

CONSIDERATIONS REGARDING THE CRIMINALITY IN THE BUSINESS FIELD

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Abstract:

Business and businesspeople have always existed and will exist forever. As society progresses thanks to its scientific discoveries, the criminal businessman will continue to shock the public opinion through his ingenuity, intelligence and, sometimes, easiness in committing an offence. The more intelligent is the criminal businessman, the more elaborate and hard to uncover will be the offence he has committed.

In today's society, we are hoping and expecting that the efforts to impose the law should become so powerful as to overwhelm those who favour the violation of the law.

Most worrying are the offences in the field of informatics. We are glad to see that technique and technology have progressed so much, that we are actually witnessing a digital revolution. These are great achievements for mankind (performing, in record time, a multitude of transactions, affairs and communications with any parts of the world), but, at the same time, new and wide horizons have opened for the offenders who exploit these informatics networks for the purpose of achieving profit, having the possibility to produce enormous frauds. This new type of criminal offence does not only threaten bank accounts, business dealings between companies and individuals, but it also represents a real danger for large worldwide concerns and even for state security.

Criminal offences in the business field are more frequent in a state facing an economic and social crisis, as the case has been so many times for Romania since 1989. We have often witnessed a void of power, a void of justice and lawfulness.

The bodies entitled to pursue criminal procedure and the judicial system will be forced to adapt, to understand the way that business offenders operate, to adopt new techniques and establish new methods of approaching justice.

Key words: business, criminality, businesspeople, financial

Dear readers, I will start this article by presenting the explanation that The Dictionary of the Romanian Language provides for the terms "business" and "businessperson".

BUSINESS⁶³ Financial, commercial or industrial transaction, usually based on racket or speculations, Enterprise having a favourable outcome, Important affair, Pursuit, Occupation.

BUSINESSPERSON⁶⁴ Person working in business, adj. BUSINESSLIKE Profiteering, Speculating, Gambling, Racketeering.

Looking back at the period following the 1989 Revolution, at the multitude of criminal offences committed in this period, at the variety of the criminal offences committed by Romanian citizens, and not only, at the ingenuity of the way these offences were committed, all we can do is admit that certain Romanians have grasped the exact meaning that The Explanatory Dictionary of the Romanian Language assigns to the term "businessperson": a person working in business who is a profiteer, a speculator, a gambler or a racketeer.

Business and businesspeople have always existed and will exist forever. As society progresses thanks to its scientific discoveries, the criminal businessman will continue to shock the public opinion through his ingenuity, intelligence and, sometimes, easiness in committing an offence. The more intelligent is the criminal businessman, the more elaborate and hard to uncover will be the offence he has committed.

I would like to refer to the expression "white collars", used for the first time by an American criminologist, Edwin Sutherland, who maintained that: "*White collar* criminality most often takes place through the erroneous presentation of the financial status of the companies, through the manipulation of the stock market and the bribing of public persons for the purpose of ensuring advantageous contracts, through the bribe given in order to strike a bargain, defalcation and use of the respective financial funds for other purposes aiming at violating the law, through the large-scale practice of fraudulent bankruptcy", and the enumeration goes on, as the possibilities to violate the law are varied and countless. *White collar* criminals commit deeds defined by Sutherland as "a violation of the criminal law by persons of a high class socioeconomic status, while performing their occupational activities". The American criminologist also presented arguments by which he demonstrated that *white collar criminals* are quite immune from criminal conviction, given the power of the class they belong to influence justice as regards the implementation and application of the law. As a result of this class tendency, Sutherland says, "the criminal offences committed by those belonging to the upper classes are generally treated differently from those committed by people belonging to the poor strata of society"⁶⁵.

Although this expression was first used in 1939 by the American criminologist Edwin Sutherland in a report he addressed to the American

⁶³ Afacere — Business, The Explanatory Dictionary of the Romanian Language, Publishing House of the Academy, 1988

⁶⁴ Afacerist — Businessperson, Businesslike, The Explanatory Dictionary of the Romanian Language

⁶⁵ Tudor Amza, Criminology. Treatise of Criminological Theory and Policy, Publishing House Lumina Lex, Bucharest, 2002

Sociological Association and, even if it is considered by present-day criminologists as ambiguous and controversial, personally, I can only find that this theory, this expression fits precisely many facts that took place in the period following the 1989 Revolution.

”The true question“, Tudor Amza maintains, in ”Treatise of Criminological Theory and Policy“, trying to explain *white collar* criminality from the viewpoint of the theories regarding criminal behavior, ”is whether it is possible to adopt laws which are opposed by quite a significant segment of the population and, once they have been adopted, whether it is possible to apply them“. The author of the treatise gives the example of the American law which in the period 1917 — 1933 prohibited the production and commercialization of alcohol, a law opposed by large segments of the population. In this case, as it is well-known, a systematic violation of the law took place. Finally, the respective law was abandoned and the incriminated practices became legal⁶⁶.

