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What is 'economic criminal law'?

Abstract

The objective of this paper is to reconstruct the meaning of term 'economic criminal law', which is imprecise but widespread in Polish legal culture. It also aims to compose an adequate definition of the concept denoted by this name. The author applied an array of methods: analysis of scholarly statements, historical and comparative analysis as well as the analysis of the law in force. The term 'economic criminal law' is a product of linguistic convention manifesting itself in legal discourse. In search of its meaning the author relied mainly on scrutiny of the wording of the discussed name. The content of this notion is composed of so-called economic offences. It was essential to determine common characteristics of such crimes. Having rejected so-called subjective conceptions and ideas referring to criminology and sociology, the author posited the object of a type of crime as the definition's rudiment. A proper description of the common generic object of economic crimes assumes a compromise between vagueness and rigidity of lengthy enumerations. 'Economic criminal law' can be described as a peculiar division of substantive criminal law distinguished by legal theory and practice. It is composed of regulations that establish types of crime, which share a common main generic object of protection which (in a historical and cultural context) are relevant bases of proper trading both in internal, and in external aspects. These two dimensions represent relations between trading participants and institutions and rules of trading, respectively.

Keywords: economic criminal law, white collar crime, object of crime, trading, Polish criminal law

Introduction

In juridical discourse the term first appeared in 1932, when Curt Lindemann in an article entitled *Gibt es ein eigenes Wirtschaftsstrafrecht?*, which stands for *Is there a united economic criminal law?* to a question phrased in such way gave an answer confirming its existence as a set of penal regulations.[1] In today's Polish legal discourse some distinction of economic criminal law is rather not questioned yet. Nonetheless, the acceptance of separateness of this relatively new discipline appears to be as widespread as superficial. This may seem surprising because the meaning of the term 'economic criminal law' is momentous for practice. It is used by Polish law firms in descriptions of legal services offered by them. The separation of economic crimes is also reflected in the organisation of the public prosecution service. Since there is no accurate definition of the concept in question, its extent, significance, and also of the specific nature of the sphere discussed, it is reasonable to ask a further, clarifying question: what is 'economic criminal law'?

In order to describe the boundaries of 'economic criminal law' as precisely as possible, we should first acknowledge a certain semantic convention. Some provisions of Polish statutory law are perceived as central for the Polish economic criminal law. These are chapters XXXVI (Crimes against trading and property interests in trading under civil law), and XXXVII (Crimes against trading in currencies and securities) in the Penal Code[2] and penal provisions of certain other economy-related statutes such as the Code of Commercial Companies.[3] Rediscovering the border of 'economic criminal law' amid other articles of the Penal Code or penal regulations located in almost sixty other acts[4] is more difficult. The concepts of economic criminal law and other related concepts do not have any legal definition in the legal system. They are not terms of the language of law, but of the

1 A. Mucha, *Struktura przestępstwa gospodarczego oraz okoliczności wyłączające bezprawność czynu w prawie karnym gospodarczym: analiza teoretyczna i dogmatyczna*, Warszawa 2013, p. 86. C. Lindemann, *Gibt es ein eigenes Wirtschaftsstrafrecht?*, Schriften des Instituts für Wirtschaftsrecht an der Universität Jena 1932, no. 12.

2 Act of 6 June 1997 – Penal Code (Dz.U. (Journal of Laws) of 2020 item 1444, Dz.U. (Journal of Laws) of 2020 item 1517).

3 Act of 15 September 2000 – Commercial Companies Code (Dz.U. (Journal of Laws) of 2020 item 1526).

4 W. Kotowski, B. Kurzępa, *Przestępstwa pozakodeksowe: komentarz*, Warszawa 2007, pp. 235-402. R. Zawłocki, in: R. Zawłocki (ed.), *System prawa handlowego. Tom X. Prawo karne gospodarcze*, Warszawa 2012, pp. 11-14.

language of lawyers.[5] The distinction of economic criminal law is only apparent at the level of terminology developed and used in legal theory and practice but not in legislation, where it is actually unperceivable. Legal scholarship does not provide a universally accepted definition of 'economic criminal law' mainly because of the aforementioned non-statutory character of the notion in question. For the same reason we must assign key cognitive value to views presented in jurisprudence (professional literature).

