. Each of them carries their own relevance. Legal responsibility is an obligation to respect the legal regulations of a given country in conducting business. Punishable behaviors are defined as behaviors contrary to the legal norms for which sanctions are prescribed. The main motivation for committing punishable behaviors in the field of economy lies in achieving illegal gain for oneself and/or causing damage to the others. In

market competition, freedom of participants is granted, but it cannot be absolute. Their competitiveness is essential; however, it must be regulated. The economic success of the organizations must be in correlation with the legal perfection of their business. Economic behaviors in accordance with the rules should be accepted and promoted while opposite behaviors should be detected and sanctioned. Punishable behaviors are diverse. They can be categorized according to several criteria, e.g. the object of protection, *modus operandi*, the segment of the economy, characteristics of the perpetrator, and types of injured parties. However, the basic criteria in categorizing punishable behaviors are their substance and intensity of the consequences (danger, harmfulness) they cause. Punishable behaviors, in accordance with the above criteria, are manifested through serious, less serious and mild forms of violation of others' rights and social values. Forms of punishable behaviors in the economy, ranked according to their degree of hazard/harmfulness are economic criminal offenses, economic misdemeanors and disciplinary acts. Punishable behaviors are anomalies and deviations in economic behavior whose essential attributes are complexity and limitlessness. These characteristics of punishable behaviors in the economy stem from the identical characteristics of the economy, which is the context of their presence and existence. Improved understanding of the phenomenology of punishable behaviors in the economy is of paramount importance and represents a precondition for their more successful reduction and/or elimination, either by business organizations (internal actions – controlling) or by the competent institutions (external actions – prosecution).

Keywords: punishable behaviors, economic criminal offenses, economic misdemeanors, disciplinary acts, success of the organizations

JEL Classification: F5, F49, L20

1. INTRODUCTION

Organizations are established for the specific purpose and generally exist as long as they fulfill their purpose in a socially justified and economically logical way. *The purpose of existence or the mission of the organization* is the creation of new values which are placed on the market to the users in order to meet their needs. The mission of the organization is socially justified if there is an adequate level of demand of its products and is economically logical if it is realized in a profitable way. Profitability enables business continuity and progression, resulting in multilateral positive effects related to *the organization* and the associated

interest groups.¹ Business profitability is utilitarian assumption of economic success and viability of the organizations on the market.

In the economic sphere success is measured by the economic parameters, primarily by *profit* or *gain*. The Accounting Act prescribes the economic-financial parameters of business performance which are contained in *the annual financial statements* (Article 15) and *the annual report* (Article 18). Profit or gain is also contained in the legal definitions of the basic types of economic subjects (companies, crafts) as their essential element. The success of organizations depends primarily on the management. Therefore, the *economic responsibility* of management is imperative.

In addition to economic, there are other types of responsibilities in business: *social, ethical and legal*. Each of them carries their own relevance, but they are not necessarily equivalent. They can be understood in a hierarchical or pyramidal relation. For example, Carroll's pyramid (Carroll and Buchholtz, 2003:40, according to Srbljinović, 2012:164) contains economic responsibility in its base, and upgrading to the top of the pyramid are respectively positioned statutory/legal responsibility, then ethical responsibility and philanthropic/social responsibility.

The European Commission defines *Corporate social responsibility* as "the responsibility of enterprises for their impact on society" (European Commission, 2011:6). Socially responsible companies, in addition to focusing on consumers, competition and profit, harmonize their business with social needs and environmental protection voluntarily and in interaction.

Ethical responsibility or business ethics (Jurković et al., 1995:447) is the application of ethical principles in business relationships and activities. Business ethics implies the obligation to act in accordance with the principles of responsibility, integrity, efficiency, transparency, quality, acting in good faith and respecting fair business practices towards business partners, business and social environment, and your own employees (CCE, Code of Business Ethics, Article 4). Ethical responsibility is complementary to economic responsibility, and substantially corresponds with social responsibility.

