

The Concept of Research on Economic Crime in the Context of the Research Task ‘Optimization of Evidence, Forensic and Operational Activities in Cases of Economic Crime From the Perspective of Law Enforcement Authorities’

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Abstract. *The aim of the publication is to outline the concept of research in the area of economic crime, which has been outlined on the basis of the undertaken research issues related to the implementation of the research task, entitled: ‘Optimization of evidence, forensic and operational activities in cases of economic crime from the perspective of law enforcement authorities’, which will allow to create an effective model for combating it. In the article, current research problems have been identified. The research project will include actions aimed at defining, designing and then determining the possibility of implementing practical tools to increase the effectiveness of law enforcement. An important research element, which is a basis for formulating specific conclusions and recommendations, will be to conduct a survey of opinions and expectations of practitioners concerning the possibilities of improving the detection process. The assumed research concept also involves diagnosing economic crimes (in terms of evidence, forensic and operational aspects). There are cases of evidence-intensive, multi-aspect cases in which the methods of action of the perpetrators constitute a challenge for law enforcement agencies in the legal or tactical aspect. Corresponding to the diagnosed research problems, several research levels have been proposed, such as causes, scale of economic crime, dynamics of crime, methods and mechanisms of committing crimes, and ways of counteracting them. As a result of in-depth research on the phenomenon of economic crime, proposals for specific solutions will be worked out, which may constitute a specific compendium of knowledge on the issues raised. The research concept covers a wide range of issues that correspond to the current challenges in combating this type of crime. A detailed description of the problems, and the research concept adopted allows us to conclude that the results of the research may be theoretically valuable and useful for science and practice. This publication constitutes a preliminary research concept adopted within the framework of the research task INP-2/2018/P/MP funded by the Ministry of Science and Higher Education.*

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Introduction

In view of the nature and scale of economic crime, it becomes a truism to state that economic crime, which is often accompanied by other types of illegal criminal activities or corruption, is a type of crime that causes a loss for the state budget and the private sector. The nature and scale of the threats requires undertaking measures, including empirical ones, aimed at developing an effective model

of counteracting economic crime. This objective can be achieved by undertaking a challenge — an analysis of the phenomenon in the following areas: investigation of the causes, scale of economic crime, dynamics of the crimes, methods and mechanisms of committing the crimes, outlining the profile of the perpetrators, evaluation of the type and manner of conducting procedural and non-procedural activities performed in the course of criminal proceedings, and diagnosis of detection difficulties.

The following research problems have been identified to which answers need to be sought in the course of the research:

1. *Because of the multitude of categories of economic crimes, which of these crimes are most frequently committed according to police statistics?*

On the basis of the obtained statistical data, it will be possible to specify the most economically and socially harmful crimes, which will allow the problem to be channelled and countermeasures adequate to the existing problems to be created. Thus, we can accept the preliminary working hypothesis assuming that the most frequently committed economic crimes are crimes covered by the Criminal Code.

2. *In view of the number of laws criminalising economic crimes, what are the problems in making a proper subsumption?* The application of regulations is problematic, because of their resources, nature, or statutory modifications (as emphasised in the literature, criminal responsibility for economic crimes is indicated in the Criminal Code¹ in 50 acts and covers 233 basic crimes²). As a result, it will be possible to create legislative proposals aimed at improving the effectiveness of actions, also taking into account the procedural economics, both in financial and time terms. It will also be appropriate to catalogue offences according to subjective, objective, or statistical criteria. The hypothesis that can be put forward in relation to the presented problem is as follows: the number of provisions currently functioning in the legal system penalising crimes of an economic nature, and their internal inconsistency, in practice, causes problems with proper subsumption.
3. *Which legal regulations affect the effectiveness of criminal proceedings in cases of economic crimes, and which, through too much formalism, make it difficult for officers to take quick and effective action?* In the practice of prosecuting economic crimes, there are procedural and evidence problems, including in particular: identification of sources of information about the crime, tactics of conducting detective evidence activities, a wide spectrum of evidence proceedings, especially in the field of securing digital evidence, and expert participation in these activities. Another problem is access to classified information, registers, and bank accounts. The difficulties in crime detection are also caused by the advanced methods used to commit the crimes and their continuous evolution. Multithreaded, complicated investigations require specialised knowledge and professional experience. It appears that temporary seizure of movable property and close cooperation with the prosecutor's office in the area of issuing orders

¹ Ustawa z dnia 6 czerwca 1997 — Kodeks karny. Dz.U. 2018, item 1600.

