

**Economic Crime and Globalisation –
New Challenges for the Police**

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Economic Crime -

A challenge to law enforcement

Abstract

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At the latest since the mid-60's, the suppression of economic crime – the first crisis symptoms of the „Social Market Economy“ system following the „German economic miracle“ were the catalysts – has been the joint task of public prosecutors' offices and police services, but also a democratic indicator of the acceptance of law enforcement in general. It is therefore no coincidence that also the current (financial) economic crisis is giving rise to high requirements and (inaction) accusations in respect of lacking and selective law enforcement.

On the basis of case examples, the presentation shows the system-innate limits of the possibilities of law enforcement in this area. It therefore makes a difference whether norms of a central codification with high ethical acceptance (such as the penal code) – because individual legal interests are concerned – are violated or whether the perpetrators have failed to comply with an obligation to act as codified in an annex of some law or other on the protection of supra-individual legal interests. The tendency for criminal court judges to exercise leniency is stronger if the criminal law has yet to create and enforce ethical bases in certain areas of society. However, in times of economic crises it becomes clear that the suppression of economic crime must inevitably entail the imposition of rigorous sentences linked to a negative judgement on the part of society, which are indispensable for the creation of acceptance of the economic order itself and the oft-evoked „trust“ as a basis for liberal economic order. The legislature must then be required to anchor the meaning of the minimum of prosecutable obligations as a correlate of economic possibilities and opportunities in the consciousness of the actors through central regulations.

In addition to this, the prosecution of economic crimes is still encumbered by particular, norm-specific prosecution obstacles. Thus, organisational structures provide the executives of at least bigger corporations with a certain degree of anonymity. The associated loss of responsibility is further boosted by attempts to replace the German personnel-orientated entrepreneurial criminal legislation with corporate criminal legislation. Modern compliance and corporate ethics adopt a different course where this is concerned.

It is also well-nigh a characteristic of economic criminal activity that those involved acquire quasi-legality for their criminal conduct. Investigators and prosecutors, of

course criminal judges also, increasingly depend on „translators“ in order to identify, among other things, the contents of products, instructions of use, etc. because technical language-specific barriers make an appropriate evaluation of the economic facts difficult, and the required experts who function as corporate consultants have created this lack of transparency by rigidly remaining within the confines of the contract assigned to them. Investigations in respect of data processing should also be addressed and the oftentimes existent transnational links of economic criminal activity, consequently the criminalistic implications of the globalisation of our economy.

Also of particular significance is the concrete handling of the constitutionally required obligation to expedite. An „appropriate“ investigative duration period in respect of an economic crime has to look different to that in a case involving straightforward case-specific facts. However, the questions – where are the required police investigation units in this area? How much time does a public prosecutor need for the specialised familiarisation and how many cases can he (then?) deal with and manage at the same time and present in court? – necessitate answers. All the more so because in recent years, lawyers with ever-higher qualifications have consistently turned investigative shortcomings into defence clout, which goes hand in hand with excellent analytic expertise from the area of especially qualified consultants. In the economic criminal law the span between the criminal law for „small-time offenders“ and „big-time offenders“ has widened significantly. These shortcomings cannot be counterbalanced by the new procedural tools which include surveillance of private premises, telecommunications interception and/or online searches and the use of undercover investigators.

As conclusion and outlook it remains to be stated that the protection of legal interests through the criminal law intended to defend our economic order cannot be achieved for free. Without the creation of the personnel conditions for specialised reconnaissance work – in particular, on the basis of personal qualifications and necessary hierarchical stimuli for this – the suppression of economic crime will remain a pipe dream.