In today’s society, we are hoping and expecting that the efforts to impose the law should become so powerful as to overwhelm those who favor the violation of the law.

We must admit that the state of a society and its reaction to the criminal offences in the business field often stimulates the offenders. They would do anything in order to achieve financial success and, if success involves even the use of illegal means, why not? The end justifies the means⁶⁷.

Criminal offences in the business field are more frequent in a state facing an economic and social crisis, as the case has been so many times for Romania since 1989. We have often witnessed a void of power, a void of justice and lawfulness.

The transition from an organized state-controlled economy to a free-market economy has been an extremely difficult process, sometimes hard to understand for certain”businesspeople“who thought that everything is allowed. It is the task of the state and of the competent institutions to interfere in such a case, in order to make sure that all market economy participants observe the rules and that those who violate the law are harshly sanctioned, depending on the gravity of their deeds.

There are countless criminal offences in the business field: from racket, fraud, disclosure of an economic secret, circulating counterfeit objects, unfair competition, tax evasion, performing prohibited activities to ill management and so on....

Most worrying are the offences in the field of informatics. We are glad to see that technique and technology have progressed so much, that we are actually witnessing a digital revolution⁶⁸. These are great achievements for mankind (performing, in record time, a multitude of transactions, affairs and communications with any parts of the world), but, at the same time, new and wide horizons have opened for the offenders who exploit these informatics networks for

⁶⁶ Tudor Amza, Criminology, Treatise of Criminological Theory and Policy, Lumina Lex, Bucharest, 2002

⁶⁷ Costica Voicu, Dirty Money and Organised Crime, Artprint Publishing House, Bucharest, 1995.

⁶⁸ Tudor Amza, Treatise of Criminological Theory and Policy, Lumina Lex, Bucharest, 2002

the purpose of achieving profit, having the possibility to produce enormous frauds. This new type of criminal offence does not only threaten bank accounts, business dealings between companies and individuals, but it also represents a real danger for large worldwide concerns and even for state security.

”Most criminal offences in the business field committed by means of the computer are criminal acts perpetrated by the employees“⁶⁹.

”Also, financial attacks are often planned by people from the inside, who know the technical details“.

There are countless illustrating examples.

”Technology, justice and crime, all develop in the same area, and there is a race for improving the means of taking action and gathering evidence against the criminals, but also for committing new crimes with a greater impact, as well as for producing laws that might protect this important discovery of the human genius, informatics“.

As regards the situation in our country, we must still remark that the qualified authorities have issued laws aiming at regulating the economic, commercial and business relations established between various partners.

I would like to mention from among these laws the following:

- Law no. 31/1990 regarding trading companies, which stipulates a number of deeds representing criminal offences, which might be committed by the administrators, partners or founders of companies. The law also has in view aspects concerning the social and juridical relations established in commercial activity, everything that is related to the existence of a trading company, to the relations which must be based on the good faith of the business partners;

- Law no. 11/1991, modified by Law no. 298/2001 regarding the fighting against unfair competition (the use of brands, inventions, firms, emblems liable to cause confusion, the circulation of counterfeit goods, etc.);

- Law no. 241/2005 regarding the criminal offences of tax evasion (hiding a taxable or dutiable asset, adulterating, destroying or hiding accounting acts);

- Law no. 21/1996 regarding competition (the deed of the natural person of participating with a fraudulent intent in conceiving, organizing or performing anticompetitive practices).

Thus, we are noticing that our institutions, as well as the international ones are concerned with knowing this phenomenon of business criminality as well as possible and finding effective counteracting means, goals that can be fulfilled only through legislative harmonization and international cooperation.

The bodies entitled to pursue criminal procedure and the judicial system will be forced to adapt, to understand the way that business offenders operate, to adopt new techniques and establish new methods of approaching justice.

Many of the criminal offences committed in the business field and which encroach upon the rights of the individual or of the community he/she belongs to

⁶⁹ Dan Banciu, Sorin Radulescu, Corruption and Organised Crime in Romania, Publishing House Continent XXI, 1994

and which harm the social rules settled in a country have eluded legal incriminations and an adequate solution is not always found, because they often take new forms, that the legislator did not have in mind when elaborating the law. A thorough study of comparative law should be carried out regarding the way in which other legislations take action against such criminal offences.

All we can do is hope that Romanian society will mature from the point of view of the perception of the notion of "democracy", of the words "business", "businessperson" and of many others, among which I think that the most important are "truth, justice and law". It is within our power that these "words" become more than just words, that they become principles, values that should guide our thoughts and activity.

Even if the Dictionary of the Romanian Language provides the definitions of the words "business" and "businessperson" presented at the beginning of this article, we should try to give another explanation to these words, such as:

Business = a financial, commercial or industrial transaction based on trust and understanding, from which all parties obtain, if not the result they wanted, at least a favorable one.