² Zawłocki R, *Podstawy odpowiedzialności karnego za przestępstwa gospodarcze*. Warsaw, 2004, p. 76.

to secure property may be an effective tool in the fight against economic crime. However, a threat to the effectiveness of proceedings may be the formalisation of activities related to access to classified information, registers, and bank accounts. The verification of such a hypothesis may be used to create a model of police conduct that reduces bureaucracy.

4. *What are the key issues to be addressed when constructing algorithms to deal with cases relating to specific categories of economic crime?* It is therefore necessary to analyse police practice in terms of the functioning of procedures/guidelines for combating various categories of economic crime. The adopted hypothesis is as follows: the development of transparent, and informal procedures of conduct in cases related to combating this crime will contribute to improving the work of the Police.

5. *What is the scale of economic crime and what are the connections (personal, physical) with organised crime, drugs, corruption, cybercrime, cross-border crime, terrorism, and political extremism?*

Trends in economic crime are observed, especially in the context of tangible benefits derived by perpetrators from illegal activities linked to other categories of crime. On the basis of the analysis of criminal investigation files and the legal qualification of the charges, it is possible to assess the scale of the links mentioned in the research problem of crime categories. Thus, the following research hypothesis can be adopted: economic crime is linked (different categories of connections, e.g. organisationally) to organised crime, drug crime, corruption, cybercrime, cross-border crime, terrorism, and political extremism.

6. *What is the procedure of adjudication in commercial matters, and what are the final decisions in commercial matters?*

In this context, it is justified to determine what final decisions are made, and to indicate the scale of consensual ways of concluding proceedings, as specified in the provisions of the Code of Criminal Procedure Article³ 335 § 1 and § 2 of the Code of Criminal Procedure, 338a of the Code of Criminal Procedure, and Article 387 of the Code of Criminal Procedure. Due to the significant financial benefits obtained by the perpetrators of these crimes, it would be desirable for courts to impose appropriate penalties, and the penalty measures provided by law. In the context of such a problem, a hypothesis can be put forward: consensual ways of concluding criminal proceedings in cases of economic crimes are a constant practice, and decisions issued by courts are adequate to the crimes committed.

7. *In what areas should police cooperation with prosecutors, courts, and other institutions be improved and will it influence the effectiveness of combating these crimes?*

The exchange of information, as well as substantive support of specialised entities, is undoubtedly an important aspect of combating economic crime. The diagnosed problem is also difficulties in the cooperation of law enforcement agencies and the justice system with the economic sector or citizens. Therefore, a hypothesis was adopted: improvement of cooperation between the Police, the prosecutor's office, the courts, and other institutions will influence the effectiveness of combating economic crimes.

³ Ustawa z 6 lipca 1997 — Kodeks postępowania karnego. Dz.U. 2017, item 1904.

8. *What are the training standards for officers involved in combating economic crime?*
It is justified to develop effective tactics to combat crime. Advanced, specialist training is necessary to prepare specialists who deal with combating economic crimes related to new forms of committing crimes (e.g. cybercrime), their nature (VAT fraud, fuel crime), and the diversity of the legal forms of the economic activity (e.g. limited liability company, Internet sales). Proposed hypothesis: Participation in trainings of officers dealing with combating economic crime will influence the effectiveness of conducted proceedings.

