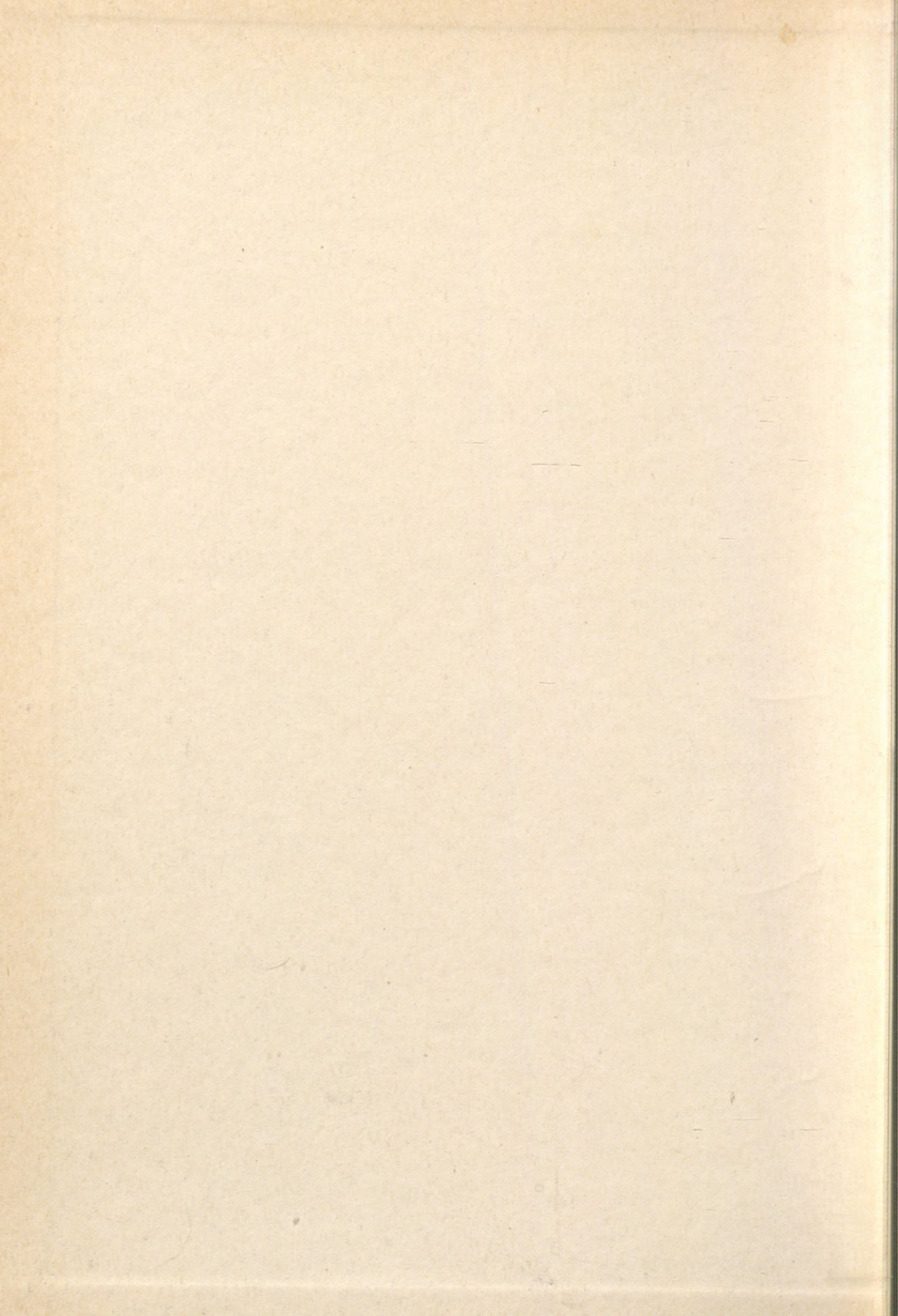


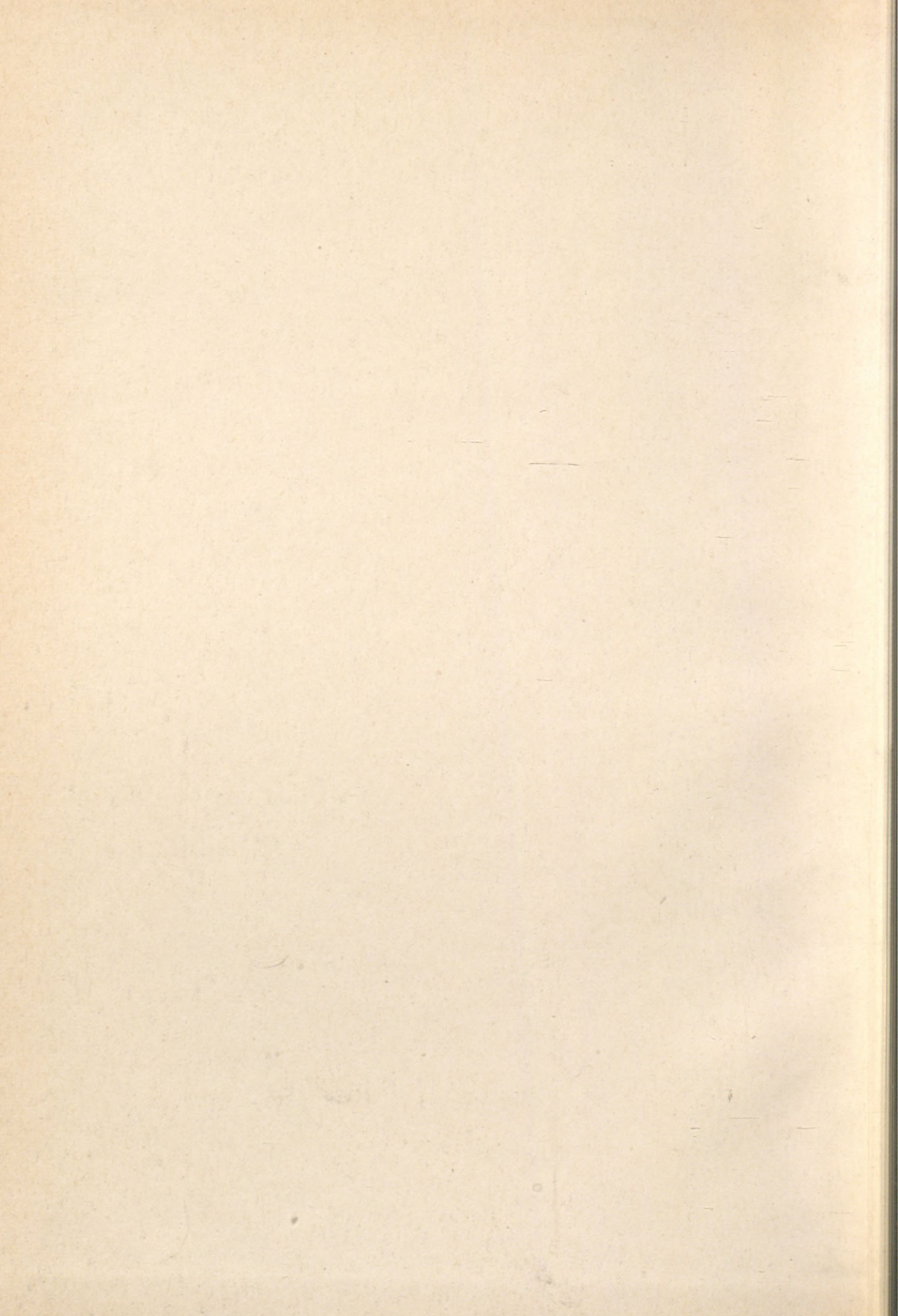
ECONOMIC CRIMINAL OFFENCES

A Theory of Economic Criminal Law

Imre A. Wiener

Akadémiai Kiadó, Budapest

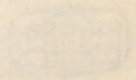


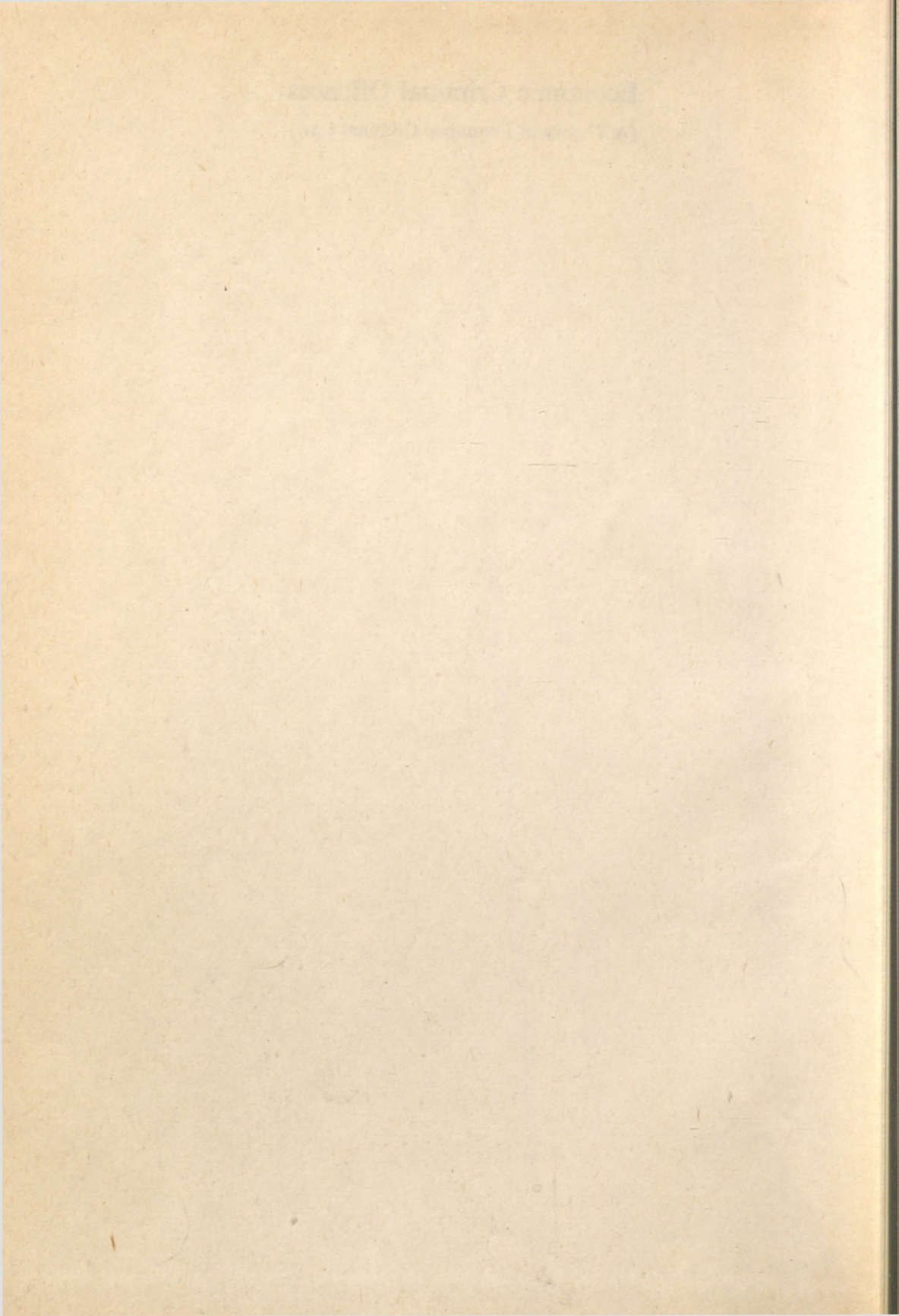


Economic Criminal Offences

(A Theory of Economic Criminal Law)

by
Fritz A. Wiesner





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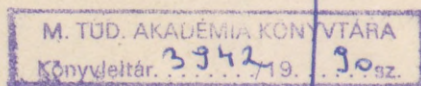
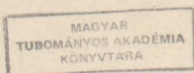


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Árpád Erdei and Miklós Udvaros have kindly agreed to
the use of their translations into English of parts of this book

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Introduction

1. It was during the past decade that criminal science turned toward such criminal offences as are perpetrated in economic life. The examination of the legal means that can be used in the struggle against them, both in socialist and in highly developed industrial economies, has become motivated by the new socio-economic circumstances that have arisen in the world economy recently—among them, by the strives for changes in economic structures as well as by the recognition, in the wake of the big scandals in the advanced economies, that the goals of the members of high circles in politics and economies are intermingled. The firm belief of earlier times, according to which politicians do not choose the career of a politician because they want to earn money, has become faded.¹ Tax-evasion cases, abuses committed by corporations, agreements to exclude competition on the market, the activities of multinational corporations, performed mainly in the third world, all contributed to the decision that the abuses of power, particularly economic power, should be put on the agenda of the UN organ dealing with crime prevention.² In the socialist countries, it was the increased development of the various economic systems that led the cultivators of criminal science to study economic crime from novel aspects. As the development of socialist economic systems assumed an accelerated course, the relation between the organs of economy control and economic units has undergone considerable changes, up to the extent that instead of (or in addition to) plan directives, the market conditions, initiatives for independent decision-making and risk-taking have become recognized factors in the control of the economy. These changes have to be kept in mind when searching for the methods with the application of which the institution of criminal liability can be used for achieving the goals set by the economic policy of the State.

2. We need not prove the truth of the fact that the occurrence of economic crime is influenced basically by the socio-economic conditions among which the economic activity is carried out. Under socialist social conditions, stock market fraud cannot be

¹ Tiedemann, K., *The International Situation of Research and Legal Reform Work in the Field of Business Crime, Annales Internationales de Criminologie*, Vol. 17, Nos. 1-2, p. 52.

