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## Economic Criminality in Transition Countries- Aspects of the Legal and Economic Analysis

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### **Abstract**

*Doubtfully considered the economic criminality, as a real dangerous form that damages the state economies, which is caused by economic criminal action taken; as such, the action that impedes business between business entities. All of these actions are considered as unlawful actions. These illegal actions of physical and legal persons who are exercising a business activity or in any way are related to the business, and essentially dealing with criminal acts performed in the economy which makes up economic crime. All these actions are undertaken for the purpose of material and financial benefits. The difficulties in dealing with economic criminality begin straight away when we attempt to find a blanket definition for it. No one has yet been able to do so satisfactory: "Although economic criminality and the combating therefore is one of the most pressing issues of the present day, its definition and the definition of what constitutes an economic crime remains one of the unsolved problems..." Astonishing though that may seem, it is indeed the case. Economic criminality encompasses all crimes that are committed within, against and by business enterprises. While this includes crimes committed by employees, it is important to realize that employee criminality is only one facet of economic criminality.*

**Key words:** Economic criminality, Firm wide risk, Economy & Production, Activities Products and markets, EU financing reforms, EU standards.

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### **I. Introduction**

Actions, which are not based in work and other permitted activities but in misuse, frauds and suspicious transactions. Criminality as a negative phenomenon and dangerous to society manifested in various forms throughout the course of human history."Economic criminality submitted in all areas of economic activity, ranging from the business of deposit, through production, cash business, commercial sector, foreign trade, commercial shops and hotel, accountants and economic sectors until in the general leadership

#### *1.1 Economy criminality and definitions*

As one of the best definitions of economic criminality considered definition of Edwin Sutherlandit (President of the American Association for Sociology) by 1939 which this criminality is considered as

white collar criminality. According to him economic criminality considered as criminality which appears in the sphere of economic activity, which forms mostly manifested during the acquisition of shares, advertising of goods, coverage of financial and corruption of civil servants directly or indirectly. (See too; B.Banoviq, obezbejenje dokaza was kriminalistickoj obradi krivicni dela privrednog kriminaliteta, Belgrade, 2002, p.13.)

Basic causes that conditioned the appearance of this type of criminality are: report form of the property of the organization working, forms of property, the degree of concentration of functions, the development and justification defense system, the organization's business position working, governance and organization development professional and intellectual ability of the offender. Although the objective factors have central importance in terms of appearance and the structure conditionality certain economic criminality, professionalism and intellectual ability, as subjective factors, in certain cases, may be crucial in committing economic criminality offenses."Perpetrators of crimes against the economy may appear different persons, in some cases, economic offenses carry all persons, while some illegal works in the field of economy can perform only one category of persons. Associated with guilt, such offenses may be committed intentionally, which must include the desire of offender for his work. In some offenses against the economy is foreseen and the receipt of the items with which the offenses was committed (see Section 244 KP Kosovo, counterfeit money).

### *1.2 Macedonia and an overview in criminal actions field*

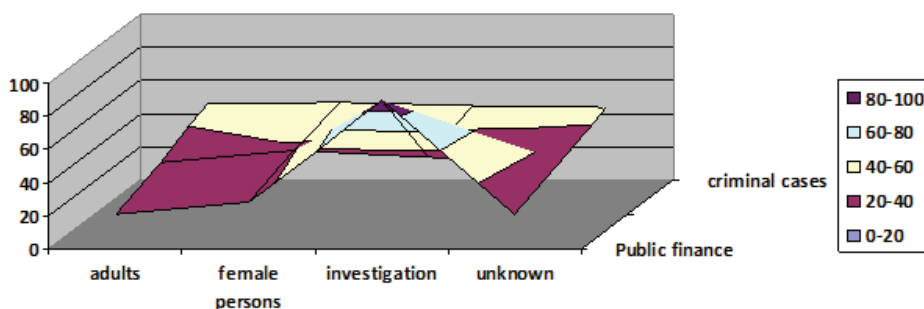
Slow changes in Macedonia after independence have resulted with massive filling criminal actions which have not been known until then. This particular phenomenon has been evident during the process of transformation of state-owned enterprises into private. In this process by exploiting the situation of termination of these enterprises with state capital which enterprises created the situation that they have huge debts and using these situations to these enterprises necessarily should start a bankruptcy procedure. By utilizing these situations, these companies were bought very cheap, while in such purchases was created a certain layer of excluded from work that called as bankruptcy worker. These situations have caused to as certain that in the Republic of Macedonia as the dominant form of economic criminality be considered transformation of state-owned enterprises to the private, causing false bankruptcies, tax evasion, illegal transactions in the area of payment turnover, fraud of committees during their savings, maintain double accounting in order to remove corruption etc..