As it has been already stated, the meaning of the notion discussed is devoid of statutory regulators. In particular, the title of chapter XXXVI of the Penal Code is not such a regulator. Formerly it was 'crime against trading'. It has been changed by the Act amending the Highway Code and the Penal Code[6] and currently reads 'crime against trading and property interests in private-law trading'. The immediate reason for the change of title was the addition of Article 306a to the said chapter. Nonetheless, this alteration can also be seen as reflecting continuous doubts concerning the actual content of that particular chapter and the generic subject of protection of the types of offences codified therein. Regardless of the unspecified nature of criminal prohibitions provided for in that chapter, limited cognitive value of its title stems also from its fragmentariness. It still encloses only some segments of the matter addressed in this paper. Finally, it must be noted that the title of the chapter in the Penal Code may not be an appropriate criterion relevant to finding the common ground between the offences collected therein.[7]

The reconstruction of the scope of the notion denoted by the name 'economic criminal law' is preconditioned by a proper determination of the linguistic content of that name itself. Kazimierz Ajdukiewicz, an eminent Polish logician, divided names into two groups based on their content: names with explicit meaning and names with intuitive meaning. The former group encompasses 'compound names', which are built of several words that convey certain meaning. The latter covers names which are attributed to some classes of subjects or phenomena based on criteria that cannot be put into words (e.g. 'dog', 'rose').[8] Only names with explicit

5 See: J. Skorupka, *Prawo karne gospodarcze: zarys wykładu*, Warszawa 2007, p. 15. In this paper the author must adopt the following terminology: legal – relating exclusively and directly to legal regulations, statutory.

6 Act of 15 March 2019 on amending the act – the Highway Code and the act – Penal Code (Dz.U. (Journal of Laws) of 2019 item 870).

7 E. Hryniewicz, *Obrót gospodarczy jako znamię czynu zabronionego*, "Kwartalnik Prawa Publicznego" 2011, vol. 3-4, p. 195.

8 K. Ajdukiewicz, *Logika pragmatyczna*, Warszawa 1965, p. 53.

meaning carry certain linguistic content, which may be reconstructed through the analysis of the words of which such a name may be composed.

'Economic criminal law' is an instance of a name with explicit meaning. Therefore, a recourse to its wording is a natural step.[9] A semantic and syntactic analysis of this phrase represents an essential, adequate ground for further speculations. The wording 'economic criminal law' itself resembles the construction of a genus-differentia definition of the denoted concept. More precisely, it may perform the same function as a *definiens* of a genus-differentia definition, where the word 'law' or words 'criminal law' indicate the *genus* and both adjectives 'economic' and 'criminal' (or only the former) indicate the *differentia specifica.* Regardless of qualifying the word 'criminal' as a component of the *genus* or of the *differentia specifica*, its position determines its role. It defines the word 'law' by narrowing its denotation, and it is detailed analogously by the word 'economic', and not vice-versa. What appears to emerge is that these three words are put in an order in which each of them gradually narrows the denotation of the denoted concept and enables its even more detailed comprehension. The word 'law' points to a somehow separated realm of law. Therefore, it consists of legal norms expressed by legal provisions. The word 'criminal' indicates the location of these norms in the legal system. It stipulates their place in criminal law – one of principal branches of law. This qualification results in an interception of some characteristics and methods adequate for criminal law. Firstly they provide for a legally defined punishment for a certain, legally described conduct which has been disapproved by the legislator. Furthermore, they are also rules of penal responsibility (although at that stage we still do not rule out some distinctiveness in this sphere). The word 'economic', finally, narrows the denotation by drawing attention to links with the economic and commercial law.