² In the course of the past years a number of international symposia were held on economic crime. Thus, among others in Lille (France), 1975 (see: *Criminalisation et infractions* . . . in our References); in Strasbourg, 1976 (see: *Twelfth Conference* . . .); in London, 1977 (see: *Conference on Economic Crime* . . .); in Syracuse (Italy), 1980 (see: *International Seminar* . . .).—The topic was on the agenda of The 13th Congress of the International Association of Penal Law (Cairo 1-7 October 1984). In the preparatory material for the latter Congress three of the earlier scientific sessions were referred to: The 1978 Conference of the Socialist Countries (Szeged, Hungary); The 12th International Congress on Penal Law (Hamburg 1979); and the 1980 Congress of the UN Crime Prevention Organization, Caracas.

a form of economic crime, and in industrially developed societies no criminal offences against the plan discipline occur. There are, however, certain provisions of criminal law which are similar independently of whether they have been created in a socialist or a capitalist socio-economic system. For example, the provisions of criminal law concerning the violation of tax or customs regulations; the acts violating the interests of consumers; or the violation of the rules on obtaining subvention or the various kinds of crime of corruption may be very similar in the law of either the advanced or the less developed economies.³ At the same time, neither the administrative provisions nor those of criminal law are necessarily the same in States with the same socio-economic system. The foundation of cartels, for example, is not regulated in every capitalist State, or, for the breach of the same prohibition, the sanctions of administrative law are employed in one State while the sanctions of criminal law in the other. If we take the example of the socialist countries, we may mention that the Penal Code of the GDR includes provisions concerning the assumption of economic risks while the Hungarian Penal Code does not. In effect, the Hungarian system of economy control ensures a higher degree of independence for the enterprises than that of the GDR.

3. The lack of a direct connection between economic crime and the provisions of criminal law in scientific conceptualization is striking. In the course of scientific inquiries into other areas of crime, the provisions of criminal law determine, as a rule, the framework of scientific conceptualization and, by that, the framework of the analyses. Traditional criminal offences, crime against life or against property, for example, are the totality of criminal offences violating the provisions that are included in the respective chapters of the Hungarian Criminal Code.

In formulating the scientific definitions of economic crime and economic criminal offences, criminal science in the industrially developed countries does not rely on the economically-related provisions of criminal law that have been formulated traditionally and are, as a rule, ranged in separate chapters, in the various codes, since in some of the codes such ranging in chapters frequently does not exist at all. Thus, in criminal science itself the object of study has to be described through the definition of the concept elements. In spite of all the efforts in this field, no homogenous view has been formed yet in the criminal science of these States.

The issue is not only a question of characterization: whether economic crime is categorized by the person of the perpetrator (white-collar crime), by the circumstances of the perpetration (the framework of the business enterprise), or by the intent to abuse trust (the business only disguises some criminal activity).⁴ If the views differed only in respect of whether the essence of economic crime should be found through the person of the offender, through the circumstances, or the motives of the perpetration of the offence and of what criterion should provide the basis for the selection of the instruments of criminal law to be used in the struggle against economic crime, any of the definitions of concept could express identical or essentially similar social

³ The legal regulation of offences against the environment and against labour safety may be similar, too, but these offences cannot be regarded as belonging to the category of economic crime.

⁴ The conflicting opinions came to the surface with such a force at the *Twelfth Conference of Directors of Criminological Research Institutes* in Strasbourg that the chairman of one of the sessions, H. Schüler-Springorum, preferred to abandon the attempts made at defining the concept of economic offences, since "no definition could embrace all the forms of economic crime". (See: *Twelfth Conference* . . . , p. 138.)

phenomenon. The difference would be, at most, what would be regarded by the individual representatives of criminal science as such a characteristic criterion that should be made use of in the process of forming the concept of economic crime in criminology.

The differences of opinion relate among others to such elements of the questions as what kinds of violation of social interests (legal objects) should be ranged among economic criminal offences. Some of the experts in scientific formulations use a narrower and a broader concept of economic offences expressing thereby the narrower or the broader scope of the studied social phenomena. Others distinguish economic crime and business crime, treating thereby financial offences separately. Moreover, it is a debated issue whether offences violating consumer interests, environment, or work safety, belong in the same category or not.

No uniform concept of economic crime and economic offences has been formed in the criminal science of socialist countries. The most important problem is the clarification of the relation between offences against social property and economic offences, but there are also problems in connection with the demarcation of economic criminal offences, white-collar offences, and corruption.⁵ The debate concerning the formulation of the concept and the problems of demarcation may be traced back to the theoretical uncertainty of what kinds of violation of social interests (legal objects) should be included among economic offences.

4. The recognition and definition of the object of protection under criminal law, i.e. the legal object, form, generally, a part of the scientific analysis of the various groups of offence.⁶ The importance, the social significance of the legal objects, determine a narrow and a broad scope of protection by criminal law and of the sanctions to be applied in cases of violations against the legal objects. Consequently, the analysis of the legal objects is significant not only from scientific points of view but also from the aspects of criminal law policy. The objects enjoying the protection of criminal law and the extent of the protection are determined by the criminal law policy of legislation.⁷ The latter is influenced by a number of factors, among others by general political principles, morals and historical traditions. In relation to economic offences, it is also influenced by the economic policy of the State, in addition to the factors mentioned.

5. In modern societies, through its economic policy, the State exerts a considerable influence—in certain fields, even a direct control—on economic activities (production, consumption, etc.), and this is a characteristic trait not only of the socialist State. The State implements its economic policy through the use of a number of means, as e.g. the prohibitions or obligations prescribed by the organs of economy control and those of

⁵ Several reports discussed the problem of demarcation, at the 1978 Conference in Szeged (October 2–6) on "Criminal offences committed in the course of economic activity". (Cf. *Prestupleniya*...)

⁶ Our views on the significance of the object of the offence are discussed in detail in Wiener, „A bűncselekmény tárgyának szerepe a büntetőjogszabály értelmezésében" (The role of the object of the criminal offence in the interpretation of the provisions of criminal law). *Állam és Jogtudomány*, 1969, pp. 123–144.

⁷ In the words of the practical criminal-policy-maker: "Penal legislation expresses the criminal policy of the socialist State before the public by determining the prohibiting and permitting rules of co-existence, the sphere of punishable acts and determines the ways and means of establishing the criminal liability." Cf. Markója, Imre, "Büntető jogpolitikánk és a büntetőjog kodifikációja" (Our criminal law policy and the codification of criminal law). *Magyar Jog és Külföldi Jogi Szemle*, 1965, p. 265.

public administration. The instruments of enforcing these prohibitions or obligations may be legal sanctions, including the penalties of criminal law.

In the course of the State implementing its economic policy, and its making use of criminal punishment as an instrument of it, criminal policy and economic policy are intertwined by necessity. There are many kinds of criminal offence that may be related to economic activities. Economic policy however does not influence criminal policy in the same way and to the same extent in the case of every kind of offence. This notwithstanding, its impact on criminal policy should be taken into consideration in the course of conceptualization in this field. The changes and modifications in the system of economy control (institutions, methods), which form part of economic policy, have an influence on the determination of the legal object of the economic offences and by that on the drawing of a demarcation line between offences against social property and economic offences. Evidently, in the systemization of concepts related to criminal liability and in general to economic criminal law, the implementation of plan directives resp. the independent economic activities on the part of enterprises require different ways of evaluation.⁸ In the system of plan directives, it is not possible to distinguish consistently between the State's public administrative resp. proprietary functions from the point of view of criminal liability, for the two kinds of activity are frequently entwined. The independent economic activities of the enterprises demand the demarcation of the two kinds of economy control of the State. Based on such distinction, criminal law will be enabled to distinguish between liability for managing social property and responsibility toward the public administrative organs of the economy.

6. As is well known, the economic policy of the State changes and develops much faster than criminal policy. Economic policy is characterized by dynamism; criminal policy, particularly the criminal policy of legislation, is characterized by stableness. Criminal laws (criminal codes) are created for longer periods, usually for decades, while economic policy may change several times. The contradiction between the dynamism of economic policy and the stableness of criminal policy can be resolved only by applying special techniques of codification in relation to economic activities.

The special techniques of codification with regard to economic crime can be classified into three basic groups. One of the methods is to change the provisions of criminal law related to economic activities as frequently as the economic policy is changed: in such cases, the legal sanctions of economic crime are directly in connection with the prohibitions or obligations prescribed by State administrative measures. This method of codification entails the consequence that, in addition to the criminal code, a permanently changing, mobile body of criminal law, the so-called supplementary criminal law (*Nebenstrafrecht*) comes into existence.

The second method of codification is to determine the skeleton regulations in criminal law, while separate legislation of the nature of administrative rules of the economy expresses the changes in economic policy. If this method is employed, the

⁸ It is only natural that economic policy is determined fundamentally by the socio-economic system. The economic policy of the State may change even within one socio-political system. Let me point out here that, in the following discussion, the fundamental issues of criminal liability will not be examined in context with the categories of political economics. (See: Erdősy, E.—He based his ideas on the categories of political economics.)

extent of authorization granted by criminal law to the economy control organs is not indifferent at all in determining the rules which are to fill the frame set up by the skeleton regulations. When the frames are to be filled, the administrative rules of the economy assume the significance of criminal law.

Finally, if the third codification technique is employed, the provisions of criminal law as well as the statutory definitions of the criminal offence include elements (such as unfair profit, which is not justified by economic standards, etc.) with the help of which the viewpoints of economic policy may and should be effectuated in the course of applying the law.

The three methods are usually employed together when the provisions of criminal law in relation to economic activities are being formulated. It is perhaps the ratios of their use that vary. There are periods and places in which the so-called supplementary statutes are used more extensively and the method of skeleton regulation loses grounds to them. Since 1961, the method of supplementary criminal law in relation of economic activities has not been in use in Hungary, consequently, it is the method of skeleton regulation that causes problems here.

7. In scientific work, in general, the use of precise technical terms is an indispensable requirement. This is particularly true for basic concepts. Thus, it is justifiable if we point out in the introduction what we mean by the terms 'economic crime' and 'economic criminal offences'. We must point out, however, that the definition of these concepts is not an easy task, since it requires the preliminary clarification of a fairly great number of basically relevant theoretical problems. Introductorily, we only present a hypothesis and it is precisely the verification of our hypothesis that will be presented in our book. The formulation of the various concepts will be the subject of the concluding Chapter. When we refer to the views of other authors, the use of the terms like white collar crime, business criminal law, the narrower and broader concepts of economic offences, or other terms, will be unavoidable. In our hypothesis, four terms should be distinguished, viz. /i/ crime related to economic activities; /ii/ economic crime, belonging to the category of criminology; /iii/ economic offences; and /iv/ economic criminal law, belonging to the main branch of criminal law.

We attribute a great moment to the distinction between the concepts of criminology and criminal law because, in our opinion, different requirements are to be satisfied in forming the scientific concepts of criminal law resp. those of criminology. The criteria for a scientific conceptualization in criminology, resp. in criminal law, will be discussed in the concluding Chapter in detail. Here we merely refer to the fact that the scientific concept of criminal law has to serve also the aims of demarcation between the various categories of offence and of the systemization in codification. In the approaches of criminological studies (prevention, aetiology, etc.) it may be required that the various categories of offence are studied collectively.

In our hypothesis, the broadest category in conceptualization is that of crime related to economic activities. This includes all the criminal offences that are committed in connection with regular economic activities.

Semantically, the term criminal offence refers both to the statutory definition of the acts and to the actual acts as are perpetrated in reality. The concept of economic offence—similarly—refers to both the relevant statutory provisions that can be classified under the same scientific category (and can be ranged in the same Chapter of

the Criminal Code) and to the actual economic activities violating the statutory provisions, i. e. economic criminal offences committed in reality.

The notion of economic criminal law, in turn, does not include such a duality and it means only the provisions of criminal law aimed at the protection of distinguished social interests, and legal objects. The application of the term economic criminal law does not want to be a way of contrasting the criminal law provisions related to economic activities with those related to general criminal acts. Depending on the used technique of codification, the provisions of economic criminal law may form part of the Criminal Code and may equally be formulated in supplementary statutes. The essence of the concept is that economic criminal law is a term referring to the provisions of criminal law that are concerned with economic activities coming under the category of criminal offence.

8. With consideration to the fact that the basic concepts are unclarified, Chapter I includes only a review of the general characterization of economic offences and of economic crime as is given by criminal science. In Chapter II we present a survey of economic crimes in Hungary. The relations between economic policy and criminal policy is discussed in Chapter III. Within that topic, we discuss the relation between the sanctions of administrative law and of criminal law and treat a special type of sanction, the one employed against legal entities. The discussion of the relation between economic policy and criminal policy helps to determine the social interests we regard as the legal object of economic offences. In Chapter IV we discuss the role of the socialist State played in the organization and control of the economy. By demarcating the public administrative functions of the socialist State from its functions as an owner, we summarize the obligations related to the management of social property in Chapter V. Determination of the legal object of economic offences and the analysis of the obligations originating from the management of social property lead us to a clear distinction between economic offences and offences against social property, making thereby possible for the theoretician to form an opinion on the issue how far the assumption of economic risks may extend from the point of view of criminal liability.

In the first five Chapters the issues considered important for criminal sciences in general and for the criminal sciences in the socialist countries in particular are put under scrutiny. The codification of economic offences also belong among the basic problems of theory, but the practice of codification in the various countries is influenced by historical traditions to a great extent. The methods of codification are examined primarily in connection with Hungarian criminal law.

In Chapter VI the various aspects of establishing specific techniques of codification, such as skeleton regulation, elements of the statutory definition of the offence which require economic-political assessment, etc. are analysed. — As has been indicated, our hypothesis—outlined in advance in the various chapters—will be brought to conclusion in our last Chapter.⁹

The Appendix contains such sections as have relevancies to our topic.

⁹ By using the method outlined above, we followed the path assigned in a similar context by a Hungarian scholar of renown: "As the aim of criminology is to study and describe the socially conditioned nature of crime, in the same way the sociology of criminal law should analyse and present the process of the generation of the norms of criminal law, and the process of selection from the socially possible modes of conduct and alternatives of conduct (as it is related to political and State interests)." (See: Szabó, A., p. 60.)

Chapter I

Economic crime; general characterization of economic offences

Preliminary—1. Criminal sciences in capitalist countries; 2. Criminal sciences in socialist countries

Preliminary

Economic crime as a special form of crime has originally been studied by criminology and the problems of this type of crime are approached by criminal sciences in capitalist countries primarily from the aspects of criminology. This approach may be observed in the grouping of offences enumerated as belonging to the category of economic crime, but it is also recognizable when the elements of the concept, clearly of a nature of criminal law, i.e. the concept of economic criminal law, are determined. As an opposite approach, the criminal sciences of the socialist countries, avoiding in some countries the use of the term 'economic criminal law', follow the system of the criminal code in the analysis and grouping of economic criminal offences, in other words, they discover the characteristic traits primarily in the protected or violated social interests, i.e. in the legal object.