During the transition period, specifically during the years 2002-2010, economic criminality situation in the Republic of Macedonia was as follows;

	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Misuse of official duty and authorizations</b>	178	854	504	275	291	477	367	290	246
<b>Hiding of tax</b>	84	109	96	114	35	40	67	54	50
<b>Damage and unauthorized access to a computer system</b>	2	1	7	2	2	7	20	63	36
<b>Fraud in obtaining credit</b>	2	3	1	28	10	25	88	67	74

From the above table we will see that offenses against public finances, circulation of payment and the economy from year to year is increased starting in 2004 to 2007, where later we will see that during the years 2009 and 2010 there is a slight decrease.

In 2010, for committing offenses against public finances, payment circulation and the economy are presented 620 adult persons, of whom; 558 persons known perpetrator, 78 female offenders, to 60 persons is thrown application, for 60 persons is interrupted further investigation, to 11 persons investigation is terminated, for 439 perpetrators is indicted and 62 perpetrators are unknown.



**Tab I:** Economic criminality situation in the Republic of Macedonia on years 2002-2010

### 1.2.1 Juridical-penal treatment and economic sphere of development

The state should be able to carry out its powers in the economic sphere in terms of the existence of private property as the dominant form of ownership, in which is based on the principle of freedom of establishment of business entities, there is a need for ensuring the implementation of state bodies powers in this area. This insurance is done by foreseen and sanctioning criminal actions directed against the public finances, payment circulation and the economy as a separate criminal offense in Criminal Code of Macedonia. This way of providing economic system is based on the so-called criminal legal protection. In 2008, out of a total of 15 462 known perpetrators of criminal offenses, 542 have been the perpetrator of this crime. Largest number of perpetrators of 232 are from Skopje. Of this number 21 were juvenile offenders as persons aged 14 to 18 years.

## 2. Literature Review and Hypotheses

Economic criminality as very dangerous phenomenon is sanctioned and criminal and legal provisions. Criminal codes of various countries have provided separate chapters which treats this type of crime. Some of the offenses against the public finances, payment circulation and the economy by KP Macedonia are: Counterfeit Money (n.268.i KP); money laundering and illegal material benefit (n.273 KP); unauthorized production (n.276 KP); contraband (n.278 KP); violation of equality in the exercise of economic activity (n.282 KP); unauthorized use of a foreign firm (n.285 KP).

Criminal Code of the Republic of Albania, based on the statement of the UN, for the fight against corruption and swag, in December 1996, nr.9275 Law, dated 16.09.2004, especially the in Convention on corruption, Council of Europe, date 27.Janar 1999, devotes a number of provisions-articles, against crime of corruption- active and passive corruption in the private sector, active and passive corruption of public officials, of high state and local elected officials, judges and prosecutors and other justice officials, witnesses, experts and interpreters and the exercise of unlawful influence on persons exercising public functions.

## 2.1 Criminality associated with the laundering of money

This offense performed in the banking business, economic or financial will issue in circulation, will take, will give or will convert money which is aware that are obtained from the drug trade, arms trade or other criminal acts (n.273.par.I IMC). More severe forms of this offense provided in parag.4, and considered that performed if the contractor has performed work as members of a group, gang or other association which deals with laundering of money and other material property. For this type of offense the offender shall be punished with imprisonment of at least five years. In provisions parag.5, provided that counterfeit money shall be forfeited.

In money laundering is intended to be hiding and not the legality and use of revenue sources and results from these sources are for specific purposes legalizing illegal income. Fraud represents the essence of all the action in money laundering, because during all actions is intended that certain tools to be shown as legal in order they can be into circulation.

In progress through the table will present data on persons accused of committing a criminal offense of money laundering, for the years 2006-2010.

Data per cases	2006	2007	2008	2009	2010
<b>Convicted persons</b>	1	2	19	1	1
<b>Women</b>	-	2	-	-	-
<b>Persons found guilty</b>	-	1	1	1	-
<b>Procedure was terminated</b>	-	1	-	-	1

From the total number of persons charged with criminal offenses of money laundering for the period in question, the court has decided as follows:

	2006	2007	2008	2009	2010
Convicted persons	-	1	19	1	-
Women	-	1	5	-	-
Total penalties	-	1	9	-	-
Prison sentence	-	1	9	-	-
Alternative measures		--	10	-	-
Suspended sentence		--	10	1	-

From the above table we will see that during the period in question, for a criminal offense of money laundering have been convicted of a total of 21, persons of whom the most in 2008,19 people. Also we will see that the perpetrators of this crime appear persons of both sexes.

