TYPOLOGIES OF FINANCIAL CRIME

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Abstract

Determining the types of each type of crime is extremely important for its study. In criminology, the truth of typology has long been known crime has more than just academic significance. They contribute to better systematization certain forms of crime and creating the preconditions for finding effective ways for its suppression. This is especially important when it comes to financial crime, having in mind its social danger and harm to the financial system as a whole. U in accordance with the above, the paper will present different typologies of financial crime. The intention of the author is not to plead for one of the divisions of financial crime, but to point out their importance for suppression through their systematic and clear presentation of this form of crime. All this indicates the descriptive character of the work. We believe that such an approach is necessary in modern criminology, especially when it comes to studying complex forms of crime, which is certainly financial.

Key words: *criminal law, financial crime, typologies*

1. Iintroduction

The volume of financial transactions increases at a staggering rate as an online banking system becomes a norm these days. Due to convenience of monetary transactions on a global scale, illegitimate money also takes advantage of the structured transaction systems, along with legitimate finances. Considering the nature of surrounding environments, financial crime is not an isolated concept. It evolves as a reflection of its environmental changes, such as social contexts and ICTs advancements. Against these backdrops, financial crime proliferates anddiversifies itself into more sophisticated subsets.

Financial crime is one of deeply entrenched illegal activities in any society. However, the concept of financial crime has not been agreed upon until now. Without proper classification and conceptualising of financial crime, it is difficult to figure out ways to identify and respond to recent types of financial crime. Therefore, it is critical to understand the nature and characteristics of contemporary financial crime. In this paper, several questions are answered: (1) what are the definition, components and typology? (2) who are victims? (3) what are thefacilitating factors and what are priorities of public organisations? (4) how does financial crime relate to other crimes? By answering these questions, it is hoped that both researchers and practitioners have a clearer picture on the recent trend of financial crime.

Economic crime is a complex social phenomenon in its causes, structure, forms and dynamics (Kostić, 1990: 303). Financial crime is one of the emerging forms of economic crime. Social danger of financial crime stems from the fact that it endangers the financial system itself team and the tax system of each state. The functioning of the fiscal system is essential importance because it provides material resources for public spending.

Determining the types of each type of crime is extremely important for its study. In criminology, the truth of typology has long been known crime has more than just academic significance. They contribute to better systematization certain forms of crime and creating the preconditions for finding effective ways for its suppression. This is especially important when it comes to financial crime, having in mind its social danger and harm to the financial system as a whole. U in accordance with the above, the paper will present different typologies of financial crime. The aim of this paper is not to analyze in detail all the forms of financial crime. It would not be possible to do that in this type of work, having in mind the structure of the crimes that make up this form of crime. The aim of the paper is to point out general characteristics of financial crime and some of its possible divisions.

The intention of the author is not to plead for one of the divisions of financial crime, but to through their systematic and clear presentation, they point out their importance for suppressing this form of crime. All this indicates the descriptive character of the work. We think so such an approach is necessary in modern criminology and in the science of criminal law, especially when it comes to studying complex forms of crime, as it certainly is financial crime.

2. Basic classification of financial crimes in his general criminal characteristics

There is no internationally accepted definition of financial crime (IMF, 2001; Ryder, 2011). Financial crime is often defined as crime against property, involving the unlawful conversion of property of another to one's own personal use and benefit. According to the International Monetary Fund (2001), financial crime refers to "any non-violent crime that generally results in a financial loss". In the UK, the Financial Services and Markets Act 2000 (FSMA) states that financial crime includes 'any offence involving fraud or dishonesty; misconduct in, or misuse of information relating to, a financial market; or handling the proceeds of crime'.