It is because of this approach that several representatives of criminal sciences in the capitalist countries want to define economic criminal law not by using the protected social interests as a basis of determination, but by making use of the element of business, of economic activities. There is a difference also in the ways of assessment on the part of the criminal sciences of the socialist resp. the capitalist countries as regards the significance of economic offences within crime in general.

The totality of all the criminal offences committed in connection with economic (business) activities, forms, of course, a much greater part of total crime than that of criminal offences belonging under the category of economic offences in the strict sense of the term. The criminal sciences of the socialist countries have made inferences according to which economic offences represent only a few per cent within total crime. In the presentation of those of capitalist countries, crime related to economic (business) activities has become a mass phenomenon. Let us now see the differences in their approaches in a brief review given below.

1. Criminal sciences in capitalist countries

The concept of economic crime went through substantial changes in content during the 20th century. Early in the century, economic crime was considered as the crime of the poor. Around the middle of the century, white-collar crime represented the economic crime and, at present, those forms of the abuse of economic power are included in the notion against which even the power of the State and criminal law frequently fails to be effective.

The economic policy of the 19th century was characterized by the idea of *laissez-faire*, economy was based on free competition and, accordingly, it was only against immoral behaviour that the means of criminal law were used also in the economic world. This way of thinking was reflected by the criminal codes of those times in Europe.¹⁰ The dominant views on economic policy in the 19th century made themselves felt in the criminal sciences also in the early years of the 20th century, and, accordingly, loitering, beggary, theft and similar offences and offences like violence against property were regarded by criminology as economic crime. Together with them were ranged fraudulent bankruptcy and other economic abuses like the adulteration of foodstuff.¹¹ According to these views, offences committed in economic life were immoral in the same way as any other forms of crime.

After World War I, profound changes took place in the economy and they brought about changes of approach both in economic policy and criminal policy. The extraordinary economic conditions during the war rendered the State interference with economic life necessary. And, in the years following the war, the operation of the economy could be maintained in a number of European countries only through strong State interference. The ideology according to which individual interests could be pushed back to have only second place behind common good, and could be limited by the latter, and the means of criminal law could be used not only against traditionally immoral acts, was in harmony with the real situation. Antitrust laws and other statutes prescribing various restrictions and punishment for the violations of provisions of these laws were based on public interests and not on immorality. Provisions of this character, i.e. provisions restricting individual interests, were not, of course, violated by the members of the poorer layers of the population. A new form of criminal offence came into existence and the offences of that type were not committed by criminals in the traditional sense. The new category of offenders were called, after Sutherland, white-collar criminals.¹²

¹⁰ Moreover, it was as early as in Roman law that punishment for certain abuses committed in economic life was prescribed. There were provisions of criminal law which could be regarded as part of economic criminal law, throughout the history of this branch of law. (See: Tiedemann, K., *Wirtschaftsstrafrecht* . . . , Allgemeiner Teil, pp. 42 et seq.)

¹¹ A. Bonger in his work, entitled *Criminality and Economic Conditions*, divided crime into five categories: economic offences; sexual offences; offences with the motive of a vengeance or other motives; political offences; and pathological offences. (Quoted by de Cuyper, R., "Review of the Basic Approaches of Economic Crime", *Revue Internationale de Droit Pénal*, 1982, Nos. 1-2, p. 47.)

¹² Sutherland's works have exerted such a strong influence on criminal sciences that even in our days, when the term of economic crime is in general use, this type of crime is still called white-collar crime. The definition of white-collar offender changed several times even in Sutherland's works. On the formulation of

In his works, Sutherland pointed out that white-collar crime represents violations of law in the same way as it is with traditional crime. At the same time, however, he also pointed out that criminal law views and treats these acts in a way different from the traditional one. This unconventional approach could be traced back to the fact that many criminologists explained crime by psychopathological and/or socio-pathological factors. And this explanation, as a rule, did not, or at least did not directly, fit to white-collar crime.

World War II and the years following it created extraordinary situation in economic life again and this situation had an impact also on crime. As the extraordinary circumstances changed, crime coming to existence in that situation lost grounds but the changes that occurred in economic life created an absolutely new situation for both practical crime control and criminal sciences.

The most important change following the war was that together with economic activities, crime became international, too. The fact that the States joined various economic groups created opportunities for abuses of a magnitude where the illegally gained profit or the damage caused to others could be expressed only in millions or billions. Economic scandals and their growing number served as one of the motivations for criminal sciences to turn to crime committed in the field of economic life.

A number of publications on these problems appeared, but when a group of experts met, it became evident that even the subject of study could not be determined, i.e. what the term economic crime meant. It was suggested, as a kind of bridging over the gap, that research should first determine the acts that could be regarded as parts of economic crime.¹³ This suggestion, however, meets a number of obstacles, and one of them is that it is very difficult to obtain information concerning economic offences from either governmental organs or enterprises.¹⁴

Under such circumstances, even finding the boundaries of economic crime, defining the criminal offences that are to be regulated by economic criminal law would mean an important step forward for criminal sciences. It is well known though that for comparative studies it is always a problem how to neutralize the special traits of the criminal codes in the determination of the sphere of the acts to be penalized. The difficulties are even enhanced in the case of economic criminal law since its criminal sanctions are prescribed for acts differing from country to country and from era to era. The elimination of the differences in the provisions of positive law has been intended by forming a theoretical category for which it is not the legal objects, i.e. the interests protected by law, that appear as demarcating criteria generally accepted in criminal law. As an example of such a theoretical aspiration, the assertion of Professor Delmas-Marty concerning business criminal law could be mentioned. According to that, the speciality of business criminal law is the enterprise. The enterprise is characteristic of the two types of offence ranged in business criminal law: financial offences and

the concept and for a summarization of its criticism see: Horoszowski, "White-collar crime or special opportunity crime?" in *Criminalisation et infractions* . . . , pp. 44 et seq.

¹³ Such views have been expressed by Lodge, T. S., in *Twelfth Conference* . . . , p. 150.

¹⁴ Professor Leigh, who is one of the best-known researchers in that field in Britain had only been permitted to examine government files on one occasion, (*Twelfth Conference* . . . , p. 33.)

economic offences. According to Professor Delmas-Marty, financial offences are the criminal offences that are committed in connection with incomes and financial resources, the victims of them may equally be private persons or the public. The other type, economic criminal offence, concerns the structure of production, turnover, and the order of the consumption of goods.¹⁵

It is also business (economic) activity that is in the centre of the categorization given by Professor Träskman in connection with economic crime. He divides economic crime into two main categories. The first category includes the illegal forms of economic activity, illegal gambling, concealing stolen goods, organized procuring among them, in other words, the whole activity is characterized by illegality. The other main category consists in committing offences within the economic enterprise. Professor Träskman classifies them as follows. Offences consisting in: /i/ the abuse of invested capital and acts causing damage to economic partners, shareholders, etc.; /ii/ the abuse of deposited capital and acts causing damage to creditors, guarantors, etc.; /iii/ the abuse of labour, directed against employees and workers; /iv/ the violations of consumers' rights; /v/ acts against competitors; /vi/ the illegal exploitation of nature and acts damaging the environment; /vii/ offences violating the interests of the State.

If we scrutinize the offences ranged in each group, we shall realize there are offences in the same group which violate different legally protected interests. A breakdown of the offences by categories shows the following picture: Category /i/ false book-keeping, various abuses concerning share-holders, such as share swindles, the sale of shares to non-existent companies; these offences may be ranged among traditional criminal offences like fraud or forgery (admitted also by Träskman himself); /ii/ fraudulent bankruptcy causing damage to creditors, insurance frauds and subsidy swindles (Träskman had to admit their close relation to the first category and that they frequently appear as the various forms of fraud); /iii/ offences against labour welfare and offences committed through the violation of regulations concerning social insurance and pensions; /iv/ offences violating the interests of consumers (Träskman has come to the conclusion that part of these offences are analogous with fraud in the traditional sense and only part of them are regulated by special legislations); /v/ in addition to the violations of the rules of competition, such criminal offences as industrial espionage or computer crime;¹⁶ /vi/ in addition to the unlawful exploitation of natural resources and polluting the environment, the violations of building regulations; /vii/ beyond offences violating the fiscal interests of the State, also the violations of the control of trade and production, and offences against officials.

After reviewing these details, we may conclude that as the result of such an interpretation of economic crime a broad concept has been formulated which includes all criminal offences committed in connection with economic activity.¹⁷ This concept,

¹⁵ Delmas-Marty, M., p. 21.

¹⁶ Computer crime is treated by some authors as one of the important types of economic crime. Contrary to these views, we share the opinion of Solarz, who has pointed out that computer crime is not a separate type of crime, it is merely a special way of perpetration. (Cf. Solarz, A.)

¹⁷ Träskman, P. O., presented his views at the *Finnish-Hungarian Seminar on Criminal Law*, held in Helsinki, 22-24, September, 1980. He had the same position in his report for The 13th Congress of the International Association of Penal Law (Cairo, October 1-7, 1984) with the remark that the concept of economic offence may not be deemed a precisely defined legal term.

consequently, is characterized by the way and circumstances of the perpetration and are not formed by criteria traditionally used in criminal law. In addition, the methods employed until now cannot be used to determine the form of crime interpreted in such a broad sense.¹⁸ And, in want of new methods frequently only such conclusions may be drawn as fit to individual cases and are generalized on that basis. This fact explains that extremely varying views exist in connection with the assessment of economic crime.¹⁹

In the criminal sciences of the capitalist countries there are a number of adherents of the conception that treats economic criminal law as the summary of criminal offences related to economic (business) enterprise.²⁰ This idea is reflected also in the resolution which has been accepted, with the participation of the socialist countries, as a recommendation for the XIIIth congress of the AIDP. According to that, economic penal law encompasses offences against the economic order, while business penal law refers to offences involving private or public enterprises. According to the accepted resolution, both "are, more or less, aspects of the same phenomenon".²¹

In the discussion concerning the determination of the concept elements of business criminal law it has become clear that the formulation has to be general since the concept covers not only offences committed to serve the interests of the enterprise but also offences committed against it. And if economic criminal law and business criminal law encompass more or less the same offences, extremely broad contents will have attributed to the "economic order" which may be considered as the legal object in the concept of economic criminal law. With such definitions the offences classified as belonging to economic criminal law correspond to the enumeration of prof. Träskman, referred to earlier. Thus, neither economic criminal law nor business criminal law can be characterized otherwise than by the totality of criminal offences committed in connection with economic (business) activity. And, in this case scientific conceptualization does not serve the systematization of criminal law, since the criminal

¹⁸ If, for example, with consideration to the circumstances of perpetration, we consider part of white-collar corruption as belonging to economic crime, statistics showing total white-collar corruption shall not show separately the part of corruption that is regarded to be part of economic crime.

¹⁹ For the sake of illustration, we quote some of the opinions as follows: M. S. Dönmezer, "... economic crime was threatening to undermine the European social system. The publicity given to economic crime in the press was influencing young people, whose commitment to the existing social system was weakening." (See: *Twelfth Conference...*, p. 28); W. Doleisch, "... there had been no significant increase in economic crime—the public had simply become more aware of it." (*Op. cit.*, p. 33); M. I. Weller, "It is possible that the losses occasioned by economic crime might be exaggerated..."—"It should be remembered that multi-national companies spent considerable sums on research of general value." (*Op. cit.*, p. 34); W. J. Chambliss, "Economic crime is a product of the economic and political system current in a given country; for example, the offences of a businessman supporting the Democrats were exposed only after the victory of the Republicans." (Cf. *Op. cit.*, p. 75); J. L. Duplat, "International monetary instability is responsible for a number of economic offences." (Cf. *Op. cit.*, p. 76).

²⁰ We have to emphasize already here (and we are going to discuss it in detail in the next Chapter) that at the formation of the concept of economic criminal law, the legally protected interests are taken into consideration in the theory of the FRG, but this method does not seem to be generally accepted in criminal sciences.

²¹ As has been mentioned in the introductory part, one of the topic of the AIDP Congress of 1984 was economic criminal law. The preparatory Colloquium on that topic had been held in Freiburg 1982. Item 4 of the accepted Resolutions deals with the problem of terminology. (*Revue Internationale de Droit Pénal*, 1983, Nos. 1–2.)

offences that can be understood as belonging here can also be placed in any chapter of the Criminal Code; but it does not serve prevention either, since it brings criminal offences under the same concept even though they differ in nature from each other to the extent that no uniform methods and means could be used against them. Finally, economic crime taken in such a broad sense cannot even be measured at present, since the methods of measuring crime are linked in our times primarily with the various categories of offence.

Thus, crime related to economic activity could be regarded only as a basis, within which criminal sciences have to select according to certain criteria of classification. The criteria of selection, however, may be different in criminal law and criminology. The concepts of the theory of criminal law are more closely linked with the legal objects, i.e. with the interests protected by law, since the classification of offences is based on the legal object, while criminology is not bound by the systematization of criminal law to the same extent. Criminology forms concepts which serve its purposes. Economic (business) enterprise, as the main criterion of conceptualization for economic crime, does not seem to provide an adequate basis for demarcation even for criminology, and is even more unfit to have a decisive role in criminal law. Consequently, attempts have to be made to formulate the concept of economic criminal law with due consideration to the interests protected by criminal law, i.e. to the legal objects. This effort could be well assisted by a general characterization of economic offences.

