

## GENERAL ASPECTS AND PARTICULARITIES OF THE OFFENCES IN THE BUSINESS FIELD

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### **Abstract:**

*The paper having the title General aspects and particularities of the offences in the business field shows a particular interest in the field of business delinquency, phenomenon that tends to extend more and more nowadays. The development of the economy based on private property sets up a juridical frame where the real and loyal economy should become a very profitable and real one in the same time. The offences regarding the business field are noted in the special part of The Criminal Code and in special laws and in laws that are not specific to the Criminal Law but the ones that contain offences stipulations. This subject presents an interest because of the up following consequences but also for the subsequent consequences. The financial delinquency changes the business environment by severe impact that it has on the loyal concurrence and is also associated with corruption. The economic and financial delinquency is not a specific phenomenon to the Romanian society, but is an undesired consequence of the economy globalization among the provenience and the corrupt money, the informatics domain is also very searched by the offered in the business field because together with the newest technologies some new forms of delinquency appear.*

**Key words:** business offences, business delinquency, financial delinquency, loyal concurrence, criminality economics phenomenon.

The business offences, named in the speciality literature as “business delinquency” represents a very important field of the delinquency phenomenon. This is why the legislator interfered and incriminated the anti-social deeds, the ones that damage the social business relations.

It is necessary the setting up of a penal constraint in this field starting from the fact that the significance of any penal regulation consists of only one characteristic: the measures to be taken in order to punish and to intimidate the offenders.

Any violation of the juridical regulation is sanctioned considering the fact that through the offence the only cause of the penal responsibility are severely violated the most important social rules.

The passing to an open market economy based on the free initiative and private property is a complex process that imposed the necessity of setting up a juridical frame where the economy to become a reality.

The development of such an economy determined also the development of a criminal environment as the offences in the business field, nowadays we can talk about the business criminal law phenomenon.

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Form the researchers study there can be drawn some characteristics of the business criminal law phenomenon:

1. the low percent of the business offences that are discovered and sanctioned, and we can say here that the black number of the criminality, this means the difference between the real offences and the discovered one by the competent authorities, is higher then the general average of the criminal phenomenon<sup>292</sup>.
2. we can deal with a classification of the business offences regarding the field where are infringed the law rules

The most important and severe consequences are because of the infringement of the rules regarding the:

- the commercial units, because the commercial unit is a juridical fundamental institution of law, absolutely necessary for the development of the economical activities inside an open market economy

This is built for an economical and productive purpose, and when this purpose is defalcated by the ones in the law can be produced a lot of severe consequences for the ones that connect with these commercial units.

Now, in Romania, the general juridical frame of regulating the commercial units is Law 31/1990 regarding the commercial units.

With this law there was an important reform for the commercial units that before 1989 disappeared completely from the economy, the only ones that were admitted were the mixed commercial units with foreign business partners.<sup>293</sup>

The law 31/1990, the law of commercial units stipulates in its content a series of actions that are qualified by the legislative as being offences and these are grouped into three categories<sup>294</sup> regarding the specific of the rules that are infringed:

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<sup>292</sup> M. A. Hotca, M. Dobrinoiu, *Offences from the special laws*, I<sup>st</sup> Vol., C.H Beck Publishing House, Bucharest, 2008, page 2.

<sup>293</sup> M. Costin, C. A. Jeflea, , *The comercial societeyes of personnes*, Lumina Lex Publishing House , Bucharest, 1999, page 3.

<sup>294</sup> M. A. Hotca, M. Dobrinoiu, cited work, page 453.

- the offences on the commercial units foundation or regarding the economical situation of these ones
- the offences that are made by the measures of the leading staff
- the offences made by the emission of actions and obligation certificates

The procedure of insolvency regulated by Law 85/2006 where is disputed the judicial re/organization of a debtor that is unable to pay and also the procedure of bankruptcy. The legislative novelty promoted by this law refers to the introduction of a simple procedure applicable to the traders, physical persons that develop actions in an individual way or family associations, but also other juridical persons that develop economical activities or other debtors that are in the situations that are noted in the law.<sup>295</sup>

The deeds that are incriminated as offences in the Law 85 are noted in art.143-147 in the law: the simple bankruptcy and the fraudulent bankruptcy, the offence of fraudulent administration, the offence of dilapidation, the offence of an inexistent debt registration, the offence of refusing to present the necessary information and documents.