Some researchers and government institutions do not clearly distinguish financial crime, financial abuse, and white collar crime and use them interchangeably without any differences. IMF (2001) suggests that financial abuse is encouraged by poor regulatory and supervisory frameworks and weak tax systems and as a subset of financial abuse financial crime requires a financial loss. Pickett and Pickett (2002) define financial crime as 'the use of deception forillegal gain, normally involving breach of trust, and some concealment of the true nature of the activities', using the terms financial crime, white-collar crime, and fraud interchangeably. On the other hand, Interpol[1] states that financial crime is also often referred to as white-collar crime which was first coined by Sutherland (1939) as "committed by a person of respectability andhigh social status in the course of his occupation". By this definition, white collar crime is equivalent to occupational crime. It is analysed that financial crime encompasses white collar crime in that the former is perpetrated by individuals or groups regardless of occupations.

[1] http://www.interpol.int/Crime-areas/Financial-crime/Financial-crime

Examples of white-collar crime are money laundering, insider dealing, fraud, and market manipulation, which can be captured by financial crime.

FBI (2005) states that financial crime is characterized by deceit, concealment, or violation of trust without dependency on physical force or violence. Pickett and Pickett (2002) enumerate several components of financial crime as following; 1. Deceitful; 2. Intentional; 3. resulting in pecuniary losses; 4. possible concealment; 5. breach of trust; 6. possible appearance of outward respectability. Based on the definitions and components above, some elements are found to be important in conceptualizing financial crime; deceitful, intentional, concealment, andfinancial loss as a result.[2] Among these elements, a financial loss is considered the core element in that without this element it might be confusing with other types of crime that takes advantage of a financial system or network. For example, when criminals and terrorists have come to relyon the financial system and the information within it, it can be said to have abused financial systems (financial abuse), but cannot be classified as financial crime as long as it does not generate pecuniary losses.

In order for fiscal policy to be effective, it is of great importance for each country to strike a balance between public revenues and expenditures. Public expenditures are financed from taxes and other duties paid by citizens (Kostić, 2016: 135). This balance is just right disturbed by the commission of criminal offenses in the field of economic crime, whose financialcrime an integral part. In this part of the paper, some of the possible ways will be presented classifications of financial crime and its general criminal characteristics.

Economic crime is a complex criminological and legal phenomenon that has emerged in modern society with the development of the economy. This form of crime includes a certain group of crimes against social-property relations and the economic system. The area of economy and economic relations are areas that are very susceptible to reporting crime (Konstantinović- Vilić, Nikolić-Ristanović and Kostić, 2012: 171-172).[3]

As can be seen, the typology of economic crime is a complex and important issue, an it depends on the criteria of division. In general, there is no generally accepted classification of economic crime. The criteria for the classification of economic crime in general (Shikman and Domuzin, 2013). Taking this into account, we can adopt a classification according to which criminal acts can be legal, social-ambient, psychological-motivational and clinical (Ignjatović, 1999: 206-228). It is practically impossible to list all types either economic or financial crime. There is a consensus among criminologists that economic crime includes the following forms of illegal behavior: crimes which the unity of the market, the appropriation of unrecorded surplus goods is disturbed and endangered, raw materials and products, deceiving customers, doing business "for one's own account" (it appears usually in retail and catering establishments), offenses related to abuse powers in economic entities, behaviors conditioned by monopolistic position on the market, unscrupulous business, etc. (Konstantinović-Vilić, Nikolić-Ristanovićand Kostić 2009: 177-178). For financial crime, legal is especially important classification of criminal offenses.

Financial crimes also include fiscal crimes. Except in criminal legislation, these crimes are prescribed in the legislation on tax procedure and tax administration (Jovašević, 2006: 793). Fiscal crimes are up to has now been the subject of numerous scientific studies and research,

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[2] Pickett, K. S., & Pickett, J. M. (2002). Financial crime investigation and control. John Wiley & Sons.

[3] HM Treasury. (2007). The financial challenge to crime and terrorism. London: The Stationary Office.

which only points to its importance fiscal system for the functioning of the entire economic activity in one country.