2. Criminal sciences in socialist countries

Economic activity in socialist countries is conducted in the framework of planned economy based on social property. Until this system came into existence and became established, criminal law had played an extremely important role in the organization and control of the economy. This had been justified not only by the relevant conditions of social changes, but also by the economic conditions of the period after World War II. The economic policy and the criminal policy were based on such principles at that time as used criminal sanctions for the organization of the economy beyond the limits justified by the objective circumstances.²² This period of the history of economic criminal law, due precisely to the extraordinary circumstances, must not be regarded as generally characteristic of the economic criminal law of the socialist countries. Under consolidated socio-economic conditions the utilization of the instruments of criminal law for the above purposes occurred much less frequently. This fact, however, is not reflected by the provisions of criminal law by necessity. If only the provisions of criminal law are viewed, we see that in Romania, for example, about one third of the provisions of criminal law are such that may be included among the provisions of economic criminal law. This number is relatively very high. If, however, the application of these provisions are examined, the ratio of persons convicted for economic offences reaches only five per cent within the whole category of criminality.²³

²² On the consequences of wrong criminal policy see: Kulcsár, K., 1961, pp. 263 et seq.

²³ Of the 388 kinds of offence defined in Romanian criminal law, 122 may be classified as belonging to economic criminal law. According to the criminal statistics of the 1970s, the proportion of economic offences

A similar percentage is shown by Bulgarian criminal statistics as well.²⁴ According to Czechoslovakian criminal statistics, offences against the economic order and economic discipline and other economic offences account for about one tenth of the offences against social property.²⁵ Similarly, the rate of economic offences within whole crime is only a few per cent in Yugoslavia.²⁶ There is also a socialist country where economic crime accounts for only 0.5 per cent within total crime.²⁷ We shall have an incorrect picture if we try to draw conclusions only from the statutory provisions, concerning the position of economic criminal law within criminal law and its social significance. Moreover, the criminal statistics of the different countries do not necessarily enumerate the same offences among economic offences. Nevertheless, in spite of the differences, the generally characteristic feature is that in the chapters entitled "Economic Offences" of the codes of the socialist countries or in the supplementary statutes belonging to the category of economic criminal law, one can find provisions concerning the violations of customs regulations or the rules of foreign exchange. These categories of offence (which represent a significant number of cases in criminal statistics, since they account for about one third or one quarter of the mentioned few per cent) deal with actions which are usually not committed in the course of economic activity. As a rule, they are committed by citizens travelling abroad or buying goods returning from abroad. Part of the economic criminal law of the socialist countries, at least viewing the situation in reality, is not related to persons conducting economic activities or to the violations of provisions concerning economic activities (to this, see later).

The relation between the sanctions to be imposed according to the law and the actual sentences also belongs to the general characteristics of the economic criminal law in socialist countries. For example in Poland, about two thirds of all convicts are sentenced to loss of freedom, and only about half of these sentences are to be implemented. What is more, the number of loss of freedom sentences for economic offences that are to be actually executed accounts for less than ten per cent of all such sentences. This refers also to the offences the punishment of which is loss of freedom between six months and five years according to the law. Considering the weight of the sentences, economic crime cannot be regarded as a category of offences of minor significance.²⁸

within total crime was 5 per cent. Cf. Bulai, C., *Conception et principes du droit pénal des affaires. Revue Internationale de Droit Pénal*, 1983, Nos. 1-2, p. 658.

²⁴ Panev, B., "Sostoyanie, prchiny i preventsiya prestupnosti v sotsialisticheskom hoziaistve". *Prestupleniya...*, p. 373.

²⁵ Under Czechoslovakian criminal law, offences against social property also belong to the category of economic offences, that is why statistical data had to be compared. Cf. Karabec, Z., "Sostoyanie i struktura prestuplenii protiv narodnogo haziastva". *Prestupleniya...*, p. 341.

²⁶ Kobe, P., "Concept and the Principle of the Economic and Business Criminal Law Including Consumer Protection". *Revue Internationale de Droit Pénal*, 1983, Nos. 1-2, pp. 789 and 790.

²⁷ Duft, H., Zeidel, D., Weber, H., "National Report of the GDR for the colloquium preparation of the XIIIth International Congress of Criminal Law". *Revue Internationale de Droit Pénal*, 1983, Nos. 1-2, p. 525.

²⁸ Krukowski, A., Zoll, A., "Les délits économiques dans la loi pénale polonaise". *Revue Internationale de Droit Pénal*, 1983, Nos. 1-2, p. 499.

What has been said in connection with the characterization of economic criminal law is valid only for economic offences in the narrower sense of the term, as is used in the criminal sciences of the capitalist countries. Since there is no uniformly accepted view in the criminal sciences of the socialist countries concerning what offences can be considered as belonging to the category of economic criminal law, we can find criminal offences even among the economic offences which are taken in the "narrow sense" of the term (e. g. damage to social property).²⁹

Criminal sciences in the socialist countries also determine various types of economic offences and these types are included in economic criminal law. According to one of the categorizations, economic offences appear in the following major forms: /a/ causing considerable economic loss by abusing rights originating from post of trust; /b/ causing considerable economic damage by violating occupational duties concerning the operation and protection of machinery, tools and equipment; /c/ unlawful raise of the price of goods and services or illicit work; /d/ rendering false reports and information concerning economic activities, particularly for obtaining illegal economic and financial benefits; /e/ profiteering and the violation of customs and currency regulations; /f/ tax evasion.³⁰

The relativity of these categories is born out, for example, by the fact that tax evasion is not an offence in Soviet criminal law.³¹

According to another classification, the following categories of economic offence may be formed: /a/ violation of regulations on the organization of production (investment, stores, etc.); /b/ violation of regulations related to the circulation of goods and to prices; /c/ violation of special rules set up for certain fields of economic activities (such as cultivation of plants, animal husbandry, etc.); /d/ violation of the rules of trade mark, trade, services and innovation; /e/ violation of the rules of the protection of the basis of the national economy (the protection of the land, woods, waters, etc.); /f/ violation of the regulations related to foreign currency, noble metals and objects made of noble metals; /g/ violation of the rules of certain occupations and professions or the unlawful practice of economic activities.³²

Criminal offences against the protection of economic discipline have been classified by Rolenc into the following categories: /a/ disturbing the control, planning and supervision of the national economy; /b/ breaches of duty in the exercise of rights of disposal over financial and material resources; /c/ delivering goods or work service of particularly bad quality; /d/ breaches of duties in the operations of socialist organizations.³³

²⁹ For example, causing significant damage to social property through the violation of the duty of supervision, guarding, management or by exceeding authority is considered as one of the most important economic offences in Polish criminal law (Article 218 of the Criminal Code). Similar provisions may be found also in other socialist criminal codes. (On the issue, see later.)

³⁰ Duft, Zeidel, Weber, *Op. cit.*, p. 528.

³¹ Shoupilov, V. P. "Concept and the principle of the economic and business criminal law including consumer protection". *Revue Internationale de Droit Pénal*, 1983, Nos. 1-2, p. 766.

³² Bulai, C., *Op. cit.*, pp. 655-657.

³³ Rolenc, O., "A gazdasági fegyelem büntetőjogi védelme a KGST európai tagállamaiban" (The criminal law protection of economic discipline in the European member-states of CMEA). *Magyar Jog*, 1980, p. 449.

Naturally, each category captures some common trait of the offences classified in the category and these traits assist us to understand the details better, but the formation of different classifications itself illuminates the differences apparent in the details.

In our opinion, criminal offences classified in the socialist countries as belonging to economic criminal law are those which violate or endanger the following three legally protected interests: /a/ financial interests of the State; /b/ State control over production and consumption; /c/ correct management of social property.

The most commonly known offences violating the financial interests of the State are tax, customs and foreign currency offences and counterfeiting money. These offences violate the financial and the budgetary activities of the State, they decrease State revenues. The offences related to subventions, subsidies, may also be classified as financial offences. We have to point out already at this point, that in connection with certain criminal offences the financial interests of the State are difficult to separate from the State control over production and consumption since the State many times controls the production and consumption indirectly, through subventions, subsidies, even through taxes and duties.

In modern societies, the State frequently issues decrees through which production and consumption are directly controlled and economic activities are supervised. The modern State generally determines the economic order within which economic activities may be conducted. The socialist State, too, determines the limits of social and private economic activities, determines the maximum price of a number of goods, prescribes obligations for producing certain articles or limits the use of certain products and regulates quality requirements, etc. State control over production and consumption appear with relevance for criminal law in the form of regulations of economic administration and these economic-administrative decrees and instructions include a number of obligations. The violations of the most important obligations are declared by the State to be criminal offences.

The criminal laws of several socialist countries declare certain forms of economic activities causing damage to the property of the enterprise to be criminal offences. The present Hungarian Criminal Code does not have such a provision among the economic offences and it qualifies the bad management of the property of the enterprise in the case of the violation of duties in the realm of property management as a property offence.

The fact that the management of social property in a way which causes damage to it can be declared an economic offence is traceable in the interwoven nature of State economy control and the economic activities of the enterprises. In socialist economy control systems where the State gives direct instruction to the enterprises, and where there are controlling organs between the central or local State organs of economic administration (trusts, combines, etc.), it is indeed difficult to separate injuries committed to social property from those committed to the national economy.

In Hungary, the economy controlling activities of the State are increasingly separated from the economic activities of the enterprises, the latter being based on the independence of the enterprises. In such a control system, acts damaging the property of the enterprise have to be treated as offences against property (bad management, causing loss in property is not included among economic offences).

In such system of socialist economy control where the independent economic activities of the enterprise are ensured, it is only offences violating the financial interests of the State, the State control and supervision over production and consumption that should be regarded as belonging to economic criminal law. With this view accepted, the interests which are protected by economic criminal law are the economic activities of the State (i.e. budgetary economic activities, the creation of the order of the national economy, its control and supervision). These are sharply separated from the enterprises' economic activities which appear in the form of production, trade, transport, services, etc.

Economic criminal law in the socialist countries is characterized first of all by its being closely related to State economy control and that it serves the enforcement of the obligations that are defined by the economy control organs of the State. This characteristic trait constitutes the special marks of economic criminal law (i.e. close connection with economic policy and administrative regulations). With this recognition and determination, economic criminal law can be regarded as part of general criminal law, even if economic criminal offences are regulated in certain socialist countries also by separate legislations, in addition to the fact that some of them are included in the respective criminal codes.

Chapter II

Economic crimes in Hungary

- General situation.—1. Economic offences specified in the Criminal Code;
2. Economic crimes in the 70s

General situation

In the period when in the Hungarian socialist economy the enterprises were controlled by means of detailed prescriptions issued by State agencies of economic administration, the question of criminal responsibility was raised primarily in relation to neglecting the central orders and infringing the prescriptions. In the recent period, economic policy measures yield more possibilities for the enterprises to make their own decisions, leading thereby to a situation in which it is not impossible that the interests of the national economy and the enterprise clash with each other.

The tax, currency and customs duty prescriptions, the obligations and prohibitions concerning the foreign trade of the country should serve primarily the interests of the whole national economy instead of serving only the interests of the enterprises. In defining the obligations established by State organs of economic administration, and protected by criminal law, the important economic-political intentions of the State come to expression.

Criminal law is applied against all kinds of money and stamp forging. Against the minor infringements of tax, currency and customs law regulations, administrative sanctions should be applied, and they will require criminal punishment only if the damage exceeds a certain amount of money. Against illegal price increases, speculation and crimes relating to public supplies, it is only above a fixed sum of money that criminal punishment will be applied. The infringement of economic regulations issued by the economic administration will be qualified as criminal act only if the breach of obligation leads to a harm against the interests of the people's economy (see later).

1. Economic offences specified in the Criminal Code

The Criminal Code (Act IV of 1978) divides the economic offences into four categories, viz.:

/i/ Such crimes as are infringement of the regulations of the economic administrative and incentive system of the State; of the economic control; or such as are related to discipline in investment; the credit monopoly of the State; as well as to the

interests attaching to the quality of products; fair competition; foreign trade monopoly; the order of carrying on foreign trade activity.

To the category of crime committed by "infringement of regulations in connection with the economy" (§287) belong the behaviour by which some duty is neglected relative to production, utilization, circulation, declaration of goods; the putting at disposal or keeping of stock; to handling of products based on prescriptions by law; or on a disposition that should not be disregarded. The regulations may limit the activity of the enterprises and may determine what kind of products should be produced or should not be produced and how the products should be utilized. Recently the State only exceptionally uses these rights (nevertheless, the production of basic consumer goods is made obligatory, whether economically it is most advantageous or not for the enterprise).

The harm to the interests of the national economy does not equal with damage to the property of the enterprises. The infringement of duty should be punished even if it has led to an increase in the property of the enterprise (for instance, if a forbidden product is produced, increasing the profit of the enterprise; or a product is neglected because it is not profitable for the enterprise).

If the consequence of the infringement of duty has an effect on several fields of the national economy (e.g. when, in consequence of the forbidden use of some product, extraordinary import is required, the infringement of duty does harm not only to the interests of the public supply, but to those of the planned foreign trade as well), then the damages together may qualify as serious damages to the national economy.

State economy control not only prescribes duties for the enterprises, but also influences their operation by means of various material grants (for example, subsidies, price allowances, State donation and other preferential treatments.) If, however, unlawful usurpation of economic advantages occurs, it disturbs the planned distribution of allocations and the crime called "misleading the organs of the national economy" (§288) is committed (e.g. the enterprise uses the export-donation without fulfilling the export-plan the purpose of which would be to serve the improvement of the foreign trade balance).

The supervision of people's economic activities is an indispensable element of the economy control of the country. The criminal act called "obstruction of economy control and of collection of economic data" (§289) is committed when the organs conducting their supervisory function cannot carry out their work, because accounts or other registers are not put at their disposal. Nevertheless, criminal law regards as crime only the frustration of such supervisory acts as are prescribed by law. Not every kind of enterprise activities may bring along criminal consequences. Several economic administrative rules, relating to the order of investments, set up various duties and prohibitions. In case of infringements of these rules, only the breach of those is regarded as crime which relates to the purpose or source of investments (§290). It qualifies as an offence if, e.g., the money granted by the State for a definite purpose is used for another purpose than it is allotted for; similarly, if the case is an unlawful use of the enterprise sources. Similarly, if the own source of the enterprise is not used for the purpose specified in the investment plan, and the enterprise is forced to turn to the central reserves for financial assistance.

Considering that the enterprises manage their business based on State property, the central economy control agencies issue directives concerning the utilization of the investment sources of the enterprises. Usually, the State banks grant the credit for some definite purpose to the enterprises. The duties and prohibitions concerned with State credits are determined by administrative regulations based on the credit system and referring to financial transactions. The crime called "infringement of financial order" (§291) appears if the interests of the credit system or the order of financial transactions are gravely harmed, as for example in the case in which the credit is used for a purpose not only different from what it was granted for but for which it would not even have been granted to the enterprise, or at least not to such an extent as it actually became misused.