¹ Interest groups by their nature are divided into: *primary or business* (co-owners, managers, employees, customers/consumers, suppliers, financiers, investors ...) and *secondary or social* (local and national community, the media, professional organizations, political authorities, institutions of areas of education, culture, sports, health, environmental protection ...).

Legal responsibility implies an obligation to respect the legal regulations in business. Management is generally responsible for conducting business in accordance with the law, but the consequences of illegal business apart from it are also borne by the economic subjects.

Given dimensions of responsibility in business are not mutually independent, autonomous and exclusive. Hypothetically speaking, the first two dimensions are obligatory, and the other two are optional.

Legal responsibility in business implies refraining from unlawful or illegal behavior. *Punishable behaviors* are defined as behaviors contrary to the legal norms for which sanctions are prescribed. The main motivation for committing punishable behaviors in the field of economy lies in achieving illegal gain for oneself and/or causing damage to the others. In market competition, freedom of participants is granted, but it cannot be absolute. Their competitiveness is essential; however, it must be regulated. The economic success of the organizations must be in correlation with the legal perfection of their business. Economic behaviors in accordance with the rules should be accepted and promoted, while opposite behaviors should be detected and sanctioned.

2. PHENOMENOLOGY OF PUNISHABLE BEHAVIORS IN THE ECONOMY

Punishable behaviors are diverse. They can be categorized according to several criteria – for example *the object of protection, modus operandi, the segment of the economy, the characteristics of the perpetrator, the types of the injured parties*. However, the basic criteria in categorizing punishable behaviors are their substance and intensity of the consequences they cause. Punishable behaviors, in accordance with the above-mentioned criteria, are manifested through serious, less serious and mild forms of the violation of others' rights and/or social values. Forms of appearance of the punishable behaviors in the economy, ranked according to their degree of hazard, therefore are: *economic criminal offenses, economic misdemeanors and disciplinary acts*.

Punishable behaviors are anomalies and deviations in economic behavior whose essential attributes are complexity and limitlessness. These characteristics of punishable behaviors in the economy stem from the identical characteristics of the economy, which is the context of their presence and existence.

2.1. ECONOMIC CRIMINAL OFFENSES

Criminal offenses and criminal sanctions shall be prescribed only for acts threatening or violating personal liberties and human rights, as well as other rights and social values guaranteed and protected by the Constitution of the Republic of Croatia and international law in such a manner that their protection could not be realized without criminal law enforcement (the Criminal Code, Article 1).

A criminal offense can be committed by an act (*delicta commisiva*) or an omission to act (*delicta ommisiva*) (Article 20). Apart from principal (one person) and co-principal (more persons jointly), other persons (accomplices) – instigators and aiders can also participate in the perpetration of criminal offense (Article 36-38).

In the context of economy and management perpetrators with the status of responsible persons in legal persons are particularly important. The Criminal Code (Article 87) defines *responsible person* as a natural person who manages business affairs of a legal person or is entrusted with particular tasks from the field of activities of a legal person. In addition to the responsible person as the perpetrator, the legal person also bears responsibility for criminal offense. The Act on the Responsibility of Legal Persons for the Criminal Offences prescribes that responsibility of legal person is based on the guilt of the responsible person (Article 5).²

Criminal offenses, including economic, due to the property of perpetrators, are divided into: *specific criminal offenses (delicta propria)* which provide that the perpetrator may be a person with certain characteristics (responsible person, official, etc.) and *general criminal offenses (delicta communia)* which provide that the perpetrator can be any or every person.

Economic criminal offenses are specific types of offenses in the Criminal Code whose *manner/context of perpetrating* stems from *business operations* or is essentially connected with them. Coverage of criminal offenses that may be considered economic results from the combination of criminal law and crime criteria. The criminal law criteria are related to *the object of protection and characteristics of the perpetrator*, while crime criteria include *manner, means and circumstances of committing criminal offenses and methods for their detection and investigation*.

Economic criminal offenses are often denoted as *economic criminality*. Both terms are used almost interchangeably, but are different in that the first refers to the criminal law aspect and therefore belongs to the criminal dogmatics, while

² The legal person shall be punished for a criminal offence of a responsible person if such offence violates any of the duties of the legal person or if the legal person has derived or should have derived illegal gain for itself or third person (Article 3).

the economic criminality refers to a specific social phenomenon and therefore has more criminological nature (Novoselec, 2009:1).