When it comes to types of crimes, fiscal crimes should be highlighted. To them the fiscal system is protected. Criminal protection of the fiscal system is justified having in see the fact that uncontrolled public spending and insufficient inflow of budget funds can contribute to the budget deficit, which has extremely adverse effects on macroeconomic conditions of a country, which is reflected in its social status. Poverty can also encourage the commission of other crimes. The position of the European Commission is that strengthening financial responsibilities should also be developed through criminal law, but no by spreading incriminations, but by applying criminal law in cases where it is necessary. The public sector obtains financial resources from the market sector through redistribution national income. The higher the public spending of the state, the less funds remain for the economy for business and investment. Fiscal crimes are most often understood as tax crimes, although they are also crimes that destabilize customs and budget system. In the following period, one could consider prescribing these works in new chapter (special group) in the Criminal Code, given that a larger number of these acts, except for unintended spending of budget funds, it is classified in the group of criminal acts againsteconomy. These crimes do not protect the economy, but, above all, the state treasury and public property, and indirectly the property of citizens, given that citizens finance public spending and that all citizens of a country under the same conditions belong to the public goods financed from public revenues (Šuput, 2015: 6).[1]

Having in mind the systematics of the Criminal Code of the Republic of Serbia, criminal acts which constitute financial crime are found in Chapter XXI (Crimes against the Economy). These include the following criminal offenses: fraud in performing economic activity (Article 223), insurance fraud (Article 223a), embezzlement in the performance of economic activity (Article 224), abuse of trust in the performance of economic activity (Article 224a), tax evasion (Article 225), non-payment of withholding tax (Article 226), abuse position of the responsible person (Article 227), abuse in connection with public procurement (Article 228), abuse in the privatization procedure (Article 228a), concluding a restrictive agreement (Article 229), accepting bribes in performing economic activities (Article 230), giving bribes in performing economic activities (Article 231), causing bankruptcy 232), causing false bankruptcy (Article 232a), causing false bankruptcy (Article 232a), damage to creditors (Article 233), illicit production (Article 234), illicit trade (Article 235), smuggling (Article 236), disabling control (Article 237), unauthorized use of someone else's business name and other special marks goodsor services (Article 238), damage to business reputation and creditworthiness (Article 239), disclosure of business secrets (Article 240), counterfeiting of money (Article 241), counterfeitingof securities (Article 242), counterfeiting and misuse of payment cards (Article 243), forgery of signs for value (Article 244), forgery of signs, ie state stamps for marking goods, measuring instruments and objects made of precious metals (Article 244a), making, procuring and giving to others means for falsification (Article 244b), money laundering (Article 245). Detailed analysisof the characteristics of each of the above criminal offenses, would greatly exceed the aim of thispaper, so at this point, in short, only their most basic general characteristics will be presented, which are indicative of their grouping and further study. As already based on the very name of these criminal offenses can be concluded, these are very numerous and heterogeneous criminal offenses, which, however, have certain common characteristics. The object of protection of thesecriminal offenses is the economy as a whole or individual types and segments of economic

[1] Wall, D. (2007). Cybercrime: The Transformation of Crime in the Information Age. Cambridge. Polity.

business, that is, the legal and quality functioning of domestic trade and foreign trade, which enables free and unhindered movement of goods, funds and people (Jovašević, 2006: 135). It is important to point out that it is a financial crime in its scope of incrimination, it is significantly narrower than economic crime because it represents its segment. A large part of the incriminations related to this form of crime are found in the so-called. ancillary criminal law. Forthe execution of most of these crimes deeds require intent. Most crimes in this group can only be committed by individuals which possess appropriate properties and perform certain tasks in economic entities, so they belong to delicta propria.[2]

A special form of financial crime is corruption. They greatly jeopardize the stability of the functioning of the financial system and the economy as a whole. In the broadest sense, corruption is defined as the abuse of the public services for the purpose of gaining private profit (Šoškić, 2004: 19). Corruption threatens the core values of a democratic society. It undermines citizens' trust in public institutions, justice and equality of people (Dimovski and Stanojević, 2013: 93). Generally speaking, corruption can be divided into small, medium and large (Šoškić, 2004: 22). Still, this division should be conditionally understood because the degree of corruption is not directly proportional to its social dangers. Therefore, it should be borne in mind that all forms of corrupt behavior and business is dangerous and to destroy the mechanisms ofthe state and society for the fight against crime and its suppression.