Good quality products entail important interests with regard to both further processing and the direct consumption of the products. The protection of these interests is served by certain criminal regulations (§§292–294). The Criminal Code makes distinction between the responsibility of the manager and the employees performing the work of quality control. It is common occurrence that economic crime is committed in this field when, as a result of infringement of duties, large quantities of products of bad quality are put into circulation. In order to protect the interests of the consumers several administrative regulations prescribe the setting of the quality standard. It is an offence to fraudulently use a standard mark, trade marks, quality marks and the name of the producer (§§295–296). This behaviour misleads the consumer about the origin of the product, harming thereby in a significant proportion of the cases their interests gravely. Such crimes endanger fair competition in the economy.

In the present economic system of Hungary, foreign trade is a monopoly of the State. The enterprises are authorized by the central economy control agencies to perform foreign trade activities. There are two kinds of crime specified in the Criminal Code as belonging to the infringement of the foreign trade monopoly of the State.

Whoever carries on foreign trade without being properly authorized, commits the crime of "unauthorized foreign trade activity" (§297). However, the enterprises which are authorized to perform foreign trade activities, do not possess limitless rights. Certain economic activities may be performed even by these enterprises only upon special permission. Such special permission is required, for example, to import or export certain goods. Their economic activity without such permission can be regarded as "foreign trade activity without permission" (§298). The punishment of this crime serves the protection of the system of foreign trade authorizations. This behaviour is punished if the interests of foreign trade are harmed.

The mentioned crimes carry a maximum punishment of 2–3 years of deprivation of liberty; the maximum punishment is 5 years if the crime caused serious damage for the national economy.

/ii/ The offences against the economic order infringe both production and consumption. A common characteristic of these crimes is the economically unfounded profiteering without work or to such an extent of work as is not in proportion with the profit. The striving for economically unfounded profit is characteristic generally of speculation and price increases. It is found among crimes relating to public supplies, too. The crime is committed here even in cases where the perpetrator originally does

not intend to pursue such aims as profiteering. This crime harms the production and distribution system (§299), which is established by the rules of economic public administration. These regulations determine who is authorized to perform commercial activity and other economic transactions. They are obligatory for State enterprises too. Theoretically, the latter can also conduct unauthorized commercial and other economic activities, but in the practice it is first of all private individuals who commit this crime. The unlawful industrial activity of private persons is a crime only in those cases, when they employ workers without permission. If a private person performs unauthorized industrial activity without the assistance of employees he or she can be punished by administrative sanctions at most.

The infringement of the credit system and the gaining of profit without work occur frequently in cases of businesslike money-lending (§300). Of course, it is not a crime if citizens occasionally lend money for each other, but it is if someone gets regular income for himself or herself by lending loans.

The adjustment of production and consumer prices by the State is a kind of incentives used for the promotion of production of the national income on the one hand and for influencing the distribution of the latter on the other. Unauthorized price rises disturb the price proportions and the living standards.

By exceeding the obligatorily prescribed prices or by attaining profit which exceeds the fair income, the crime of charging illegal prices (§§301—302) is committed. Ascertaining a profit which exceeds the fair income depends on the characteristics of the economic activity, the level of development of the economy and on the category of the given prices. If this crime actually disturbs the production or influences the development of living standards harmfully on a nation-wide level, the damage to the whole national economy can be ascertained.

The offences relating to public supplies may affect heavily and closely the normal functioning of the economy. The supply of the population with consumer goods, moreover, the use and distribution of the consumer goods in case of a normal operation of the economy, does not require the intervention of criminal law. However, extraordinary circumstances (e.g. heavy natural disaster, international crisis) can in certain territories produce such a situation, in which, the public supplies can be secured or some products can be supplied, only by means or strict prescriptions.

The offences having effect on public supplies (§303) by infringing the rules of the orderly economic management, or breaking the prescriptions of some regulation by law, entail a maximum punishment—relative to those which are enumerated in this part of the Code—of generally 2 years deprivation of liberty. This maximum may increase if certain more severe circumstances are present. For example, the extent of the deprivation of liberty may be as long as 8 years, if the crime caused serious damage to the national economy. However, price increases, profiteering and endangering the public supplies committed in a relatively insignificant value can be punished by administrative sanctions. In the practice, this “insignificant value” is usually a couple of thousand forints.

/iii/ Money and stamp forging (§§304—308) count as classical crimes, because they have been encountered in the criminal law for a long time. As far as these crimes are concerned, the criminal policy and the criminal law does not depend on the economic-political means and methods.

Money forging is punished by deprivation of liberty not exceeding 10 years, stamp forging by deprivation of liberty not exceeding 5 years.

/iv/ The legislator places the crimes violating foreign exchange control, tax fraud and customs duty crimes among the financial offences. Hungarian economy conducts a strict currency management. It puts restrictions not only on the enterprises, but on the citizens as well. The regulations prescribe the ways of disposition of currencies, foreign securities, precious metals and foreign claims (assets). The criminal law protection of the planned currency management is in close connection with the duties and prohibitions prescribed in the administrative regulations. The criminal law (§309) actually establishes only the punishments, the duties are prescribed by administrative regulations.

Both the enterprises and the citizens are burdened by taxes. The primary means of enforcing the payment of taxes is the financial fine. In case of delay the amount to be paid by the taxpayer is proportionally increased. The criminal punishment is applied first of all against those, who conceal their obligation to pay the tax (§§310–311), causing thereby that the tax authorities do not get sufficient information to establish the payable amount of tax.

The customs duty regulations determine the rules for paying customs duties, the exemptions, the amount to be paid, as well as the modes of issuing the necessary and required permits for customs procedures (§312). The criminal law establishes the punishments to be inflicted on offenders infringing the customs duty regulations.

Let us mention finally that criminal law considers the issuing and putting of uncovered cheques into circulation as a criminal offence (§313).

The punishment of the above crimes generally involves deprivation of liberty not exceeding one year. In case of various aggravating circumstances the punishment can be 8 years deprivation of liberty. In the case of infringement of tax and customs duty regulations the punishment can be 5 years of imprisonment. The value limit between crime and the violation of administrative law is 5000 Ft (in relation of crimes against currency regulations), resp. 20000 Ft (in other financial crimes).

While referring to the criminal law let us remark that the previous Criminal Code placed bribery and defrauding the customs among the offences against the economic order. Today the criminal offences of corruption (both in the office and the economy) are included in Chapter XV of the Criminal Code.

Defrauding the customers is one form of fraud. Defrauding the customers in retail trade by false weighing or counting is placed today among the offences against property. As the two latter crime categories are not listed by the law among the economic offences anymore, the controversy between the legal and scientific terms of the economic offences ceased to exist here.

2. Economic crimes in the 70s

Economic crimes cannot be related so closely to any chapter of the Criminal Code as can economic offences. The criminologists talk about economic crimes in different terms in Hungary too. In its widest sense it includes all kinds of criminality against property, but in its narrowest meaning it includes only those economic offences, which

are committed in the enterprise management and this is only some thousandth of criminality as a whole. Between these two extremes the following proportions can be recognized:

Considering the data of more than a decade of the criminal statistics, the crimes against property take up to 58 per cent of criminality as a whole, while the economic offences take up only 3 per cent. The crimes against property include those committed against social property (22 per cent) as well as against the property of persons (36 per cent). The social property means that of cooperatives and the State. The thefts of social property and the crimes against the property of persons together take up about the half of the whole criminality; from the almost two-thirds of the criminality only about 10 per cent remains to be related to economic activities. Even this number includes such kinds of behaviour as are registered by the criminal statistics as embezzlement against social property or fraud, but the crime itself, in the form as it has been committed, is not related to economic management. However, considering the fact that the so-called intellectual crimes against social property (embezzlement, fraud, bad and negligent management) are usually committed in connection with the economic management, these criminal acts should be regarded as part of economic crimes in a wider meaning of the term. Their importance is increased by the fact that such crimes cause about 50 per cent of the whole material damage caused to social property and in the same time thefts cause only about 23 per cent of that. In the economic offences (in the acceptance of the earlier Criminal Code: offences against the national economy), which take up only 3 per cent of the whole criminality, only a smaller part is related to management. The larger part of these crimes is against customs duties and currency regulations, and they are usually committed by the citizens. (In the 3 per cent mentioned above bribery is included too. Nowadays it is not regarded as economic offence.)

In the past decade about twenty persons per year were sentenced because of crimes infringing the investment and financial regulations; the number of the procedures initiated because the industrial goods brought into circulation appeared to be of bad quality did not even reach an amount of ten in a year; and the number of procedures against illegal price increases could be estimated as a sum of one hundred annually. Even these crimes were not all committed in the framework of the enterprise, because in that period it was qualified as financial offence if private persons sold the goods which they had bought on an instalment system and they did not pay the monthly instalments.

With regard to the data of the last decade the number of those sentenced because of committing economic offences was highest in 1978. Let us survey the data of this year in detail.

Altogether 2943 persons were sentenced on account of committing offences against the national economy. The criminal statistics include only profiteering, the crimes violating foreign exchange control and the offences against customs duty regulations, because of the frequency of these crimes. For the three kinds of crime mentioned above altogether 2455 persons were sentenced. The remaining 488 persons were sentenced for other kinds of offence against the national economy. (This number is not detailed by the public statistics.) Several sentences were imposed because of tax fraud, illegal price increases and bribery (the latter no longer qualifies as an economic offence). Crimes infringing the financial regulations were committed by private persons. A breakdown

of the number of the persons sentenced for committing offences against the national economy can be given as is presented in Table 1.

If we continue the breaking down of the statistical data from some other aspects, the results presented in Tables 2 and 3 will be obtained.

Concerning the assessment of the statistical data, it should be mentioned that in our statistical system the sentence is registered only in one criminal category, even if it is imposed by the court for committing more than one offence and the offences were of

Table 1

Profiteering	577	
Currency crimes	1523	
Customs duty crimes	355	2455
Tax fraud	106	
Illegal price increase	112	
Bribery	109	
Defrauding the customers	109	
Infringement of the financial regulations	21	
Others	31	+ 488
		2943

Table 2

Crime category	Number of persons	Sentenced deprivation of liberty	Suspended from the sentence	Correc-tional educational work	Fine
Profiteering	577	367	296	16	194
Currency crimes	1523	120	93	6	1397
Customs duty crimes	355	56	47	1	298
Others	488	123	102	9	356
Total sum	2943	666	538	32	2245

Table 3

Crime category	Total of depriva-tion of liberty	Under 6 months	6-12 months	1-2 years	2-5 years
Profiteering	367	172	154	37	4
Currency crimes	120	53	51	13	3
Customs duty crimes	56	39	16	1	—
Others	123	80	34	9	—
Total sum	666	344	255	60	7

quite different kinds. The most characteristic offence is registered among the others and the criminal statistics keeps only that one on the record. Therefore it is quite probable that more persons committing economic offences were sentenced than the records presented by statistics would suggest. If the court imposing the sentence considered another offence as more serious than the economic one, the criminal statistics will not register the offence as committed against the economy.

In the opinion of the criminologists, the statistical data do not present the real picture of criminality. Latent criminality is estimated rather high in this field. The number of those crimes which are not investigated can be much higher than that of the investigated cases. Naturally, an assessment of this kind—as it is based on estimation—is uncertain. The ratio between criminal and administrative sanctions imposed for the investigated and revealed illegal acts may be considered as a tangible evaluation relative to society. The numbers of criminal and of administrative sanctions for illegal acts against property were about the same, but the number of criminal sanctions was only about 10 per cent of the number of administrative sanctions for committing illegal acts against the economy. This fact seems to be in relation to legal regulations. In most of the cases, administrative sanctions can be imposed when the damage to property does not exceed 2000 forints. Concerning economic offences, the limit is higher (5000 and 20000 Ft) as was mentioned earlier.

The estimation of the social danger caused by economic offences comes to expression also through the penalties imposed by the courts. In three-fourths of the sentences a fine has been imposed; the number of the sentences in which not-suspended deprivation of liberty has been imposed, is less than 5 per cent.

To the social danger of the economic offences the following explanation can be added. In connection with the offences infringing economic duties, the criminal-political principle prevails that criminal law is to be applied only exceptionally. State economic administration enforces the fulfilment of various duties by other means. Furthermore the infringement of the rules concerning the quality of goods does not involve frequent criminal prosecution because of evidentiary difficulties. It is rather difficult to prove it beyond any doubt that not only some but a considerable mass of products have been faulty and of bad quality. Sanctions of administrative and labour law are usually used in such cases.

The protection of foreign trade monopoly is also secured first of all by administrative means. In case the harm caused to foreign trade monopoly goes together with corruption and bad and negligent management, the fact of the crime infringing the foreign trade monopoly is not presented in the criminal statistics.

The statistical frequency rate of the offences against the order of economy shows that in those cases criminal punishment is imposed more often. However the extent of the imposed punishments indicates—supported by other experiences as well—that profiteering is committed in the framework of low-scale private enterprises. Illegal price increases occur less frequently in the private trade, more often in the State and co-operative trading in which the employees commit such crimes as is for example the covering up of inventory deficits. If the surplus achieved by price increases is taken out of the money box of the enterprise, also embezzlement is committed prejudicing thereby the social property. In such cases, the illegal price increase is not indicated in the criminal statistics.

Offences relating to public supplies do not happen in normal circumstances of the economy.

The number of money and stamp forging, committed by counterfeit or forged money and stamps being put into circulation, annually is less than ten and the serious crime of counterfeiting or forging of money has not happened in Hungary for several decades.

The financial offences usually are committed in private economy: tax fraud primarily by small craftsmen and small retail dealers; the currency and customs duty crimes mostly by citizens travelling abroad. In this field crime commitment in a value of hundred thousand or million forints occurs normally in crime cases of smuggling committed mainly by foreign citizens.

As could be seen above, economic offences belong to the category of the criminal acts which get usually milder sentences than the rest within the field of criminality as a whole. This estimation will not be changed by the cases of defrauding the customers while they are purchasing foodstuffs. As has been pointed out earlier, in this field administrative sanctions are more frequent.