Economic criminal law is situated at the point of contact of two big, diverse branches of law: criminal (penal) law and a part of the legal system covering norms pertaining to business, called 'economic law' or 'commercial law'. It must be noted, however, that the equivalent of the latter of these terms in the Polish legal culture is attributed to private-law regulations. Regardless of terminology, penal norms could seemingly fit in the public fraction of economic law. This would be a rather deceptive judgment. Penal provisions operating within the sphere of regulations on business, as for instance these included in chapter four of the Act on Combating Unfair Competition[10], employ a purely penal method of regulation, which is

9 Due to marginal significance in juridical discourse and drawbacks of such conceptions, attempts of an alternative nomenclature were disregarded in this paper.

10 Act of 16 April 1993 on combating unfair competition (Dz.U. (Journal of Laws) of 2020 item 1913).

to provide criminal punishment for a legally defined, socially harmful conduct. It must be borne in mind that criminal law is – at least to some extent – interdisciplinary in nature, since criminal conduct may demonstrate bonds with potentially all spheres of human activity, including economic activity. From this perspective the so-called 'economic criminal law' shall be perceived as constituting an intrusion of criminal law into the sphere of the trading. The latter is founded on principles of private law (especially the autonomy of will) and free market economy. Criminalisation is rather at odds with them. To conclude, 'economic criminal law' represents a part of criminal law demonstrating substantial connections with economic law.[11] Links with criminal law prevail.

As 'economic criminal law' represents a specialised discipline of criminal law, the character of this specialisation must become an object of further analysis. It is of course substantive. An analysis of a set of regulations that lay down types of economic crimes must obviously involve a general scrutiny of the notion of economic crime. More precisely, the subject matter of this scrutiny is the connection of types of crime perceived as 'economic' with economy itself. What appears to play the most important role is the rediscovery of a common, adequate feature of these various crimes, understood as legally defined types of crime. This feature shall serve as a criterion of distinction of economic criminal law.

This characteristic common substantive feature is the sphere of social relations protected by the aforementioned regulations.[12] It could be also described as (common) generic object of protection of these crimes. In other words, it is the value or interest protected by law and violated by some specific crimes, for example so-called economic crimes.

Such an opinion advocates defining economic criminal crime by reference to the object of the crime (object of protection), which is distinctive for the so-called objective conceptions. Further remarks developing that view shall be preceded by its defence in the light of opposite theories which stand for defining economic crimes from the side of the subject committing the crime or other criminological factors. In Polish legal literature these conceptions are sometimes inaccurately called 'subjective'.[13] As a matter of fact, they are primarily characterised by a focus on criminological factors. The key one is the person of the offender. These theories are typical for common law culture and still remain in force in the United

11 See: S. Żółtek, *Prawo karne gospodarcze w aspekcie zasady subsydiarności*, Warszawa 2009, p. 36-37.

12 J. Skorupka, op. cit., p. 15.

13 V. Konarska-Wrzosek, A. Marek, *Prawo karne*, Warszawa 2019, p. 620.

States of America.[14] The Anglo-Saxon term 'white collar crime' is very telling. It was invented by Edwin Sutherland. He coined it at the annual meeting of the American Sociological Society in Philadelphia in 1939[15] and later used it in his 1949 publication – *White Collar Crime.*[16] He wrote: "White-collar crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation".[17] Thus he prompted research on definitional controversies related to the concept of white collar crime and gave birth to offender-based conceptions of white collar crime.[18] According to them, the distinctive criterion of white collar crime is not the assaulted object, but the perpetrator.[19] He or she should have a specific status, e.g. entrepreneur, at least semi-professional[20] or should act on an entrepreneur's behalf, or have specialist knowledge in the field of business and management.