At the core of financial crime is the tendency to use money illegally outside legal regulations. This aspiration creates a special process that, basically, concerns production, trade, investment and financial flows without territorial restrictions, worldwide level that enabled them to develop high information technologies. The downside Globalization is a phenomenon of organized crime that seeks to launder money legalizes the proceeds of crime, and then infiltrates the financial and economic flows, with the aim of controlling certain economic flows, and to influence them political processes for the realization of their interests (Radonjić, 2015: 19). Financially crime can also be seen as a reflection of the negative consequences of the globalization process and the growing efforts of individuals from criminal structures to exploit gaps in the legal system individual states and thus "legalize" illegally acquired profits. If the stateopposes this process with effective criminal law, clear incriminations that would covering different types of crimes, criminal proceedings related to finances will certainly be significantly aggravated.

3. Typology

Gottschalk (2010) classified a wide range of financial crime into four main categories (i.e. corruption, fraud, theft, and manipulation). Although any justification on why these four categories were chosen was not provided, recent types of financial crime were reviewed in an exhaustive manner.

Classification of financial crime by Gottschalk (2010)

- ✓ Corruption: Kickbacks, bribery, extortion, embezzlement
- ✓ Fraud: Identity, mortgage, occupational
- ✓ Theft: Cash, intellectual, fraud
- ✓ Manipulation: Laundering, cybercrime, bid rigging, insider trading

[2] Sutherland, E.H. (1939), Principles of Criminology, (3rd ed.). Philadelphia: J.B. Lipincott &Co.

IMF (2001) interpreted financial crime in a relatively narrow sense, distinguishing the two terms. Financial abuse is defined as a broad concept. As a subset, 'financial sector crime' involves a financial institution or financial market, while 'other financial crime' includes a range of unlawful activities which entail financial loss. And, the rest is conceptualised as 'otherfinancial abuse'.[1]

Classification of financial crime by IMF (2001)

- ✓ Financial sector crime: Money laundering/fraud/tax evasion/circumvention of exchange restrictions /other
- ✓ Other financial crime: Sale of fictitious financial instruments or insurance policies/ embezzlement/tax evasion/stock manipulation/other
- ✓ Other financial abuse: Tax avoidance/connected party lending/stock manipulation /other

3.1 The Activities and Extent of Financial Crime

Examples of financial crime are money-laundering, tax evasion, fraud (embezzlement, check and credit card fraud, securities fraud, insurance fraud, health care fraud and pension fraud), stock manipulation, tax avoidance, bribery and corruption, insider trading, terrorist financing, etc. FBI (2005) focuses its investigations on corporate fraud, health care fraud,mortgage fraud, identity theft, insurance fraud, and money laundering.

Interpol[2] points out that financial crime is generally transnational by the use of networks such as internet. In nature, transnational crime and cybercrime are closely connected to financial crime, causing a detrimental impact on financial institutions or individuals around the world. Why is financial crime more likely to be transnational and hinge on electronic networks? First, proceeds from financial crime need to be stored in a safe place where local law enforcement agencies are unable to trace. It means that sending the proceeds overseas to where cross-border cooperation does not work well reduces the chances of being caught. Second, wiring the proceeds does not require going through customs inspections, thus limiting the reach of law enforcement agencies. It is almost impossible for local agencies to spot and freeze the proceeds before transferring beyond the border in that online money transaction finishes within seconds. These natures correspond to the characteristics of an information society mentioned by Castells (2000); Informational, global, and networked. Let's think about remittance of illicit money. It can be elaborated that "financial information on the proceeds is delivered to a third person beyond the border (global) via computer networks". This explanation substantiates the argument that financial crime exactly reflects the current societal change into an information society.