By extending the frameworks of economic crimes even further we list here the bad and negligent management of social property, getting thereby a picture as follows.

For bad management 367 persons were sentenced and for negligent management 142 defendants. As regards bad management, fines were imposed against 213 defendants (58 per cent); 40 defendants were sentenced to do correctional-educational work; 114 defendants were sentenced to deprivation of liberty, but 81 of these sentences were suspended. In 33 cases the deprivation of liberty sentence was to be imposed (9 per cent); 2-5 years deprivation of liberty was imposed in only two cases. For negligent management in 110 cases the court imposed fine (78 per cent), 12 defendants were obliged to do correctional-educational work. In the cases of deprivation of liberty punishment, imposed against 20 persons, 19 were suspended. The punishment which was not suspended did not exceed 6 months. In evaluating the punishments imposed for negligent management it should be known that the dividing line between the criminal and the administrative unlawfulness is put at the value of 20000 forints. Beside the relatively bigger damage, the degree of negligency causing the crime plays a decisive role at the imposition of the punishment.

Let us emphasize here again that criminal statistics does not show the bad or negligent management which were committed along with other kinds of crime against property, e.g. with fraud, embezzlement.

If we regard as economic crimes only the criminal categories which we presented till now, we must admit that, considering either their proportion within criminality or their danger against society, these crimes do not represent very serious peril for society. Among the corruptional cases, the ones which were registered as economic bribery are not especially serious. These cases were committed in a way that the customer gave 100-200 forints for the sales clerk in order to obtain some ware which was difficult to obtain by purchase. The peril of the corruption increases significantly by its nature of occurring in high number latently on the one hand and by the bribery cases which are committed along with other crimes on the other hand. If corruption is committed together with embezzlement and fraud, the harmful effect on society is more serious. The social harm of economic crimes is growing in significance if we classify

Table 4

Designation	Total	Deprivation of liberty	Suspended from the sentence	Correctional-educational work	Fine
Embezzlement	2734	1295	866	225	1214
Fraud	1243	665	422	76	502

Table 5

Designation	Total	Under 6 months	6-12 months	1-2 years	2-5 years	more than 5 years
Sentences for embezzlement	1295	587	542	122	36	8
Fraud	665	231	301	87	38	8

embezzlements and frauds against social property in this category too. The number of defendants sentenced for committing embezzlement against social property was 2734, and that of defendants sentenced for committing fraud against social property was 1243. (By breaking down the number of penalties we obtain the picture given in Table 4. By taking the cases of deprivation of liberty separately, we obtain the data presented in Table 5.)

The data of the criminal statistics prove that these crimes happen frequently and their punishments are severe. However, from the data it is not possible to ascertain how many crimes are committed in relation to economy, and since the data of the criminal statistics are not suitable to measure the exact level of the economic crimes, criminologists survey economic criminality primarily by means of representative research.

The experiences of representative research proved that the cases which are committed usually in criminal partnership, in the framework of the enterprise or co-operative management, and cause some hundred thousand or million forint damages to the social property, are especially harmful to society. In such cases corruptional connections are frequent and in the course of the lengthy time of the criminal activity usually some economic offence also is committed.

According to the facts mentioned above it is reasonable to assert that economic crime undoubtedly has wider meaning in criminology than economic offences have in criminal law. In examining economic crimes we may discuss the causes, circumstances, conditions and measures to prevent all the kinds of crime related to economy. The measures to prevent them are closely related to the organization of the economy. Consequently, it is appropriate that in examining the economic crimes one should not stick very closely to the categorization principles of criminal law, but to those of economic life.

Chapter III

Economic criminal law and economic policy

Preliminary.—1. Economic policy and criminal policy; 2. Criminal and administrative sanctions; 3. Criminal liability of legal entities (corporate criminal responsibility)

Preliminary

The connection between economic policy and criminal policy is studied by criminal sciences in both the capitalist and the socialist countries. The study of their interdependence allots criminal sciences special tasks. A more distant, usually indirect, relation of criminal policy and law becomes a closer one here, enabling thereby criminal sciences to carry out researches beyond those performed within the theory of law of the particular fields, and the particular branches of legal sciences, with regard to the direct relation between criminal policy and criminal law and that of economic policy and the law of economic administration.

The problems of economic criminal law can be studied only in connection with general criminal policy. Criminal policy concerning economic criminal offences is influenced by economic policy to such an extent that it is directly traceable in the specific rules of economic criminal law, rendering thereby the study of the interrelations between economic criminal law and economic policy an unavoidable necessity.

For socialist criminal sciences it is particularly important to take into consideration the fact that the changes in economic policy related to economy control have an impact on economic criminal law. The changes in economic policy influence not only criminal policy related to the determination of acts to be fought against with the means of criminal law but also the new kinds of relationship between the organs of economy control and enterprises, exerting thereby an influence on the scientific definition of the object of protection by criminal law as well.

The acts to be punished, along with the criminal sanctions to be applied, are determined on the basis of criminal policy. The goals set up by the economic policy are served by criminal sanctions and administrative sanctions together. Frequently, economic policy considerations determine whether administrative or criminal law sanctions should be applied. Administrative sanctions can be used against legal entities (enterprises) as well. The close connection between the sanctions of criminal law and of administrative law brings about a criminal liability of legal entities based on different

principles from those of the criminal laws in the continental legal systems. It is thought by some authors, primarily in the literature of capitalist countries, that in this way an effective means can be arrived at—from the point of view of criminal policy.

1. Economic policy and criminal policy

The tasks of the State and the social tasks in struggling against crime are in the final analysis defined by the criminal policy of the State. Criminal policy decides what forms of behaviour should be declared criminal offences and how the provisions of criminal law should be applied. In the process of formulating the criminal policy principles of legislation and of the application of law, social, political and moral aspects are taken into consideration. The characteristic system of institutions of law and of the traditional categories of criminal liability are not disregarded either. The purposes to be served by criminal liability can be achieved only if the system of institutions of criminal law operates correctly. Certain systems of the institutions of criminal law, the categories of liability and the objects of liability, change only after decades have elapsed. In certain areas they have preserved their stability for centuries.

For the protection of basic economic interests criminal law has been used by the State since the latter came into existence. The means of criminal law have been used for the protection of property relations as the basis of the economic order, but, along with that, they have been used to ensure the income of the State, to ensure the revenues of the treasury. The provisions of criminal law that are to protect these fundamental economic and economic-political interests have become a more or less harmonically integrated part of the system of institutions of criminal law.³⁴

Although the rules of criminal law that are to protect fundamental economic interests may be considered as part of criminal law in the traditional sense, the theories of criminal law of the modern capitalist States have recognized that the principles of criminal policy do not prevail completely as far as offences committed in connection with economic activities are concerned. Breaks have been demonstrated in the implementation of the criminal policy of both the legislation and the application of the law. The determination of the criminological category of white-collar criminals is the result precisely of the recognition that there are groups of offenders against whom the general aims of criminal policy cannot be effectuated.

In modern capitalism an obstacle of the effectuation of criminal policy is that the law-maker and the highly placed business criminals share common interests and are part of the same organization.³⁵ For, in a profit-oriented economic system it is hard to distinguish lawful and unlawful activities in the business field.³⁶ The general public, however, is much less tolerant toward economic criminals than the class to which the judges themselves belong.³⁷ According to a paper by an author from Latin America,

³⁴ Let us remark here that although tax evasion has been punished by the State for thousands of years, it was not considered in Hungary as a traditional offence even as late as a few decades ago.

³⁵ Says Haagensen, K. (*Twelfth Conference* . . . , p. 146).

³⁶ Among others see, Dönmezer, M. S. (*Twelfth Conference* . . . , p. 142).

³⁷ States Erman, S. (*Twelfth Conference* . . . , p. 142).

the "framers of criminal law are severely influenced by the socio-economic status of the perpetrator as well as the nature of the act, so the higher the status of the offender the lower the penalty."³⁸

The prevalence of the principles of criminal policy is hindered in modern capitalism not only by the social position of the perpetrators of economic offences and by the inter-blend of the high echelons of politics and economy but also by the fact that criminal policy in this realm is necessarily influenced by the economic system and by economic policy interests.

Antitrust laws show clearly the close interrelation between economic crime and views of economic policy and the system of economy control based on the latter. The prohibitions and the sanctions of their breaches show an extreme variety, including the fact that there are Western-European countries with not even any antitrust laws. Even the countries that prohibit the formation of cartels allow various types of association if they are economically desirable or useful. Thus, the prohibitions are enforced as depending on economic policy considerations, since — for example — the formation of a cartel with the aim of dominating the market should be judged differently from the various agreements which are aimed at surmounting an economic crisis.³⁹

Other socio-economic considerations can also have effects of hindering the consistent effectuation of the principles of criminal policy. Examples could be listed copiously. Enterprises that cause damage to the national economy in a certain way, may ensure, at the same time, benefits and if these benefits do not materialize, the loss will be more significant than the damage itself. The growth of unemployment used to be considered such a loss in Hungary. If the sanctions of criminal law had been applied consistently, more enterprises than one should have been wound up and that would have resulted in the growth of unemployment.⁴⁰

Keen competition in the advanced economies also can be a factor which compels whole branches of business to commit criminal offences so that they could stay in competition. According to certain estimation, from 50 to 80 per cent of all German egg dealers obtained fraudulent subventions between 1956 and 1963.⁴¹

When criminal sciences in the capitalist countries try to find the optimal way of conciliation of the aspects of economic policy and criminal policy, it is always kept in mind that inappropriate measures might undermine the economy.⁴² The practice of the criminal policy of the nineteen fifties in Hungary also proves clearly that the use of the means of criminal law does not necessarily promote the development of the

³⁸ Salas, Navarro Solano and Carita, "Comparative Study of White-Collar Crime in Latin America with Special Emphasis on Costa Rica". Paper for the *Annual Meeting of the American Society of Criminology* at San Francisco, California, November, 1980.

³⁹ Tiedemann, K., "Antitrust Law and Criminal Law Policy in Western Europe". In: Leigh, L. H. (ed.) *Economic Crime in Europe*. The Macmillan Press Ltd. London 1980, p. 42.

⁴⁰ Lehtimaja, L., "Economic criminality—who is to be blamed for it?" Contribution to the *Finnish-Hungarian Seminar on Criminal Law*, Helsinki, 22–24 September, 1980.—Similar ideas have been expressed by Delmas-Marty, M. *Twelfth Conference...*, p. 139).

⁴¹ States Sieber, M. in the introduction to the topic entitled "Phenomenology of Economic Crime". (*Twelfth Conference...*, p. 24).

⁴² According to Dönmezer, M. S., the wrong measures may undermine the economy. (*Twelfth Conference...*, p. 142.)

economy. Criminal policy and economic policy were in harmony in that era, thus it was out of question that the effectuation of correct economic policy aims was hindered by an incorrect criminal policy. The means of criminal law were appropriate for the criminal policy of that era since the system of the institutions of criminal law could be used to enforce the instructions.

As has been pointed out in Chapter I, considering the provisions of criminal law, it may seem even in our days that the means of criminal law form an important element of the effectuation of the economic policy of the State. Statistical data, however, have shown to how small extent the provisions of criminal law are used. And this fact is closely related to the changes of economic policy. For, in systems of planned economy where the economic activities of the enterprises are controlled overwhelmingly through central State directives, the breach of the obligation prescribed by directives could result in the establishment of criminal liability. In turn, in the economic policy of such planned economy that makes use of market relations and is based on independent economic decisions, central State directives have a much more limited role. The new forms of the economic activity of the enterprises do not drive out criminal law from the realm of the economy, but its role is much less significant, as is born out by statistical data.

We can consider it a fact that in our days criminal law is pushed to the back and the reasons of that should be found in the relation between economic policy requirements and the system of the institutions of criminal law, in addition to the change of economic policy. Following from the economic policy that ensures a broad scope for independent decision-making on the part of the enterprise, the economy control organs of the State use the method of incentives primarily to make the enterprise carry on operations which are useful to the whole national economy. And, economic incentives are precisely the opposite of punishment, thus criminal law, promoting the action of the incentives, takes measures only against abuses. If the system of economy control changes in accordance with the changes of economic policy, the role of criminal law in the State control of the economy will also change by necessity.

Criminal law may not disregard the institutionalized distinction of economic policy between proprietary and public administrative economy control. It must be realized on the level of criminal policy that the independence of the enterprises, the right to make independent economic decisions is the decentralization of proprietary rights and not of the rights belonging to public administration. Accordingly, the evaluation of the responsibility for the independent economic decisions requires an approach of criminal law which is completely different from the one needed for the judgement of the breaches of the obligations included in the directives. Independent economic decision-making approaches to the exercise of certain proprietary rights under the conditions of commodity and market relations. In the process of exercising proprietary rights, damage may be caused to social property and it may lead to the establishment of criminal liability. However, criminal liability for damage caused in this way is closely related to risk-taking as an important element of economic decision-making. When criminal policy integrates economic risk-taking into the system of criminal responsibility it does nothing but admits the connection between economic policy and protection of property by criminal law. (The details will be discussed in Chapter V.)

The acceptance of an economic policy under which independent decision-making at the enterprise is preferred does not mean that economic activity is not controlled through direct means at all. In addition to the exercise of its proprietary rights, the State uses also the public-administrative method of economy control and it is protected under criminal law. Public-administrative economy control by the State takes, as a rule, the form of statutes which are economic-administrative in nature. These statutes either establish the duties of those who perform economic activity or authorize the organs of economic administration to prescribe various duties. The statutes of economic administration express the economic policy of the State and change together with the changes in the economic policy.

Economic-administrative statutes have outstanding importance also from the point of view of economic criminal law. These statutes form the direct link between economic policy and criminal law, usually by providing the contents to the skeleton regulations of criminal law. The statutes satisfy the requirement formulated in the *nullum crimen sine lege* principle, declaring what conduct, what breach of obligation or prohibition should be punished.

If the statutory definition of the offence is a skeleton regulation, the administrative regulations must be used—in principle, even if the administrative provision is not in accord with the requirements of economic policy. This is one of the reasons why the codification technique of skeleton criminal law regulation has to be discussed in a later part in detail.