Economic criminality in a narrow sense (*restrictively defined*) encompasses the totality of criminal offenses committed in the sphere of management, the executive and supervisory functions in the economic subjects in the pursuit of economic activities. In a broader sense (*extensively defined*) economic criminality includes punishable actions (criminal offenses and misdemeanors) committed in non-economic subjects, if they are associated with asset management (Orlović, Pajčić, 2007:697-698).

The Criminal Code has twenty six chapters (Chapter IX – XXXIV) in its Special part. They essentially represent *catalogs of incriminations* related to certain social values to which criminal law protection is secured. *The economy* is one of those values explicitly protected by the Criminal Code. Chapter 24 (XXIV) contains the catalog of incriminations related to the economy.

In the phenomenological sense, criminal offenses in this chapter include different *manners of perpetrating* (abuse, fraud, bribery, preference, evasion, deception), various *segments of the economy* (capital market, public procurements, advertising, production, trade), different *objects of protection* (business books, institute of bankruptcy, the fiscal system, others' company, trade secret), and can be sorted according to various *character categories* (corruption, fiscal, stock, bankruptcy, delusional, sabotage, secondary, prohibition). Economic criminal offenses, apart from Chapter twenty four, are classified into other nine Chapters of the Criminal Code.³

In addition to the Criminal Code, economic criminal offenses are contained in the provisions of *secondary criminal legislation* (the Companies Act, the Foreign Exchange Act, the Act on Commodity Reserves and the Act on International Restrictive Measures). There are seventy one economic criminal offenses in the framework of Croatian criminal law (the Criminal Code and secondary criminal legislation). Their quantitative extensiveness and phenomenological yield is visible, but it does not automatically imply their qualitative optimality/perfection.

Statistical indicators of the Ministry of the Interior⁴ show that the police reported 2,177 perpetrators (2,026 natural persons and 151 legal persons) for

³ Catalog of criminal offenses by the lines of work of Criminal Police, Number: 511-01-75 / 20-3-183-161 / 2-12, passed on 1 March 2013.

⁴ Ministry of Interior, Statistical review of safety indicators and operating results in 2014, Reg: 511-01 142-1001-1/15, Zagreb, January 2015; the Ministry of the Interior statistics <http://www.mup.hr/main.aspx?id=180991>

6,393 economic criminal offenses in 2014. The most frequent economic criminal offenses in that year were Forgery of official or business document (1,673), Computer fraud (960), Abuse of position and authority (890), Illicit trade (453), Abuse of trust in economic transactions (374).

2.2. ECONOMIC MISDEMEANORS

Misdemeanors and misdemeanor sanctions shall be prescribed only for acts threatening or violating public order, social discipline and social values guaranteed and protected by the Constitution of the Republic of Croatia, international law and the laws whose protection is not possible without misdemeanor sanctioning, and their protection cannot be realized through criminal law enforcement (the Misdemeanor Act, Article 1).

This provision makes it clear that misdemeanors are punishable actions outside the scope of criminal offenses. Consequences of misdemeanors are usually less socially dangerous/harmful than the consequences of criminal offenses. Misdemeanors and misdemeanor sanctions can be prescribed *by law and the decisions of local and regional government* (Article 2).

In their statistical reports Central Bureau of Statistics (www.dsz.hr) classifies misdemeanors in the following categories: public order and peace, safety of road traffic, public safety, *economy*, *financial activities*, work and safety at work, education, science, culture and information, health care and social welfare, health insurance and environmental health, social self-protection, administration.

Table 1. shows the type and number of accused perpetrators in the domain of economy and financial activities in 2013.