3.2 Extent

It seems to be impossible to accurately calculate the extent of financial crime (Ryder, 2001). A study from the United Nations Office on Drugs and Crime (UNODC, 2011) estimated that in 2009 all criminal proceeds were likely to amount to 3.6% of global GDP, which was

[1] Kolhatkar, S. (2015. October 21). Has It Become Impossible to Prosecute White-Collar Crime? Retrieved from http://www.bloomberg.com

[2] http://www.interpol.int/Crime-areas/Financial-crime/Financial-crime

equivalent to about $2.1 trillion. Besides, the research pointed out that the volume of international money-laundering was expected to be about 2.7% of global GDP or $1.6 trillion. This money-laundering figure falls within the often called ‘consensus range’ suggested by the International Monetary Fund in 1998, which is from 2 to 5 per cent of the world’s GDP. This estimate would be translated into from $590 billion to $1.5 trillion by using actual numbers of 1998, while FATF estimated about $500 billion. The lower figure roughly equates to the value ofthe total output of an economy the size of Spain.

In terms of corruption which is “abuse of entrusted power for private gain”(Transparency International[3]), the World Bank states that approximately $1 trillion is paid in bribes around the world. Considering the economic and societal ripple effects, the World Economic Forum estimates that the cost of corruption equates to 5% of global GDP, which is about $2.6 trillion and that corruption increases the cost of doing business by up to 10% on average (World Economic Journal[4]). IMF research has revealed that investment in corrupt countries is about 5% lower compared to countries that are relatively corruption-free (OECD, 2013). It is important to notice that a country’s capital productivity is adversely related to corruption (Lambsdorff, 2003). The argument that corruption is directly associated with economic growth in a country gives more weight to the significance of tackling corruptive activities.

The UNODC estimated that in the U.S. about $300 billion or about 2 per cent of the economy was generated in illicit proceeds in 2010. Among all the financial crimes in the US, illicit drug sales and fraud was estimated to account for most proceeds. The UK HM Treasury (2007) estimated that over £20 billion of social and economic damage was brought about in the UK and more than half of the damage is generated by illicit drug use. KPMG’s 2012 survey with281 respondents reported that the total value of fraud for public and private sector organisations in Australia and New Zealand was $372.7million, with an average loss per organization of $3.08 million. According to the Australian Institute of Criminology (2011), fraud is estimated to have cost the Australian society $6.05 billion in 2011. To sum up, these figures show that money-laundering, drug sales, and fraud are major illegal activities that do harm on the national and international scales.

3.2 Victims of Financial Crime

Victims range from individuals to institutions, corporations, thus affecting all levels of society (Gottschalk, 2010). At a micro level, individual citizens and corporations suffer the effects of serious financial crimes. Some market frauds have taken in thousands of people, with many losing their savings, security and also affecting their emotional wellbeing, physical health and relationships (Australian Crime Commission5). At a macro level, financial crime has a negative impact on the entire economic and social system through the considerable loss ofmoney incurred.

[3] http://www.transparency.org/what-is-corruption
[4] http://world-economic.com/articles_wej-373.html

Classification of victims

	Individual	Organizational
Internal	1	3
External	2	4

1. Individual internal victims : Individuals in the organization are the victims

2. Individual external victims : Individuals outside the organization are the victims

3. Organizational internal victims : Organizations as such are the victims

4. Organizational external victims : Outside organizations are the Victims

Each type of victims has their own interests in different forms of financial crime. Firstly, individual citizens using services from financial institutions usually fall for fraud and identity theft either by insiders or outsiders.[1] The Ponzi scheme by Bernard Madoff in 2008 is an example of fraud by an insider and it can also be called as occupational financial crime. Fraud byinsiders is not expected to happen a lot because of increasing internal control, but once it occurs, the amount of damage is massive. On the contrary, it is more frequent case that criminals outside a financial institution target individuals. It is quite obvious that phishing has become the most prevalent style of fraud against individuals. By the use of computers and networks, criminals can target tens of thousands of potential victims by automated calls or emails or text messages. As cyber financial crime, phishing affects each individual with a relatively small amount of damage,but large in aggregate. Secondly, corporations including financial institutions become victims of financial crime. Insiders are more inclined to commit crimes such as corruption, embezzlement, cash and inventory theft, and intellectual property theft, while outsiders including customers might be responsible for identity fraud, insurance fraud, and consumer fraud, etc. Thirdly,financial crime destabilizes national economies (FATF6). Ryder (2011) claims that the integrity of a nation's financial institutions can be eroded and the effects of financial crime can ultimately threaten national security. Enron scandal was the big single case that rocked the whole US economy. In fact, a national financial scandal sometimes gives rise to a ripple effect throughout the global economy.