Later Edwin Sutherland suggested an alternative, offence-based definition, which broadly described all white collar offences as violations of trust.[21] Another broad offence-based conception was put forward by Herbert Edelhertz. He defined white collar crime as any "illegal act or series of illegal acts committed by non-physical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantages".[22]

There is no single, precise definition of white collar crime in the Anglo-Saxon legal culture[23]. They are predominantly based on two approaches presented above: the subjective and conduct-based ones. They often overlap, as both said approaches are based on criminological criteria. Such criteria tend to be broad and inaccurate. Anglo-Saxon jurisprudence deals with such excessiveness of extension by formulating numerous definitional conditions such as, to mention the most significant ones, lack of violence, acting under the guise of legitimacy, causing large material

14 A. Mucha, op. cit., p. 83.

15 E. Waring, D. Weisburd, *White Collar Crime and Criminal Careers*, Cambridge 2001, p. 1.

16 E.H. Sutherland, *White Collar Crime*, New York 1949, S. Żółtek, op. cit., p. 52.

17 E.H. Sutherland, op. cit., p. 9.

18 See: K. Holtfreter, *Hartung-Burgess Debate,* in: L.M. Salinger (ed.), *Encyclopedia of White-Collar & Corporate Crime*, vol. 1, Thousand Oaks 2005, p. 386.

19 S. Żółtek, op. cit., p. 33.

20 Ibidem, p. 32.

21 K. Holtfreter, *Sutherland-Tappan Debate,* in: L.M. Salinger (ed.), *Encyclopedia of White-Collar & Corporate Crime*, vol. 2, Thousand Oaks 2005, pp. 776-777.

22 R. O'Sullivan, *Edelhertz, Herbert (1922-1999),* in: L.M. Salinger (ed.), *Encyclopedia of White-Collar & Corporate Crime*, vol. 1, Thousand Oaks 2005, p. 275.

23 E. Waring, D. Weisburd, op. cit., pp. 7-8.

or financial loss and other. Such a method leads to a different sort of excessiveness. Enumerating too many criteria blurs the clarity of a proposed definition. Anglo-Saxon legal theory does not aspire to solve this twofold complication. Instead of composing an accurate definition, they gather typical features of the phenomenon described. Such fluidity and extension of denotation correspond with the common-law culture. Despite the perceived convergence of legal cultures, it must be said that such approach remains inadequate to *civil law* legal culture[24] which prefers strict criteria in conceptualisation.

As far as subjective conceptions are concerned, they also deserve some universal critical remarks (apart from cultural disparity). They lose sight of conduct as a basis of criminal responsibility and devote too much attention to the perpetrator's personal circumstances. What is more, the observation on which they are based has become partially outdated. The level of wealth of violators committing economic crimes is not so high anymore.[25]

Furthermore, conceptions using the subjective method (or substantially analogous methods) only partially do not deserve credit.[26] These conceptions may, for example, consider all crimes demonstrating any relation to business activity as 'economic'. Another thesis focuses on the perpetrator and the injured party viewed from a wide sociological perspective. Marxist legal theory sees economic crime as something to do with class struggle. All definitional ideas that rely essentially on criminological, forensic, and sociological factors, must be rejected due to excessive denotative extension and lack of precision. These drawbacks are apparently caused by syndromic, not juridical approach to economic crime. Such approach is practicable in criminology. Nonetheless, the criminological approach in legal scholarly discussions can play only a subsidiary role.

Coming back to so-called objective conceptions, we should focus on the generic object of protection of crimes qualified in Polish legal culture as 'economic'. This is the distinctive factor of 'economic criminal law'. Objective conceptions that dominate in legal studies manifest themselves in various versions. On the one side we have authors who describe the object of protection of economic crimes in a synthetic, general, sometimes even vague manner, as Curt Lindemann did. He asserted that economic crimes attack the whole of economy or its certain fragments.[27]

24 A. Mucha, op. cit., pp. 84-85.

25 E. Waring, D. Weisburd, op. cit., pp. 8-11.

26 Among such conceptions the most important one is the one advocated by Mireille Delmas-Marty, see: S. Żółtek, op. cit., pp. 26-28, also Mucha, A., op. cit., pp. 89-90.