The research concept

The first stage of the research on the title issue will include the identification, on the basis of available police statistics, of categories of the stated crimes (from the Criminal Code and non-code regulations) against economic trafficking — in quantitative and qualitative terms. For example, in police pragmatics, economic crimes include crimes involving forgery of documents and their use as authentic documents, as well as certification of untruth in documents, against property, i.e. any kind of appropriation, extortion of money and goods. In Chapter XXXVI of the Criminal Code, crimes against economic activity are listed, i.e. extortion of credits, bank loans, extortion of compensation under insurance contracts, money laundering, prevention of debt enforcement, unreliable keeping of business records and prevention of public tenders. Often, the category of economic crimes includes crimes against money and securities trading and falsification of official marks. Crime is also associated with crimes related to obtaining someone else's computer program in order to gain financial gain — Internet and intellectual frauds, including the introduction to the market of goods under a counterfeited trademark, sales of alcoholic beverages without a required permit, bottling of spirits and production of tobacco products without a required permit, fuel crime, and finally against the environment (negative consequences of economic activity) and against labour rights (violation of employee rights in workplaces).

Bearing in mind that currently there are various types of criminal regulations protecting the economy (both in the Criminal Code and in non-code regulations), it will also be justified in the course of the research process to indicate the typology of economic crimes based on the subjective criterion in the sense of the victim of the crime (e.g. Article 296 of the Criminal Code — an entrepreneur), the perpetrator (e.g. Article 299 § 2 of the Criminal Code — an employee of a financial institution), and the criterion of subject of protection (e.g. economic trade, stock exchange trading). This analysis will serve to identify the category of crimes (crimes) in relation to which the research issues will be specified in detail.

At the same time, based on the literature on the subject, including criminology ('economic pathology') and sociology ('economic crime'), the definition of economic crime will be clarified. During the research process, a correlation between economic crime and white collar crime will be carried out. Conducting this procedure is necessary not only to specify the subject of the research, but it also allows a proper criminal interpretation of the basis of responsibility for economic crimes to be conducted. An important stage of research is the operationalisation of the

research process (definition of concepts, selection and definition of indicators and variables, selection of sets for research).

An indispensable procedure in the context of the issues raised is also an analysis of government programs and strategic European documents in terms of the functioning of current concepts and best practices, on the basis of which they will build effective solutions that meet the current challenges in order to improve the system of preventing economic crime.

In the course of the research, a diagnosis of economic crimes (in terms of evidence, forensic, and operational aspects) will also be carried out. There are cases of evidence-complex, multi-faceted cases in which the methods of the perpetrators pose a challenge to law enforcement agencies in legal or tactical terms

Analysing the competence acts regulating the scope and tasks of institutions and services dealing with combating economic crimes, one can observe a similar subject of activity. Therefore, it is justified to analyse the scope of competence of individual services established to combat economic crime and to review the tasks of institutions and entities which, apart from law enforcement agencies, perform functions in relation to combating various aspects of economic crime (e.g. the Polish Financial Supervision Authority, the General Inspector of Financial Information, the Main Pharmaceutical Inspector, the Office of Competition and Consumer Protection, the Public Procurement Office, and the Trade Inspectorate). Therefore, there is a need to develop a model of inter-institutional cooperation in the field of combating economic crime, while eliminating the need to undertake identical undertakings by different entities.

It is also important to create information policy tools in the scope of the research. Social prevention appears to be an important element in the model of crime prevention, including economic crime prevention. Therefore, it is necessary to develop effective media prevention tools and a specific catalogue of rules of conduct — ethos in business. To combat the crime in question, it is also necessary to increase the level of knowledge of authorities established for the protection of security and public order with regard to the implementation of statutory tasks, and to support the quality of 'services' provided by the authorities responsible for security, which will also enable the implementation of tasks for the benefit of citizens in a more effective manner.

The main objective of the researcher in the title research is to indicate solutions supporting law enforcement officers acting for the benefit of state security in the implementation of the conducted proceedings, and to support the process of their training, as well as to enable the public sector to have access to centralised knowledge and algorithms for dealing with the occurrence of prohibited acts, and the occurrence of victimogenic factors.

The assumed research objective pursued by the concerned research is also to show the links between economic crime and criminal offences, drugs, corruption, cybercrime, cross-border crime, terrorism, and political extremism, and to indicate criminogenic areas such as loans, subsidies, tenders, and bank contracts.