Lastly, international financial system and institutions are victims on the global level. Western countries have placed a high priority on tackling money-laundering and terrorism financing. Responding to calls from the international community, international organizationssuch as IMF and FATF have extended their reach to the areas of anti-money laundering (AML) and combating the financing of terrorism (CFT). The aim of them is to secure the integrity of the international financial system. In this year, it has been discovered that international sport institutions such as FIFA and IAAF have had serious internal financial problems, which is corruption. The scandals surrounding FIFA and IAAF were, respectively, over the selection of hosting cities for World cup and covering up positive doping tests. It is quite surprising that those non-profit institutions supposed to maintain a high level of integrity have a difficulty in preventing kickbacks and bribes. However, it is not easy to pinpoint victims on a global scale for two reasons. First, victims such as financial system are intangibles. Second, the actual amount of financial damage is intricate to figure out.[2]

4. CONCLUSION

Organized criminal networks are often behind financial crime. Baker (1999), citing the U.S. Treasury Department, stated that 99.9 per cent of the criminal money has ended up being deposited in secure accounts. In order to secure evidence or to freeze and seize illegally obtained assets, law enforcement officers need to react swiftly. The amount of being seized and frozen by legal institutions is less than 1 per cent of global illicit financial flows (UNODC, 2011). As a matter of fact, there are some debilitating factors that make it hard to trace the criminal or the illegal assets. These factors are differences among countries in terms of their national jurisdictions, their implementation of international conventions, and the level of expertise of their investigative and prosecutorial authorities.

When financial sector crime occurs, it is difficult for law enforcement agencies to hold employees in financial institutions accountable for illegal transactions. More frequently, government departments pursue enormous multi-billion-dollar civil penalties against big banks, rather than charges against individuals (Bloomberg News9). Especially, for some countries that are based on adversarial legal system, jurors drawn from the ranks of working people find themselves stuck with little grasp of what the defendants want to argue. In order to reach a final verdict, jurors should struggle to understand the mind-boggling modern financial system. Although many difficulties in restitution exist, regulatory authorities and law enforcement agencies need to figure out ways to outsmart criminals who take advantage of loopholes in financial systems.

Financial crime is a very complex form of crime. Its complexity stems from the fact that in the era of globalization, in which we find ourselves today, there are currents money is very difficult to keep track of. And when a certain illegality is noticed in these processes, in order to sanction such behavior, it is necessary to bring it under the appropriate legal norm of criminal legislation. It is here that significance comes to the fore typologies of financial crime. With the aim of greater transparency of the provisions of the Criminal Code of the Republic of Serbia, respecting all the rules and principles of modern nomotechnics, the separation of criminaloffenses against financial crime should be considered in a separate chapter of the Criminal Code.

We believe that in this way the application of criminal legislation in the field of combating financial crime would be facilitated. Adoption such a concept of incrimination *de legeferenda* would contribute to a more effective fight against it all forms of financial crime,especially given the importance of efficient and timely conduct of financial investigations andthe role of financial forensics in combating this form of crime.

At this point it should be noted that in the suppression financial and other forms of economic crime, in addition to academic experts and higher education institutions, should include experts who in their daily work perform financial control of the work of economic entities, institutions and state bodies (tax inspectors, internal and external auditors, officials of special departments internal affairs bodies, public prosecutors and their deputies, etc.).

Only in this way, with a multidisciplinary approach to this form of crime, long-term ones can occur results in the field of its formal and informal control and suppression.

This paper aims to provide an overview of the characteristics of financial crime and its possible classifications. They do not have classifications of crime into certain groups only nomotechnical significance when drafting legal texts. They also make it much easier to find adequate measures to fight various forms of crime.

Grouping crimes according to certain common characteristics contributes to the achievement of this goal. In this sense, this work can be understood as a kind of attempt to points to the importance of the typology of crimes through the prism of financial crime

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