## 2.2 Criminality against illegal trade

After that in conditions of market economy, state has limited powers in many activities including and productive activities may happen to be produced and processed and placed on the market products which may have adverse consequences for the lives of citizens as is the case with the production or circulation of narcotic tools. In some commodities submit a source permanent destruction of risks as is the case with weapons. Because of this circulation with such goods is prohibited or restricted. Any action for that inserts in circulation these goods, that causes illegal trade. In 2008, 964 offenses were caused in legal circulation of illicit trade.

### *2.3 Albania and problems identified.*

In the context of criminality in Albania we will focus on a specific aspect for Albania. Any anticipated strategy should also take into account the level of payment and other benefits of the staff within the justice system in general and judges in particular. An appropriate level of pay and other benefits is probably one of the most effective ways to "immunize" employees from corruption.

#### *2.3.I The Constitution of the Republic of Albania.*

Offenses against the person are the worse wound crime in Albania. This is because these offenses are committed against individuals Albanian society "Offenses against the person recorded 2240 proceedings, or compared to 2002, decreasing 5.5%". (Sollaku Th 2006 report pp 4)

Although generally results in a decreasing trend of these criminal group, is evidenced an increasing number: 63 proceedings for murder, article 76 of the Penal Code. These crimes have significant consequences to life and health such as the death of 271 persons and serious or slight injury of 421 persons. Of these criminal proceedings were sent for judgment, judgment and convicted 863 defendants and 642 other defendants judgment continues. For these types of serious crimes the prosecution has sought the prosecution of fierce political and judgment proceedings, to influence in alleviation and prevent this phenomenon very negative, with serious consequences not only for the victims and their families, but also for the public safety of society as a whole. (Sollaku Th 2006 report pp 7,11, 21).

#### *2.4 Albanian judicial system and the need for reform.*

Albanian judicial system has undergone radical changes and a improved considerably over the last decade. However, the need for more legitimacy and control show that the Albanian legal system needs further improvement in order to create a stable and transparent system, based on the principles of the rule of law. Legal instrumental often not respected or abused in order to achieve results "desired" - but not necessarily legitimate.

Consequently, the rights and freedoms of individuals often violated and give the impression that the judicial system is neither fair nor independent. (Law no. 8436, dated December 28, 1998, "On the organization of the judicial power in the Republic of Albania" [Judicial Power Law], Article 39, paragraph I.

#### *2.4.I The specific data for types of economic criminality*

For illegal trafficking are followed 270 proceedings, with 327 defendants. It has been indicted in the court for 184 defendants and convicted 105 of them.

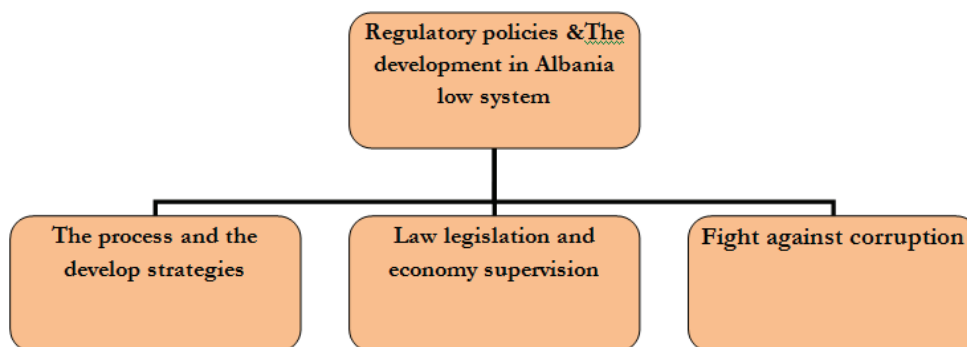
1. For the cultivation and trafficking of narcotics, has followed 333 proceedings, with 364 defendants. Has been indicted in the court and are sentenced 148 defendants.
2. For criminal offenses that are related to illegal activity or state employees in the public service, are followed 407 proceedings, with 224 defendants.
3. For offenses against the person, are recorded 2240 proceedings of which 63 for murder. These crimes have led to the deaths of 271 people and injuring 421 persons. For offenses against property and in economic sphere are 5101 registered proceedings of which were convicted 2413 people, while other 1227 trial continues.