In relation to this problem, the assumed goal of the research process is to develop theoretical assumptions (legal, systemic, organisational) that constitute the basis for considering the possible legitimacy of constructing a prototype of a specialised application (software) supporting the taking of fundamental procedural

decisions in economic matters as the implementation of the postulate which is to increase the competence of services and institutions in the field of the recognition, detection, and combating of these crimes of an economic nature that are particularly acute for the state and citizens.

To adequately summarise the abovementioned research problems, it is justified to distinguish several research levels, including the causes, manifestations, forms of crime, and mechanisms of combating it:

1. Legislative — analysis of national and international legal acts, ministerial acts, government programmes, and European documents in order to develop proposals for unification, changes in regulations and the development of a catalogue (containing categories of crime typologies, and their descriptions) constituting a supporting tool useful for the performance of official duties.
2. Jurisdictional — analysis of national and EU jurisprudence in terms of creating interpretative models that can be applied in practice on the basis of individual cases and problems considered by courts.
3. Evidentiary — analysis of procedural and non-procedural activities of law enforcement authorities, procedural decisions issued in the course of proceedings, and substantive decisions made (final decisions) in order to develop algorithms and canons of proceedings; procedural authorities in criminal proceedings are obliged to establish facts essential for the settlement of a case in a manner allowing for the realisation of the principle of material truth; evidence constituting a source of knowledge is collected, recorded, conducted, and evaluated during the course of evidence proceedings; therefore, the aspect of introducing evidence to the process, its admissibility, and the principles and methods of conducting it is important.
4. Social (civic) — construction of a guide for citizens and business entities containing procedures (algorithms) for a case of the occurrence of specific prohibited acts and victimogenic factors.
5. Training — developing assumptions (concepts) for the construction of a methodology of proceeding by law enforcement agencies in the area of preventing economic crime (including in particular tactics and technologies, and defining the principles of cooperation between law enforcement agencies, the judiciary, and other specialised institutions).
6. Technological — identifying the IT tools functioning in Poland and abroad (simulators, prototypes, training applications) in the field of counteracting economic crime, and possibly, in the absence of such tools, suggesting initial assumptions for the construction of such a multifaceted tool using modern technologies to combat economic crime; a functional tool could be used to analyse historical data, detect symptoms and manifestations of economic crime, and forecast possible mechanisms of committing crimes in the future, making time, geographical, personal, and financial flows correlations. Such a solution would be useful for crime fighting services, state authorities and institutions, as well as for in-depth research analyses.

Recommendations developed on the basis of the presented multifaceted approach will be used to outline a model of economic crime control.

The criminological study carried out within the framework of the research will cover the etiology, phenomenology of the phenomenon, and prevention.

Criminology is also interested in the circumstances of committing a crime, the situation of the perpetrator, and the motivation for their action.⁴

Adequately to the adopted research concept, the following research methods will be used:

1. Analyses of legal sources.
2. Analyses of international law instruments.
3. Analyses of literature (comments, monographs, manuals, articles).
4. Analyses of judicial decisions.
5. Analyses of statistics from the area concerned.
6. Analyses of documents (file examination).
7. Diagnostic survey.

The research techniques to be used will be document research and surveys. In the research on how the research tool will be used, questionnaires will be used (a questionnaire for specialists fighting economic crime, and a tool necessary to analyse criminal proceedings files). The survey will be conducted among investigators employed in economic crime combatting units and experts dealing with legal and tactical aspects of combatting economic crime from individual Regional Police Headquarters, the Warsaw Metropolitan Police Headquarters and the Central Investigation Bureau of the Police.