27 A. Mucha, op. cit., pp. 86-87.

Such statements are still quite ambiguous. Their dearth of precision raises doubts regarding the belonging of, for instance, crimes against property (in general, such as robbery) to the category of economic crimes. Trading as a whole is after all such a broad plain of social life that it is in fact violated by majority of crimes. This indeterminacy has been the reason for criticism of defining the discipline under discussion from the side of the object of protection. Attempts to rectify this issue predominantly provided further detailed clarifications. The most radial theses, such as those presented by Ernst-Joachim Lampe, simply put forward a direct enumeration of groups of certain crimes[28], thereby constructing a complex enumerative definition.

Such non-flexible enumerations of prohibited acts are not adequate and should be rejected. This step is dictated by conspicuous flexibility of the term 'economic criminal law' which has two dimensions. Pragmatic flexibility lies in a certain leeway in the use of the term. This freedom results in semantic flexibility – lack of a precise uniform meaning.

In the field of economic activity this twofold flexibility is further enhanced due to market dynamics. However, these characteristics are not exclusively typical of the name 'economic criminal law', but (to some degree) permeate the entire language. People who live together learn to use and understand certain expressions in one or more different senses. In this way they develop certain semantic conventions and form a language community.[29] The same applies to legal theorists and practitioners and the term 'economic criminal law', which has never been legally defined. Its emergence is attributable to a continuous use among the members of professional lawyers' community.

The described inherent indefiniteness could be remedied by adding that the accurate criterion is main, not subsidiary, generic object of protection of statutory types of crime. This clarification means that crimes that directly violate another interest or value, but also indirectly harm economic processes may be excluded from further discussion.

There have been numerous projects for naming the main generic object of protection in economic crimes. Discussing them all, even cohesively, goes beyond the scope of this article. Two most useful proposals uttered in Polish legal literature deserve a mention. First of them was presented by Robert Zawłocki, second – by

28 Ibidem, pp. 90-91.

29 K. Ajdukiewicz, op. cit., pp. 23, 54.

Sławomir Żółtek. The former describes discussed generic object of protection as specific rudiments of proper trading.[30]

Such an approach is devoid of doubtful criteria invented by other authors. Universalism is the foremost advantage of such an outlook on the principles of trading. A definition that includes such a referral will maintain its validity regardless of any transformations. Rules of trading often vary (for instance regarding the question of the role of the state). Similar references underlie the construction of statutory sets of elements of so-called economic offences.

Another advantage of Robert Zawłocki's approach is the choice of an object directly connected with 'trading', and not with 'economy' as a whole. This choice reflects solutions applied in legislation currently in force. They are fundamentally different in comparison with the legislative thought underlying the 1969 Penal Code.[31] Its chapter XXX, entitled 'Economic crimes', contained regulations criminalising acts that directly damage property, not related directly to 'trading' which is active in its nature.[32] Article 220 of that act concerned causing considerable damage.[33] Nowadays the legislator visibly distinguishes economic crime (participation in trading is required) from other crimes, especially from crimes against property. This change of approach is partly a further outcome of transition from a socialist to free-market economy.[34]

30 R. Zawłocki, in: R. Zawłocki (ed.), op. cit., pp. 24, 60-62. More in: M. Bojarski, in: M. Filar (ed.), *Kodeks karny. Komentarz*, Warszawa 2016, pp. 1552-1553; W. Franczuk, *Ochrona gospodarki w ustawodawstwie karnym Ukrainy i Polski (cechy wspólne i różnice)*, "Studia Iuridica Lublinensia" 2013, vol. 20, p. 155.

31 Act of 19 April 1969 – Penal Code (Dz.U. (Journal of Laws) of 1969 no. 13 item 94, Dz.U. (Journal of Laws) of 1974 no. 27 item 157, of 1979 no. 15, item 97, of 1982 no. 16, item 125, of 1982 no. 40 item 271 and no. 41 item 273, of 1983 no. 6 item 35 and no. 44 item 203, Dz.U. (Journal of Laws) of 1985 no. 4 item 15 and no. 23 item 100, Dz.U. (Journal of Laws) of 1987 no. 14 item 83, Dz.U. (Journal of Laws) of 1988 no. 20, item 135, Dz.U. (Journal of Laws) of 1989 no. 29, item 154 and no. 34 item 180, Dz.U. (Journal of Laws) of 1990 no. 14 item 84 and no. 72 item 422, Dz.U. (Journal of Laws) of 1992 no. 24 item 101, Dz.U. (Journal of Laws) of 1993 no. 17 item 78, Dz.U. (Journal of Laws) of 1994 no. 126 item 615, Dz.U. (Journal of Laws) of 1995 no. 95 item 475, Dz.U. (Journal of Laws) of 1996 no. 139 item 646 and no. 139 item 646, Dz.U. (Journal of Laws) of 1997 no. 6 item 31 and no. 28 item 152).