Table 1. Type and number of accused perpetrators in the domain of economy and financial activities in 2013

type of person domain of misdemeanor	adult perpetrators	juvenile perpetrators	legal persons	responsible persons	total
economy	21,842 (8.7%)	55 (1.0%)	9,688 (33.1%)	9,635 (32.5%)	41,220 (13.1%)
financial activities	9,168 (3.7%)	2 (0.0%)	5,722 (19.6%)	6,117 (20.7%)	21,009 (6.7%)
total misdemeanors	250,516	5,866	29,236	29,609	315,227

Source: Central Bureau of Statistics – Misdemeanor perpetrators in 2013 (processed)⁵

⁵ *Legal persons perpetrators* are a domestic legal persons (such as companies, government bodies, trade unions, etc.) and foreigners considered as legal persons under Croatian law ... *Responsible*

2.3. DISCIPLINARY ACTS

Disciplinary acts are generally the least harmful types of criminal actions. They refer to the violation of specific legal norms which regulate the functioning and code of conduct of certain groups of citizens in different organizations. The relationships between employees and their organizations of employment (rights and obligations) are regulated by laws, subordinate legislation and other legal frameworks. In the private sector these are the Labor Act, collective agreements, employment rules, contracts in operation, codes of conduct and alike. In the state administration these are the Civil Servants Act, rules of the internal order, collective agreements, codes of ethics.

Considering individual cases separately, disciplinary acts in principle do not represent a significant disadvantage for the organization. The real danger, however, stems from their number and frequency, i.e. from the totality of the negative effects which have the cumulative impact on the organization and its operations.

3. IMPACT OF PUNISHABLE BEHAVIORS ON THE SUCCESS OF THE ORGANIZATIONS

The consequences of punishable behaviors in the economy result from the motif of their perpetration. It is primarily concerned with achieving illegal *gain* for oneself or the other, i.e. causing *damage* to the other. *The gain* achieved by perpetration of criminal action is primarily a legal category, and then afterwards economic category. Material gain achieved by criminal offenses or misdemeanor is liable to confiscation in criminal and misdemeanor proceeding conducted by the competent court. Unless revoked for any reason, the material gain is integrated into economic flows, but in principle, its illegal character never stops. *The damage* caused by punishable behavior is primarily an economic category and then afterwards legal. An injured party suffers the economic consequences of the misappropriation of its property promptly and truly. Legal proceedings instituted in order to protect property rights of the injured party are uncertain and lengthy, and often unsuccessful.

persons perpetrators are responsible persons (director, accountant, treasurer and others.) in a legal persons (company, government body etc.) ... (2014:8).

The consequences of punishable behaviors, according to the way of their demonstration, can be divided into *direct or individual* – those to which directly injured subjects are exposed and *indirect or social* – those that are realized as negative impacts on the wider community, i.e. the general social situation. In accordance with specified types of consequences, there are two groups/types of injured parties: *direct injured parties* – natural persons, legal persons and the state; and *indirect “injured parties”* – economic, social and political situation in the society.

Direct damage is never solely and exclusively a result of punishable behavior; it is automatic source of indirect consequences arising secondarily (by chain reaction or domino effect). Direct and indirect damages are indivisible from each other, they have a causal relationship; the second are multiplied from the first. Economic relations are complex, they cannot always be unambiguously identified, analyzed and evaluated, and the same applies to the negative effects of criminal actions in the economy. At least general analysis of direct and indirect damage is possible and desirable, and we are presenting the one related to the business organizations (private sector) and the state as an organization (public sector) (Orlović, 2013:405-406).

Business organization as the injured party of the criminal actions: a) direct damage (lower revenues or higher expenditures), b) indirect damage – b1) *demolition of a market economy* (non-market criteria for the allocation of resources, the collapse of the business climate, lower investment in excellence and development, lower interest of foreign and domestic investors, decrease in the competitiveness of the economy), b2) *increased business risk* (greater caution – lower economic activity, lower GDP, lower budget revenues, lower budget expenditures, slowdown in the development of state and society), b3) *increased borrowing* (higher amounts of interest, higher operating costs, lower competitiveness of business organization, loss of market share, lower economic activity, layoffs), b4) *the initiation of the procedure for legal protection* (wasting energy and financial resources, durability and uncertainty of procedures, costs of public administration and courts, increase in number of public servants, inefficient and expensive public administration).