Finally, there are provisions of criminal law related to economic activity in the process of the application of which only criminal policy goals have to be pursued and the widespread use of the means of criminal law is only a signal for economic policy. As an example, economic corruption should be mentioned. It may happen that this type of corruption does not hinder, on the contrary, it enlivens economic activity, for it is able to put such forces into action that would not operate without corruption. Independently of the negative or positive consequences, criminal law fights corruption. It may well be that the lack of certain goods is the consequence of an incorrect economic policy and this situation gives birth to corruption. The increase in the number of the criminal offences, however, may be a signal for economic policy at most, the punishment of corruption is a traditional task of criminal law.

Considering the impact of economic policy on criminal policy, offences committed in connection with economic activity may be classified into three groups.

/i/ Criminal policy concerning offences violating property relations generally is independent of economic policy changes. However, a change in economic policy may have an impact on the forms of perpetration of certain traditional property offences. Experience shows that a changed economic policy may bring about new forms of fraud or embezzlement.⁴³ The change of economic policy, however, does not have such impact in this field which would justify either the modification of the statutory provisions or the alteration of the application of law or the interpretation of law. In the realm of offences against property, economic policy influences the practical

⁴³ We can mention as an example the article of Kérdő, S., „Az évvégi mérlegbeszámoló meghamisításának Csongrád megyei tapasztalatairól” (The experience of the falsification of the end-of-year balance reports in Csongrád Country). *Belügyi Szemle*, January 1980, p. 91.

interpretation of the provision concerning the breach of the obligations related to the management of property when an economic decision which resulted in damage should be judged.

/ii/ Contrary to the previous item, here we have to assert that criminal policy concerning offences violating the economy control activity of the State has to give due consideration to the requirements of economic policy and that is the point where criminal law is closely related to the statutes of economic administration.

/iii/ Finally, there are provisions of criminal law the application of which only calls attention to the tensions of the economy; criminal law, however, operates primarily for other social interests (such as the purity of public life, the protection of the environment, the protection of life and health) than those of economic policy only.

The mentioned three groups differ from each other not only in terms of their object of law but also because the economic policy considerations influence the selection of the sanctions used for the protection of the State's economy controlling activity.

2. Criminal and administrative sanctions

The connection of economic criminal law with public administration amounts to more than the fact that economic policy is related to criminal law by the norms of administrative law. For the punishment of unlawful acts perpetrated in economic life the administrative sanctions from economic policy aspects appear frequently much more effective than criminal punishment. The importance and the effectivity of the administrative measures are emphasized also by the resolutions of the Freiburg preparatory Colloquium. The reasons why the representatives of the criminal sciences of the socialist countries and the scholars of the capitalist countries may give their approval to that part of the resolutions are not completely identical.

The necessity of the use of administrative sanctions in capitalist countries is closely related to the criminal liability of legal entities which is not accepted in the majority of the socialist countries. For, the goals of criminal or of economic policy for the achievement of which the institution of the criminal liability of legal entities is needed in the capitalist economic system may be attained through other means in the socialist countries.

According to the law of certain capitalist countries, in the case of the perpetration of certain economic offences the court may place a governmental manager over the board of the company for several years. In other instances, as a sanction of false advertisement, the court may order the enterprise to give the right information to the consumers through a new advertisement. Such and similar sanctions are classified by the representatives of criminal sciences as belonging more to the law of administration than to criminal law even if they are employed by criminal courts.⁴⁴

The significance of administrative sanctions employed in economic life extends beyond the significance of administrative sanctions imposed by criminal courts, in

⁴⁴ Leigh, L. H., Policy and Punitive Measures in Respect of Economic Offences. In: "Collected Measures in Respect of Economic Offences." *Collected Studies in Criminological Research*, Vol. XV, Council of Europe, Strasbourg 1977, p. 154.

capitalist countries too. For example, in the USA, criminal sanctions are hardly used in the case of a number of fiscal offences. The significance of criminal sanctions is preceded by that of civil law suits initiated by the injured parties and by that of the administrative proceedings conducted by the Federal agency which is to exercise supervision, or civil suit initiated by that agency. There are provisions of criminal law which have not been in use for years, but scientific studies meet difficulties in this field because the Federal agency empowered to proceed in such cases does not make the criteria public on the basis of which it is decided which one of the various sanctions would be selected.⁴⁵ Administrative authorities investigating the violations of law committed in economic life have broad discretion also in other countries in deciding what sanctions they will apply or the application of what sanctions they will initiate. Among the possibilities, in addition to civil lawsuit, there are the simple warning of the enterprise or financial settlement with the enterprise. In the FRG, the enactment of a separate law has been effected in order to prevent the spreading of such a practice.⁴⁶

One of the reasons why criminal sciences study the relation of criminal law and administrative law sanctions is that the same offence is punished with criminal sanctions in one country and with administrative sanctions in another.⁴⁷ Comparative studies are justified also by the fact that certain organs of the EEC also have the authorization to apply sanctions. In principle, it is possible to impose a fine for cartel agreements but the multinational companies usually prevent the application of such sanctions through their ability to alter costs and profits.⁴⁸

The administrative measures that are to serve prevention appear to be more effective. For example, the Labour Government in Sweden introduced certain provisions, one of them entitling the representative of the police to sit on the boards of firms; another legislation obliged the management to keep workers in touch with various aspects of production.⁴⁹ Such measures were to prevent economic crime.

In economic systems based on private ownership the State can influence the exercise of proprietary rights only through the administrative measures of the public authorities; and sanctions—should they be either of criminal law or administrative law—are an important, even if not the most important, element of the effectuation of that influence. In turn, in socialist systems, the State exercises also proprietary rights as far as the major part of social property is concerned and the exercise of these rights creates the possibility of checking and controlling economic activity. In socialist systems, even if State (as a public authority) intervention (i.e. intervention through criminal law or administrative law) is not needed to appoint or remove the managers of enterprises, it is indeed one of the important elements of economy control which is embodied in the exercise of proprietary rights, and through the exercise of these rights, a number of forms of economic crime may be prevented or decreased against which only the means of the public authority can be used in capitalist economic systems.

⁴⁵ Ginsberg, R. E., "Fiscal Offences: the Federal Approach in the United States". *Revue Internationale de Droit Pénal*, 1982, Nos. 1-2, p. 233.

⁴⁶ Tiedemann, K., *Antitrust law* . . . , p. 42.

⁴⁷ It is not enough to compare only criminal law norms, as Sieber, M. pointed out. (*Twelfth Conference* . . . , p. 22.)

⁴⁸ Tiedemann, K., *Antitrust law* . . . , p. 52.

⁴⁹ As Svensson has pointed out. (*Twelfth Conference* . . . , p. 146.)

The proprietary rights of the State, of course, may not be used in connection with the economic activity of co-operatives and citizens. The economic activity of co-operatives and citizens do not compare with the activity of the big State enterprises in terms of volume. From that it follows by necessity that the economic offences that may be committed in the course of the economic activity of co-operatives and citizens are usually of lesser significance and this fact is reflected also by criminal statistics.

All this does not mean that administrative sanctions do not have any significance in the socialist systems in the struggle against offences perpetrated in connection with economic activity. The use of administrative sanctions is explained by two reasons of legal policy. One of them is related to the general criminal political principle according to which in minor violations of law it is unnecessary to apply criminal sanctions; the other one is related to the economic policy advantages of using administrative sanctions against legal entities. In the socialist countries, decriminalization took place several decades ago, when certain acts of minor significance were declared to be administrative infractions (regulatory offences) belonging under the jurisdiction of administrative authorities and, by that, these acts became excluded from the realm of criminal liability. The borderline between economic and property infractions and criminal offences is drawn differently in various countries and various times, still, one may make the observation that administrative fine is a broadly applied sanction.

The use of the administrative sanction, i.e. fine for an infraction, is, on the one hand, in accordance with the general principles of decriminalization and, on the other hand, it is in accordance with the practice of sentencing for economic offences. Administrative infractions are, as a rule, judged by the organs of public administration and not by courts (these organs in certain countries are various committees), and these organs impose the penalty.

The correctness of decriminalization is shown by the fact that in a significant number of the cases coming before courts, the punishment is a fine, thus, even without decriminalization the same sanction (i.e. fine) would be employed. Of course, from the point of view of certain legal consequences, there is a difference between the fine that is imposed by a court and the fine imposed by an administrative authority proceeding in infraction cases, but in terms of their nature, the two sanctions are the same.

The Freiburg Colloquium, in addition to emphasizing the importance of administrative sanctions, deemed necessary to include in the resolution the necessity of ensuring the proper guarantees in the administrative process, and also that the administrative organs should not be authorized to impose loss of freedom punishment for violations of law committed in business and economic life. The law of administrative infractions of the socialist countries satisfies these requirements since the proceedings are conducted with proper guarantees and the applied sanction is usually a fine. In Polish law, though, loss of freedom may be imposed in certain cases, however in such cases appeals are handled by courts and not by a higher administrative forum.⁵⁰ The final decision in imposing loss of freedom, thus, is a court decision and not that of an administrative authority.

The borderlines between administrative and criminal liabilities are not always clearly drawn, the demarcation is frequently based on relative criteria, still it may be

⁵⁰ Krukowski, Zoll, *Op. cit.*, p. 509.

said it is the measure of the dangerousness to society that decides what form of liability should be used for the particular type of violation of law. Administrative sanctions are applied against such acts that violate or endanger the order of economic activity, but not in a realm or not to the extent that the application of a criminal sanction would be justified. For this reason, behaviour serving as the basis for the establishment of liability is frequently similar in the case of the application of a criminal or an administrative sanction. True, the theoretical criteria of the demarcation of criminal liability and administrative liability for infractions are not clear and are much discussed, it does not, however, mean that the demarcation in the statutes is also unclear. Legislators, as a rule, draw the dividing line between the two forms of liability by criteria determined in sums of money.

The statute on administrative infractions extends also to unlawful behaviour providing the basis of fining, i.e. to irregularities. It authorizes the supervisory organs to impose sanctions for infractions, in connection with irregularities. The principle of the uniform treatment is that the irregularities discovered by the supervisory organs are not different essentially from administrative infractions—a fact which makes it difficult to distinguish between them.

Administrative infractions are committed by economic organizations mostly in the course of their activities of production or service. The range of violations of law committed in the course of economic activity and sanctioned by administrative law is extremely broad. It extends to the endangerment of all those interests that may enjoy the protection of criminal law. Yet, their characteristic trait is that they violate the norms of State administration (economic administration) relevant for the area and cause no violation of interests significant enough from the point of view of criminal law. The norms of administrative law regulate economic activity not only in a way related directly to this activity (i.e. to production, services etc.), they also include provisions that are to protect other important social interests (such as health service, labour protection, fine regulations). If the violation of these regulations produces serious consequences, criminal sanctions may be applied. The offence committed by violating the mentioned administrative provisions is related to economic activity but it is not certain that it may be included in the conceptual category of economic crime.

The significance of administrative sanctions in the socialist countries amounts to more than their use in case of the establishment of liability for administrative infractions. The sanctions that may be applied against legal entities, the various forms of fine, are of at least the same importance. The significance of fine employed against legal entities is explained by two circumstances. First, in economic life decisions violating the law are made on behalf of the enterprise in a system which makes it difficult, at least for the outsider, to establish individual liability. Within enterprises the system of decision-making may be built in a way allowing the distribution of responsibility among the individuals participating in decision-making, thus their punishment would not be compatible with the principle of culpability prevailing in criminal law and in the law of administrative infractions. Second, the fine is a detriment for the whole collective of the enterprise, thus, it induces the collective to prevent the violations of law. Thus, fine imposed on legal entities is a sanction of a form of liability which is directed at the collective and not at the individual.

Such fines represent a financial loss which is to serve motivation of the activity of the organizations. If the activity of economic organs is evaluated from some point of view as socially or economically negative, the fine as a sanction is connected to this negative evaluation, independently of whether the economic organization can be blamed for the harmful result or not. For example, the fine for environmental pollution has to be paid independently of whether the economic organ was or was not able to prevent the pollution of the environment. Fiscal organs also frequently impose fines if they establish that the enterprises do not perform their duty of paying taxes or they have obtained certain budgetary benefits unlawfully. There are various types of fine, such as the fine for the breaches of building regulations or of transport.⁵¹

In the Hungarian legal system there is a special type of fine which is not imposed by administrative authorities but by civil courts in civil litigations. This type of fine is the economic fine which is imposed, as a rule, if the economic organization makes somehow unfair profit, for example by asking for prices exceeding the officially defined limit. True, according to the valid legal provisions, after the imposition of the economic fine, the liability of the natural persons also should be examined in a separate proceeding, however, the establishment of personal liability is frequently prevented by the system of economic decision-making itself, since the acts of the single persons participating in decision-making cannot be considered to be criminal offences, nevertheless the economic fine has to be paid. As a requirement, the imposition of an economic fine should be followed by the establishment of personal responsibility at least in the form of a sanction by labour law. It is not a Hungarian speciality that the imposition of a sanction on the legal entity is not followed by the establishment of individual liability.⁵²

3. Criminal liability of legal entities (corporate criminal responsibility)

The criminal responsibility of legal entities appeared in English law in the middle of the last century. Prior to that, criminal liability could be established only in the case of persons acting on behalf of the corporation. At present, criminal responsibility of legal entities is generally accepted in common law countries. In these countries the criminal liability of enterprises exists not only for economic offences but even for homicide; true, usually only for negligent homicide. Although the justification of the criminal liability of legal entities is admitted in general in the common law countries, the basis of liability is a much debated issue.

The basis of the criminal liability of legal entities is explained by various theories. The theory of vicarious liability; the doctrines of identification and of strict liability are among them.

The theory of vicarious liability for the employee is based, as a matter of fact, on civil law liability for damage and the liability here includes not only liability for the acts of the management but for the acts of every employee proceeding in his or her capacity

⁵¹ The various kinds of fine are treated as pseudo-forms of liability by Kálmán, Gy., p. 306.