32 See: O. Górniok, *Przestępstwa gospodarcze. Rozdział XXXVI i XXXVII Kodeksu karnego. Komentarz,* Warszawa 2000, p. 13. See also: I. Andrejew, *Kodeks karny. Krótki komentarz*, Warszawa 1988, pp. 199-211.

33 See: I. Andrejew, op. cit., pp. 204-205.

34 M. Bojarski, in: M. Filar (ed.), op. cit., pp. 1552-1553. The author states that damage to property as a form of economic damage, causing a shortage etc. do not require criminal-law protection anymore. Instead, rules of proper free-market economy deserve such protection.

It is noteworthy that the conception put forward by Robert Zawłocki corresponds with other ideas expressed in Polish legal studies. Elżbieta Hryniewicz, who explored the object of protection of crimes covered by the chapter XXXVI of the Penal Code, claimed that trading is such an object. It thus should be understood as formal or actual economic relations that formulate an organised exchange of goods and services. The proper character of this exchange implies not only its lawfulness but also that its participants observe loyalty and honesty as values which they can expect each other to take into account in a market economy.[35] This last reservation, in turn, fits with the idea proposed by Sławomir Żółtek.

Żółtek asserts that the analysed object of protection has two aspects that correspond to the public-private dichotomy of legal regulations on trading.[36] Thus, the internal aspect protects equal relations between parties in trading and the external aspect protects basic institutions, principles, and regulations of trading.[37] Turning a spotlight on the external aspect allows us to examine the doubts on the place of numerous penal regulations situated in statutes of substantive administrative law that criminalise the running of a regulated business without permission granted by a competent authority.[38] These criminal provisions are part of 'economic criminal law' provided that they are designated to protect institutions that ensure certainty of trade.

For a more comprehensive understanding of the object of economic protection, attention should be paid to a helpful observation expressed in studies of private law. It is reckoned there that trading covers not only the sole exchange of goods and services with participation of business operators (entrepreneurs), but also the total of legal relationships established between the parties.[39] When it comes to business activity, its statutory definition in Article 3 of the Entrepreneurs' Act[40] describes such activity as continuous, organised, profitable and performed on one's

35 E. Hryniewicz, op. cit., p. 193.

36 S. Żółtek, op. cit., pp. 38-39.

37 Ibidem, pp. 40-41.

38 The number of statutes containing such regulations is vast. Article 24 of the Act of 24 August 2001 on final settlement in payment systems and securities settlement systems and on rules of supervision over these systems may serve as an exemplification of such an extra-code penal provision which criminalises i.a. the maintenance of a payment system without a necessary licence issued by the President of Narodowy Bank Polski (Poland's National Bank) (Dz.U. (Journal of Laws) of 2019 item 212). See also: W. Kotowski, B. Kurzępa, op. cit., pp. 80-91, 317-319.

39 K. Kruczalak, *Prawo handlowe. Zarys wykładu*, Warszawa 2008, p. 21. See also: W. Franczuk, op. cit., p. 146.

40 Act of 6 March 2018 – Entrepreneurs Law (Dz.U. (Journal of Laws) of 2021 item 162).

own behalf. Modifications, compared to the wording of the Freedom of Business Activity Act (repealed on the 30th of April 2018)[41], could not infringe the gist of the previous definition. In fact, any statutory definition of business activity is indirectly determined by the rule of freedom of business activity laid down in Article 20 of the Constitution of the Republic of Poland.[42] What should be emphasised is how specific this sphere is. Criminal law should play a regulative role here to an extent strictly outlined by rules of proportionality and subsidiarity from which the following emerge, respectively: appropriate, not too severe penal repression towards harmful or undesirable conduct, and the subsidiary role of criminal law which should give way to other branches of law in terms of regulating trading. Criminal law shall constitute *ultima ratio* on any background.