### 3. Methodology and Research Goal

For theft of property, are recorded 2693 proceedings which have been sent to trial and are tried and convicted 1,198 defendants, while the other 653 are judging. For crimes in the field of customs and for criminal offenses relating to taxes are recorded 206 proceedings and are sentenced 145 defendants 62 others are on trial (OSCE Albania Report 2009).

### 4. Corruption in the Albanian judicial system

International and national studies show that corruption in the Albanian judicial system is perceived to be too high and be a serious obstacle to the functioning of the judicial system. While the new government has demonstrated a serious commitment to the fight against corruption, few concrete measures have been taken so far to tackle the issue of corruption in the judicial system.



Cumming, C. M., and B. J. Hirtle (2001): "The Challenges of Risk Management in Diversified Financial Companies, pp 134

To find solutions related to the real and perceived corruption within the system of justice should take measures set. The first step would be to end immediately contacts / inappropriate connections between members of the judiciary and the parties in the proceedings or their representatives. In addition, each court and the prosecution should be required to develop strategies and take concrete measures to combat corruption within the relevant institution in the Republic of Albania.

#### 4.1 Needs for legal proceedings rigorous in Albanian system.

As noted in this scientific paper, deprivation of liberty of persons set it in an extremely delicate situation. For this reason, it is important that the deprivation of liberty to be as limited and to follow rigorous proceedings defined in international documents, the Constitution of the Republic of Albania and in the Code of Criminal Procedure. All actors involved, that are police, prosecutor, judge and defense attorney, also have a key role in maintaining these standards and in taking action against abuses against persons or investigative actions.

In this aspect, there is room for much improvement in the Albanian context. Thus, it is observed that in most cases, persons deprived of their liberty are not informed of the reasons for arrest or their rights; them regularly abused by the police; they are unable to contact with a lawyer and are not sent

before a judge within the time specified in Constitution. Decisions argued in a poor manner and give the impression that decisions on the appointment of security measures often issued without legal reasons.

#### *4.2 Economic criminality prevention*

Considering the fact that economic criminality can appear in different forms, according to the recommendations contained in the International Convention, but also in bilateral agreements for the elimination of economic criminality, is necessary that within each system to be established more bodies and specialized institutions in order to be able to follow, detected and sanctioned this type of criminality. Anti-corruption policy is in the foreground, not only in the transition period, but also in other developed countries, because it is a widespread international phenomenon and socially in a very great risk. The fight against corruption, as international phenomenon, requires not only an effective policy within the country, but also international cooperation, based on the European Convention.

From criminal and legal standpoint, figures analyzed in the special part of criminal law and practice will prove how that it would be effective measures taken to prevent and fighting corruption at the present time and which areas will need to be met, in order to fight his policies give proper results.

Important role in economic crime prevention directly have; courts, public prosecutors, police, financial police and customs and services indirectly, the management of public revenues, directorate for prevention of money laundering, the state anti-corruption commission, , the state market inspectorate etc..

### **5. Conclusions and recommendations**

Economic criminality undoubtedly now considered as very dangerous form that are hurting the economies of different countries, developed or under development. Important role in economic criminality prevention directly have; courts, public prosecutors, police, financial police and customs services and indirectly, department of public revenue, directorate for prevention of money laundering, the state anti-corruption commission, the state market inspectorate etc.

Also the implementation of the legislation has a special significance in the prevention and combating of successful economic criminality. In preventing and combating economic criminality, important contribution will also provide ongoing scientific approaches, various economic forums, seminars, national and international conferences, etc. Crimes in the field of customs and for criminal offenses relating to taxes and tax liabilities are recorded 206 proceedings, with almost the same figure in 2002. Have been tried and convicted 145 defendants and are in judicial review 62 defendants. Analysis of the number of prosecutions for these offenses shows 21.7 percent of proceedings for crimes in the field of customs. Downward trend in 57 percent of proceedings for criminal offenses in connection with taxes and tax liabilities, does not reflect the real state of criminality in this important area, where collected revenues for the state budget. "Continues to feel the lack of effectiveness of internal control in taxes and tax liabilities, and therefore is not detected and reported the real criminality in this sector, which has to do not only with the concealment of income, but also with the laundering of dirty money.

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