- The Register of Commerce because the traders, before starting the trade, as well as other authorized persons, individual, family or juridical companies, that are noted expressly in the law, before these to start the activity, have the obligation to ask for the matriculation in the Commerce Register, and during the actions or at the end of the trade or any activity to ask for the notes to be written in the same register mentions regarding the documents and the deeds that are required by the law.
- The accountability of the commercial units because the company is obliged to organize and to lead its own accountability
- The financial and fiscal field, because the existence of the state is dependent by the participation of the liable to pay the duties, physical and juridical persons in order to form the public funds, and the obligations to participate to these funds are formed by the Constitution of Romania, the purloining from this is being considered an offence

The financial delinquency changes the business environment by severe impact that it has on the loyal concurrence and is also associated with corruption.

The economic and financial delinquency is not a specific phenomenon to the Romanian society, but is an undesired consequence of the economy globalization among the provenience and the corrupt money, the informatics domain is also very

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<sup>295</sup> S. Angheni, M. Volonciu, C. Stoica, *The comercial law*, 4<sup>th</sup> Edition, C.H. Beck Publishing House, Bucharest, 2008, pages 245, 246.

searched by the offered in the business field because together with the newest technologies some new forms of delinquency appear.

Unfortunately, the internet does not make any exception and the situation is aggravated by the fact that the internet generates continuous flux of information, products and services that cross in a very rapid way the internal and external borders of the European Union.

According as the electronic devices become more and more accessible for everybody, the offences in the informatics domain develops and diversifies very rapidly, over crossing the traditional way of committing offences or counterfeiting.

So, the legislator and the entities to apply the rules are almost disarmed when dealing with the multiplication of the illegal contents and the explosion of the piratical phenomena.

1. Another particularity of the offences in the business field that is determined by the way that, in difference of the offences committed in other fields where, usually, the negative consequences are easily estimated, in this field, the damages are very hard to be found and estimated, because there are many cases when the offences remain to be undiscovered, people having a high level of tolerance towards these then the offences that submit violent actions.
2. The business field offences over crossed for a long time now the internal borders of countries and from here we can note the tendency of people to involve in these offences, sometimes having a powerful impact for and towards agencies in many countries in the same time. We can talk here about the criminality phenomenon in the business field at a national level, but we can also extend this phenomenon to the international level. The proportion of this phenomenon determined numerous international organizations to gather and to get involved in the fight against the criminality deeds in the field of international business. The evolution of the contemporary society underlines the fact that even if there are many measures to be taken against this phenomenon and there are many specialized institutions of social control against these deeds of delinquency and criminality, in many countries the deeds become more and more present and also these diversified their field of actions, becoming more and more popular in the fields like: finance, banks, fraud, blackmail, bribery and corruption.
3. The criminality in the business field involves negative consequences that affect both the public and the private sectors. First of all, this represents a social problem whose manifestation methods and the solutions to be found presents a high interest for the social control bodies like: the police, the justice system and the administration, but also the large public.
4. The offence in the business international and national affairs have a lot of causes
5. The criminality in the business field and the organized offences are deeply connected to the commercial society that is legally build and constituted,

the one that develop its activity obeying the existing rules, for several reasons these can take some measures that are not according to the law and to convert its initial objective in an non legal one, or a criminal group and constitute itself in a legal organization having as purpose to hide its true objectives, these being to commit offences<sup>296</sup>. By researching the different actions in the business fields the control bodies have discovered enormous well build networks of organized criminality.

6. A specific particularity of these offences regards the established purpose by committing these actions like: gaining money and other financial acts, from there being affected the security of the economical system of a country, the loyal concurrence, the patrimony that is so necessary for a person or for an economical organization.
7. The fight against this criminality in the business field involves a large number of institutions, an important role in changing the attitude towards these offences have also the civil society.
8. Regarding the sanctions for the criminal deeds in the economic field, a specific aspect refers to the fact that the sanctions with prison and penal fines predominate, for the physical persons and the classical punishments for the juridical persons.

So, we may conclude that the phenomenon of criminality in the business field is a part of the entire criminality phenomenon and presents a series of specific particularities, being underlined the fact that in economic and social crisis situations this phenomenon takes extension.

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<sup>296</sup> C. Voicu, A. Boroi, *The penal law of business*, C.H. Beck Publishing House , Bucharest, 2006, page 9.