Having presented two most relevant approaches, some less adequate but specific ideas should be mentioned. The first one is advocated by Oktawia Górniok. Her proposal was to add another condition of 'ruining trust on a supra-individual scale'[43] to the definition of economic crime. This element is neither helpful, nor essential.[44] In fact, crime in general destroys broadly understood social confidence and, after all, parties in trading do not express a qualified degree of trust towards each other. Venture capital may serve as an example of a sphere marked with uncertainty. For the sake of clarity, it should be noted that economic offences target both supra-individual and individual economic interests if their widespread occurrence jeopardises trading.[45]

Another creative concept is explicated by Andrzej Mucha.[46] This is the conception of 'constructive illegitimacy'. Its author focuses on specificity of illegitimacy in the internal structure of economic crime. He rightly points out that in cases of economic offences scrutiny of illegitimacy always requires reference to norms from outside of criminal law. He believes this to be a common characteristic of economic crime (together with the common object of protection). This additional characteristic is, however, not diagnostic. Types of offences referring to 'external' sources

41 Act of 2 July 2004 on the freedom of establishment (Dz.U. (Journal of Laws) of 2017 item 2168, Dz.U. (Journal of Laws) of 2017 item 2290 and item 2486 and of 2018 item 107 and item 398).

42 Constitution of the Republic of Poland of 2 April 1997 (Dz.U. (Journal of Laws) of 1997 no. 78, item 483, Dz.U. (Journal of Laws) of 2001 no. 28 item 319, of 2006 no. 200 item 1471 and of 2009 no. 114, item 946).

43 O. Górniok, op. cit., p. 13.

44 More in: A. Mucha, op. cit., pp. 105-106.

45 V. Konarska-Wrzosek, A. Marek, op. cit., pp. 620-621.

46 A. Mucha, op. cit., pp. 168-171.

of illegitimacy occur also among other common (and fiscal[47]) crimes. In addition to that we lose sight of the decisive significance of the main generic object of protection. The original concept of 'constructive illegitimacy', adding no value to the definition of 'economic criminal law', remains a valuable observation. Nevertheless, it is useless for definitional purposes.

At this stage it is advisable to apply the criteria developed so far. It will be of great cognitive value to name examples of legal institutions which do not meet them. An economic experiment is a particular figure of a circumstance that demonstrate that the illegitimacy of a conduct under Article 27 of the Penal Code does not rather fall within the scope of economic criminal law. It can be applied in cases of all the types of crime in the legal system.

The same applies to the so-called extended confiscation under Article 45 and Article 45a of the Penal Code, and also forfeiture of a company under Article 44a, although in the latter case connections with economic criminal law seem to be exceptionally tight in the light of subsection 1 *in fine* of that Article. The phrase 'in order to disguise the benefit achieved from it' which closes the quoted provision, refers clearly to the crime of money laundering under Article 299 of the Penal Code. Nonetheless, it may find application in cases of crimes that violate social interests other that principles of economic exchange. The broader scope of application of forfeiture of a company indicates that provisions that stipulate it cannot be considered an integral part of economic criminal law.