Conclusions

In view of the new manifestations and mechanisms of crimes of an economic nature being committed, it is necessary to take initiatives aimed at preventing this type of crime. Within the title research undertaking, actions will be taken to define, design, and then implement practical tools to increase the effectiveness of prosecution of these crimes. An important research element, constituting the basis for formulating specific conclusions and recommendations, will be to conduct within its framework a survey of opinions and expectations of practitioners as to the possibilities of improving the detection process. An analysis of currently functioning legal regulations, and the pragmatics of law enforcement agencies and the justice system leads to reflection and taking decisive legislative, organisational, and training actions, which would also be reflected in the effectiveness of the entire penal process.

The expected research results are as follows:

1. Optimisation of conducted proceedings regarding economic crimes.
2. Elimination of errors in fundamental procedural decision-making.
3. Faster and more appropriate response to the events.
4. Standardisation of law enforcement activities.
5. Increase citizens' sense of security.
6. Improvement of the image of the police and other internal security authorities.
7. Development of appropriate decision-making competences.

⁴ Baładynowicz A, System kontroli przestępczości gospodarczej. *Prokuratura i Prawo*, 2004, No. 9, p. 23.

8. Cost effectiveness.
9. Increase in the level of access to information on economic crimes for professional entities and citizens.
10. Increase in the comfort and effectiveness of training of internal security officers.

References

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Streszczenie. Celem publikacji jest nakreślenie koncepcji badań w obszarze przestępczości gospodarczej, co pozwoli na wykreowanie skutecznego modelu jej zwalczania. W obliczu nowych przejawów i mechanizmów popełniania przestępstw o charakterze gospodarczym konieczne jest podejmowanie inicjatyw mających na celu przeciwdziałanie tego rodzaju przestępczości. W artykule zostały wylonione aktualne problemy badawcze. W ramach przedsięwzięcia badawczego zostaną podjęte działania mające na celu zdefiniowanie, zaprojektowanie, a następnie określenie możliwości implementacji praktycznych narzędzi służących zwiększeniu efektywności ścigania przestępstw. Istotnym elementem badawczym, stanowiącym podstawę do formułowania konkretnych wniosków i rekomendacji, będzie przeprowadzenie w jego ramach badania opinii i oczekiwań praktyków, co do możliwości usprawnienia procesu wykrywczego. Założona koncepcja badawcza zakłada ponadto dokonanie diagnozy przestępstw gospodarczych (w aspekcie dowodowym, kryminalistycznym, operacyjnym). Zdarzają się bowiem przypadki skomplikowanych dowodowo, wieloaspektowych spraw, w których metody działania sprawców stanowią wyzwanie dla organów ścigania w aspekcie prawnym czy taktycznym. Adekwatnie do zdiagnozowanych problemów badawczych zaproponowano kilka płaszczyzn badawczych takich jak przyczyny, skala przestępczości gospodarczej, dynamika przestępczości, metody i mechanizmy popełniania przestępstw, sposoby przeciwdziałania. W rezultacie pogłębionych badań nad zjawiskiem przestępczości gospodarczej wypracowane zostaną propozycje konkretnych rozwiązań mogących stanowić swoiste kompendium wiedzy z zakresu poruszanej problematyki. Koncepcja badawcza obejmuje szerokie spectrum zagadnień, które korespondują z aktualnymi wyzwaniami w zakresie zwalczania tego rodzaju przestępczości. Szczegółowy opis problemów i przyjętej koncepcji badawczej pozwala na konstatację, iż efekty badań mogą być wartościowe teoretycznie i użyteczne dla nauki oraz praktyki. Niniejsza publikacja przedstawia wstępną koncepcję badawczą przyjętą w ramach realizacji zadania badawczego INP-2/2018/P/MP finansowanego ze środków Ministerstwa Nauki i Szkolnictwa Wyzszego.