State as the injured party of the criminal actions: a) direct damage (lower budget revenues or higher expenditures), b) indirect damage – b1) *fiscal deficit* (higher state borrowing, paying higher amounts of interests, over-indebtedness of the state, weaker credit rating, the more expensive borrowing – the higher

interest rates, debt bondage - debt rescheduling, interest payments instead of investing in the development, b2) *higher taxes for the economy* (higher operating costs, lower competitiveness of the economy, lower income of business subjects, reduction of business activities, less tax payments to the state - from business, layoffs - lower taxes on wages, increase of underground economy, b3) *higher taxes for citizens* (lower purchasing power, lower consumption, lower demand for goods on the market, inferior standard of living, unemployment, poverty, increased costs of state for social welfare), b4) *lower budget expenditures* (lower expenses on social security, education, health, lower standard of living, depopulation and lack of workforce, less infrastructure investment, lower economic activity, lower budget revenues, slowing the development of state and society).

Besides negative, punishable actions in the economy, marginally and conditionally, may as well have some positive consequences. The existence of two opposing sides in punishable actions, the injured party and the perpetrator, lead to the existence of reciprocity and equivalence in the consequences that arise (damage/gain). Material gain achieved by punishable action cannot be kept by the perpetrator, but must be seized in the judicial proceeding. However, in reality there is a significant discrepancy between the numbers of suspects, accused and convicted persons, and when one adds undiscovered crime (dark figure) – it is shown that a significant number of perpetrators of criminal actions successfully maintain its illegal gain. This fact is devastating for the legal system and the entire community.

What may possibly be considered positive in economic terms in such circumstances is the fact that this illegal gain is subsequently “injected” into legal economic flows in the form of investments, savings or consumption, which are desirable activities in usual economic circumstances. In legal terms, it is *money laundering*, one of the most serious forms of crime and in fact it is very doubtful, actually unacceptable, to consider any positive economic effects caused by criminal behaviors in the economy.

Ideally, illegal material gain should not have positive effects for its acquirers or holders on any basis. In this regard the state continuously invests certain efforts in ensuring legal, organizational, material and institutional conditions as well as in preventing and combating criminal actions from which such gain is generated.

4. CONCLUSION

The success of the business organizations is measured by the economic parameters. Responsibility in business is therefore primarily economic, but also legal, ethical and social. Apart from legal, criminal behaviors of the participants in the economic processes may as well have effect on the economic parameters of success.

Punishable behaviors in the economy are diverse, and their effects on the success of the organizations are exclusively negative, to a greater or lesser extent. The main motif of the perpetrator is obtaining illegal material gain for oneself, i.e. doing damage to the other.

Phenomenology of punishable behaviors in the economy can be analyzed and systematized according to various criteria; the most important of them to be the level of hazard / harmfulness caused by underlying behavior.

Economic criminal offenses are the most dangerous forms of punishable behaviors prescribed in the Criminal Code and the secondary criminal legislation; they include different ways of perpetrating, segments of the economy, the objects of protection, character substance. In addition to the responsible person as the perpetrator, the legal person also bears legal responsibility for criminal offenses. *Economic misdemeanors* are less dangerous forms of punishable behaviors, prescribed by the laws and decisions of local and regional authorities. *Disciplinary acts* are the mildest forms of punishable behaviors, related to the working responsibility, i.e. violation of labor discipline by workers at the expense of the organizations or employers.

The consequences of punishable behaviors are direct (injured subjects) and indirect (economic and other consequences for the injured party and society); they are causally related and indivisible to each other. Main injured parties of punishable behaviors are business organizations and state and through these subjects negative consequences are dispersed to the entire community.

Improvement in understanding *phenomenology* of punishable behaviors in the economy contributes to a more comprehensive understanding of their *consequences*. Alongside with the *etiology*, that is the key determinant of the respective socio-economic phenomena. The adequacy of systemic reaction against them also depends on the level of cognition of aforementioned determinants. Key determinants of the respective reaction are reciprocal to previous ones and those

are the prevention and repression of punishable behaviors offenses and sanation of their consequences.

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