Fiscal criminal law should also be placed beyond the scope of realm of law in question. Sławomir Żółtek expressed the expediency of this distinction. It results from the discrepancy around the object of protection. Fiscal criminal law protects the interest of the state, not trading.[48] Żółtek also notices that rules of fiscal-criminal responsibility are regulated separately, whereas general rules of penal responsibility stipulated by the general part of the Penal Code apply to types economic offences.[49] Fiscal criminal law is after all more autonomic which is perceivable even at the level of legislative separation.[50]

Finally, regulations stipulated for corporate liability, often called by misleading names, e.g. 'companies' criminal law', should not be included in the realm of economic criminal law due to *quasi*-penal character of such responsibility, and, importantly, doe to the extensively broad objective scope of application of these

47 L. Wilk, J. Zagrodnik, *Prawo i proces karny skarbowy*, Warszawa 2019, pp. 6-7.

48 Ibidem, pp. 4.

49 S. Żółtek, op. cit., pp. 41-42.

50 L. Wilk, J. Zagrodnik, op. cit., pp. 4-5.

norms. In most legal orders it goes beyond economic crime[51], which is also true under a relevant Polish statute.[52]

In a procedural angle, any distinctions regarding economic criminal law cannot be perceived. There is no specific set of procedural regulations applicable in cases of economic offences. Similar observations apply to rules of criminal responsibility. General rules codified in the general part of the Penal Code apply as they are to economic crimes. The substantive character of economic criminal law should be ultimately confirmed.

In the context of application of general principles of criminal liability, for the sake of accuracy we must mention three relevant features that stem from Articles 307, 308, and 309 of the Penal Code. Article 307 provides for a specific voluntary compensation clause. It allows for extraordinary mitigation of punishment in the event of compensation or even exemption from punishment if the compensation to the injured party covers the entire loss. It allows a perpetrator of a completed act to avoid the penalty. This feature is important in distinguishing the clause in Article 307 from a similar exemption clause contained in Article 15 of the Penal Code. The latter is not applicable to performed acts, but only to attempted criminal acts.[53] Article 308 equates employed administrators with debtors and creditors in terms of criminal liability. Validity of this provision is clearly limited to types of offences which require a subjective feature of being a debtor or creditor in an obligation relationship. Article 309 increases the statutory level of fines for economic crimes under the Penal Code. All these features serve a common purpose, which is to adjust the rules of criminal liability to a specific business context. Article 307 reduces negative implications of liability where the compensation for a loss renders repressive sanctions inadequate. Article 308 responds to the division of duties frequent in enterprises. Representation in external relations is the most relevant of these duties.[54] Article 309 adjusts the extent of monetary sanctions to the violators' presumed aim, which is to obtain profit.[55]

51 See: ibidem, pp. 43-45.

52 Act of 28 October 2002 on liability of collective entities for publishable offences (Dz.U. (Journal of Laws) of 2020 r. item 358). See especially Article 16 of this act. It enumerates criminal provisions that prohibit acts for which liability stipulated for in that statute may be held by a 'collective subject'.

53 R. Zawłocki, in: M. Królikowski, R. Zawłocki (eds.), *Kodeks karny. Część szczególna. Tom II.*, Warszawa 2013, p. 896.

54 Ibidem, pp. 897-898. M. Bojarski, in: M. Filar (ed.), op. cit., p. 1642.

55 R. Zawłocki, in: M. Królikowski, R. Zawłocki (eds.), op. cit., p. 902.

Conclusions

Autonomy of the discipline in question is not so evident as it is in the case of fiscal criminal law. It is to some degree perceivable in legal sciences, where a lot of attention is given to this domain. On the other hand, authors addressing the question of separateness of economic criminal law consider it a part of criminal law and deny its independence.[56] Such a conclusion should not rather meet any objections. Apart from legal sciences, autonomy is also visible in the organizational structure of Polish public prosecutor's office at the level of districts, where the postulate of separating departments to deal with economic crime has been fulfilled. Such a postulate has not been put into action in the case of courts. Thus, limited in its autonomy, economic criminal law may be defined as a special branch of substantive criminal law distinguished by jurisprudence. It is composed of regulations that establish types of crime, which share a common main generic object of protection which provides a relevant (in a historical and cultural context) basis of a proper trading, both in internal and in external aspects. These two dimensions stand for relations between trading participants and for institutions and rules of trading, respectively.

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56 See: R. Zawłocki, in: R. Zawłocki (ed.), op. cit., pp. 9-10, 44-45.

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