Zusammenfassung. Ziel der Veröffentlichung ist es, das Konzept der Forschung im Bereich der Wirtschaftskriminalität zu skizzieren, mit dessen Hilfe ein wirksames Modell für deren Bekämpfung geschaffen werden kann. Angesichts neuer Erscheinungsformen und Mechanismen der Begehung von Wirtschaftsverbrechen müssen Initiativen ergriffen werden, um dieser Art von Verbrechen entgegenzuwirken. Aktuelle Forschungsprobleme wurden im Artikel ausgewählt. Im Rahmen des Forschungsvorhabens werden

Aktivitäten durchgeführt, um die Möglichkeiten der Implementierung praktischer Instrumente zur Steigerung der Effizienz der Strafverfolgung zu definieren, weiter sie zu entwerfen und anschließend zu bestimmen. Ein wichtiges Forschungselement, das die Grundlage für die Formulierung spezifischer Schlussfolgerungen und Empfehlungen bildet, wird die Prüfung der Meinungen und Erwartungen der Praktiker hinsichtlich der Möglichkeiten zur Verbesserung des Erkennungsprozesses sein. Das angenommene Forschungskonzept geht auch von der Diagnose von Wirtschaftsverbrechen aus (in Bezug auf Beweise, forensische und operative). Es gibt Fälle von evidenzkomplexen, facettenreichen Fällen, in denen die Methoden der Täter die Strafverfolgung in rechtlicher oder taktischer Hinsicht herausfordern. Entsprechend den diagnostizierten Forschungsproblemen wurden folgende verschiedene Forschungsbereiche vorgeschlagen, wie Ursachen, Ausmaß der Wirtschaftskriminalität, Kriminalitätsdynamik, Methoden und Mechanismen der Begehung von Verbrechen sowie Möglichkeiten zu deren Verhinderung. Als Ergebnis eingehender Untersuchungen zum Phänomen der Wirtschaftskriminalität können spezifische Lösungen entwickelt werden, die eine Art vom Wissenskompendium auf dem Gebiet der aufgeworfenen Fragen darstellen können. Das Forschungskonzept deckt ein breites Spektrum von Themen ab, die den aktuellen Herausforderungen bei der Bekämpfung dieser Art von Kriminalität entsprechen. Eine detaillierte Beschreibung der Probleme und des angenommenen Forschungskonzepts lässt den Schluss zu, dass die Forschungsergebnisse theoretisch wertvoll und für Wissenschaft und Praxis nützlich sein können. Diese Veröffentlichung ist ein vorläufiges Forschungskonzept, das im Rahmen der vom Ministerium für Wissenschaft und Hochschulbildung finanzierten Forschungsaufgabe Nr. INP-2/2018 / P / MP angenommen wurde.

Резюме. Целью статьи является описание концепции исследования в области экономической преступности, что позволит создать эффективную модель для борьбы с ней. Учитывая новые проявления и механизмы, совершаемых преступлений экономического характера, необходимо предпринять инициативы, направленные на противодействие данному виду преступности. В статье определены актуальные проблемы исследований. Исследовательский проект включает в себя мероприятия, направленные на определение, проектирование и последующее определение возможности внедрения практических инструментов для повышения эффективности правоприменения. Важным исследовательским элементом, составляющим основу для формулирования конкретных выводов и рекомендаций станет изучение мнений и ожиданий практиков относительно возможностей повышения уровня эффективности процесса раскрытия преступлений. Предполагаемая концепция исследования учитывает также диагностику экономических преступлений (в доказательственном, криминалистическом и оперативном аспектах). Есть случаи сложных, многоаспектных дел, в которых методы используемые преступниками представляют собой сложное задание для правоохранительных органов в юридическом или тактическом плане. В соответствии с диагностированными проблемами исследования было предложено несколько исследовательских планов, таких как причины, масштабы экономических преступлений, динамика преступности, методы и механизмы совершения преступлений, способы их предотвращения. В результате углубленного исследования явления экономической преступности будут разработаны конкретные решения, которые могут являться своего рода сборником знаний в области затрагиваемых вопросов. Концепция исследования охватывает широкий спектр вопросов, которые соответствуют современным вызовам в борьбе с этим видом преступлений. Подробное описание проблем и принятой концепции исследования позволяет сделать вывод, что результаты исследования могут быть теоретически ценными и полезными для науки и практики. В настоящей статье представлена предварительная концепция исследования, разработана в рамках исследовательской задачи INP-2/2018/P/MP, финансируемой Министерством науки и высшего образования.