⁵² Bulai, C., *Op. cit.*, p. 663.

as such. In countries where the principle of liability for employees is accepted only in civil law and not in criminal law, the decisions of the senior officers of legal entities are identified with the acts of the legal entities, on the basis of the theory of identification. The criminal liability of a legal entity is built on this basis. The Model Penal Code of the USA combines these two principles building the criminal liability of legal entities on the instructions of the leading officers of the companies, on the one hand and on the fact that the unlawful act was at least recklessly tolerated by these officers.⁵³ In addition to laying the principles of the criminal liability of legal entities, it is also a much debated issue, how it is possible, or whether it is necessary at all, to take into consideration any form of culpability. One of the reports of the Law Commission of England while emphasizing the necessity of maintaining the principle of culpability observes that it is different from the generally accepted legal concepts of intent and negligence.⁵⁴

In the European literature of criminal law, the criminal liability of legal entities was much discussed as early as the last century. The Bucharest Congress in 1929 of the International Association of Penal Law represented an important step in the development of views; the Congress took a stand for measures of social defence to be employed against legal entities.⁵⁵ Nowadays, scientific debates are going on in a number of European countries on the criminal liability of legal entities.

One of the arguments raised in the debates is that the criminal liability of legal entities is needed since a collective will differing from the will of the individuals constituting the collective may exist. The adherents of this theory do not deem the counter argument valid according to which punishment imposed on a collective may strike also the innocent; they refer to the fact that the punishment frequently is detrimental also to the convict's family members and they are as innocent at least as the members of legal entities. They believe that general and special preventions also are possible in the case of legal entities. According to their arguments, prevention can be effectuated in the case of legal entities in the same way as it is when the punishment is inflicted on a natural person.

Corporate criminal liability for economic offences is demanded on the basis that big enterprises, particularly multinational corporations represent such an economic and financial reality, such a power, that not only civil law and commercial law but also criminal law should recognize that fact. If civil law and commercial law employ strict liability in a number of instances, criminal law should not recoil either from its use. Corporate criminal liability is justified also with reference to justice, because it is unjust that only a single person should suffer for an unlawful act committed in the interest of the collective.⁵⁶

According to another argument, social conditions have changed to the extent in our days that these changes justify the revision of the principle of individual culpability

⁵³ Ottley, B. L., "Criminal Liability for Defective Products: New Problems in Corporate Responsibility and Sanctions". *Revue Internationale de Droit Pénal*, 1982, Nos. 1-2, p. 145.

⁵⁴ *Strict liability and the enforcement of the factories Act 1961*. Published Working Paper, No. 30, The Law Commission, London.

⁵⁵ Venandet, G., "La responsabilité pénale des personnes morales dans l'avant-projet de code pénal". *Revue trimestrielle de Droit commercial*, 1978, pp. 731-765.

⁵⁶ Venandet, G., *Op. Cit.*, p. 756.

in criminal law. The unlawful acts of legal entities may involve socio-economic consequences for which the establishment of only individual liability is not in proportion. The organization may cumulate the effects of individual actions and individual negligence: due to this, traditional punishments are not proportional to the offences. In big organizations it is frequent that foremen or immediate supervisors are held liable instead of the managers of the enterprise, particularly in the case of violations of labour safety regulations.⁵⁷

The demand for corporate criminal liability may be justified by the mentioned plausible arguments of criminal policy, nevertheless the statutory definition of liability raises a number of problems. Even the very issue what organizations should be embraced by corporate liability is very much debated, as e.g. in the case when the activity of a commercial, industrial or financial nature is a criterion of criminal liability, as one can see it in the draft of the French Penal Code; because even with this solution, the question of the liability of churches or trade unions may be raised. The criminal liability of these organizations has not been demanded even by those who argue for the criminal liability of legal entities.

As far as the basis of liability is concerned, several principles are regarded as acceptable. According to one view, the criminal liability of legal entities is completely independent of personal liability; in other words, it is not necessary to find the actual perpetrator. According to another model, culpability is presumed and the legal entity has only the right to exculpate itself if it can prove that it proceeded with proper care. Liability is limited to the narrowest circle by the model according to which corporate criminal liability exists only for certain defined high managerial officers of the legal entity.

The reasons of both criminal policy and the laying of the theoretical foundations of liability rise the final question what sanctions may be applied against legal entities. The answers to the question may be called almost uniform, for fine is regarded as the most important one and the dissolution of the legal entity as the gravest of the sanctions. It is suggested that in the imposition of the fine, the assets of the legal entity and the profit deriving from the perpetration of the offence should be taken into consideration.

Although criminal liability is recognized in the European legal systems, as a rule, only in the case of natural persons, we should note that penal statutes include several provisions which embody the principle of vicarious liability—earlier Hungarian law also had such provisions. On the basis of such provisions, civil law and administrative sanctions may be applied against legal entities if their employees committed a criminal offence in the sphere of the operations of the enterprise.⁵⁸ Consequently, it is possible to find a solution, apart from the criminal liability of legal entities, which could serve the protection of society properly.

In the socialist countries, the application of sanctions against legal entities, beyond the sanctions of civil law and administrative law, is not deemed necessary. For this

⁵⁷ Backman, E., "Towards a Penal Responsibility of Legal Persons?" Lecture delivered at the *Finnish-Hungarian Seminar on Criminal Law*, Helsinki, 22–24 September, 1980.

⁵⁸ According to Section 4, para (2) of Act XIV of 1939, the enterprise and the perpetrator were liable jointly and severally to pay property compensation if the foreign exchange offence was perpetrated in the interests of the enterprise.

reason, criminal liability of legal entities is generally not admitted in socialist legal theory. Fines imposed by various administrative organs serve effectively the prevention of the violations of law and the dissolution of the big enterprises is usually not a sanction imposed by the public authority but an act of exercising proprietary rights.

In Yugoslavia, socialist property is organized in the form of self-management. This fact may explain why the institution of the criminal liability of legal entities is used by Yugoslavian law. One should see, however, that the criminal liability of legal entities is linked there with a special kind of punishable conduct.—In the socialist countries, the sanctions of criminal law are employed, as a rule, for criminal offences, and administrative sanctions for administrative infractions. But in Yugoslavian law there is an intermediate category which could be called petty offence. Accordingly, economic criminal offences, economic petty offences and economic administrative offences are distinguished. Economic petty offences, which include acts violating the law of tax and foreign exchange policy, may be committed by both natural and legal persons. Criminal offences in the strict sense of the word, within the given classification of offences, may not be committed by legal entities. The responsibility of the legal entity does not depend on the guilt of its employee and theory regards this liability a strict one. Petty offences committed by legal entities are judged by courts and their sanction is fine, the amount of which is higher than the amount of fine that can be imposed for infractions.⁵⁹

There are proposals expressed also in Hungarian literature which are aimed at the establishment of a legal institution which would be based on the development of the economic fine and would be similar to criminal liability, even if it were not called so. The proposals are similar to the common law system as far as the court decisions (civil and not criminal courts' decisions) would be attributed to effects of precedents in developing law. These precedents would determine the types of conduct to be punished. As far as the bases of liability are concerned, the elements of strict liability and of civil law liability for fault would be mixed in the suggested system.⁶⁰ The Hungarian example also substantiate the assertion of the resolution accepted by the Freiburg Colloquium according to which the necessity of the criminal liability of legal entities in connection with economic offences is admitted by a growing number of countries. The resolution suggest that countries which do not recognize such criminal liability should consider the possibility of imposing administrative sanctions against legal entities. The part of the resolution demanding the application of the principle of culpability in the field of economic offences is also remarkable. It is also suggested by the resolutions that strict liability offences should be abolished as quickly as possible. We should like to add that the principle of culpability and criminal liability of legal entities can be reconciled only with difficulties. This is precisely the reason why socialist criminal sciences have formed their position, concerning the criminal liability of legal entities, as it is now.

The dominant views in socialist criminal law base criminal liability on individual culpability. It follows that—according to these views—criminal liability is individual

⁵⁹ Kobe, P., *Op. cit.*, p. 782.

⁶⁰ Cf. Szalay, L.

liability, i.e. one has take the responsibility only for his own conduct. However, we must not forget that economic activity does not consist of the isolated actions of individual human beings, the acts of a number of people are closely connected with each other. Thus, criminal liability for the act of another person has special significance in this field.

The general rules of criminal law recognize accessory liability attached to offences committed by others and this liability exists also in the field of crime related to economic activity. The offence of another person, i.e. the basic offence, is an indispensable precondition of accessory liability. However, in addition to the basic offence, there always is some kind of conduct founding accessory liability and it is qualified by criminal law as instigation, or being an accessory (before or after the fact) or receiver of stolen goods, etc. These traditional categories exist also in the case of economic activity and all forms of conduct that qualify as instigation, abetting, etc.; all are treated by criminal law in the traditional way. There are, however, such other forms of conduct—linked to the actions of others in the course of economic activity—which do not fall within the mentioned categories of accessory liability. The manager who does not organize the protection of social property and in this way a possibility is created to damage, to pilfer social property, is not either an instigator, nor abettor or receiver of stolen property. The conduct of the manager who orders an untrained worker to operate some equipment or machinery and an accident occurs cannot be fitted into any of these categories either.

In the mentioned cases the damage produced by the theft or by the accident is not caused by the manager and the behaviour does not provide a basis for accessory liability either. However, it is possible to set requirements which, if met, exclude or limit the violation of interests protected by criminal law. If the manager organizes well the protection of property or has the machinery operated by an expert worker, the probability of the injury of the interests will diminish. So, it is possible to formulate requirements related to management which are linked in their form of appearance to criminal offences committed by other persons. These requirements, however, are formulated in criminal law in the form of independent breach of duty and in such cases liability is founded by the person's own conduct in addition to the acts of others. Thus, liability for the acts of others is formulated in the socialist countries in a way that independent breach of duty and individual culpability are also involved. This form of liability is in complete accordance with the requirement formulated by the resolutions of the Freiburg Colloquium, according to which criminal responsibility on account of offences by other persons should be recognized only when the breaches of a supervisory duty and individual culpability are present.

For the reasons mentioned above, there is no such an urgent demand of criminal policy in the socialist countries as would render the recognition of the criminal liability of legal entities necessary. The aims of criminal policy and economic policy are adequately served by individual criminal liability and by the administrative sanctions that may be used against both individuals and legal entities.

Chapter IV

The legal object of economic offences

Preliminary.—1. Victims and violated interests; 2. Economic activity and economic management; 3. The economic activity of the State as the object of protection.

Preliminary

In principle, it would not be absurd that the interests of the victims, for example, the State or the consumers, embodied the legal object of the particular offences. However, from the aspects of criminal law regulation, the victims and the interests violated by the offence do not coincide by necessity and one criminal offence may violate various interests at the same time. Thus, in the determination of the legal object, a selection has to be made in a way that it should have social contents and the definition of the legal object should capture social reality correctly.

As far as the legal object of economic offences is concerned, we refer only to certain characteristic views expressed in the literature of criminal sciences in the capitalist countries, and we discuss the issues the criminal law of the socialist countries is concerned with in more detail. Considering the close connection between criminal law and economic policy, the most important of the issues is the distinction between the State's public administrative management and its proprietary management of economic activity, from the point of view of protection under criminal law. The demarcation of the State's proprietary management and of its public administrative management is in close connection with the relation between the economic activity and the economic management in socialist economic systems.

1. Victims and violated interests

The injury suffered by the victim frequently represents in a concrete form the violation of the interests, of values, protected by criminal law, i.e. the violations related to legal objects. It is particularly clear in the case of offences against life and bodily integrity, but it can be seen also with property offences. In the latter cases, however, the injuries of the victims, their deprivation of certain of their properties or damages caused to their properties, express the aspect of their being injuries to property relations and as such the legal object in a way that the injury caused to the victims does not gain significance directly. It is through the economic administrative regulation that

it becomes significant for the examination as the object of protection. (Evidently, this assertion is not to deny that the study of the victims of economic offences can be important for criminology.)

The relation between the enterprise conducting economic activity (hereinafter and in this context the enterprise) and the victim of the offence has been taken into consideration by J. Cosson when setting up the various classes of criminal offences belonging to economic criminal law, as follows:⁶¹

The first group consists of criminal offences the victims of which are the proprietor of the enterprise or his partners. Among the victims of offences belonging in this group, there are shareholders of the company and tax authorities. J. Cosson enumerates here the criminal offences that are committed by the directors of the enterprise to the injury of the shareholders through the misappropriation of the enterprise's assets, but also the acts that cause damage to tax authorities through a false registration of the firm. Under certain rules of taxation, the taxes paid by the enterprise depend on whether the enterprise is owned by one person or by shareholders. The abuse of this type is usually committed by naming the person holding the whole of the share capital as the head of the enterprise, perhaps the shares are in his hold through nominees. The offences the victims of which are not economic enterprises but persons intending to buy apartments also belong to this category. Building associations sell shares and the purchasing subscriber believes he will be the owner of an apartment in a block of flats; actually he is buying shares in an association that owns the building. If the association goes bankrupt, the subscriber will lose his invested money.

This includes also the criminal offences that are committed through the use of the various forms of concern of big enterprises, by transferring capital from one enterprise to another. In such cases the victims of the abuse are the shareholders and tax authorities. Finally, this group includes frauds with securities, when the shares of worthless or non-existent enterprises are sold.

The next group is formed of acts causing damage to the creditors of the firm. The various forms of bankruptcy belong here which may originate from the errors committed in the management or from organized fraudulent bankruptcy. The victims of these offences may be banks and tax authorities, in addition to the creditors. In the classification of Cosson, the State is always included among the creditors in the case of abuses connected with offences perpetrated in the realm of social security, turnover tax and profits tax or the violation of customs regulations. Acts, injurious to the employees of the enterprise, also belong in the category of offences damaging the creditors. The enterprise may violate not only the property interests of the employees in connection with the wages and salaries. The employees are the victims also of abuses related to work conditions or to the violations of the safety regulations of work that constitute criminal offences violating or endangering life and bodily integrity. The third group of victims is composed of consumers. A number of offences may be committed against consumers, by misleading advertising or by the refusal to sell as mentioned by Cosson.

The fourth group of victims is that of competitors. In connection with that, Cosson has pointed out, that the State exerts an influence on economic activity even in the free-market-economy systems through regulating the rules of competition. Although the

⁶¹ Cosson, J., General report (*Twelfth Conference* . . . , pp. 164 et seq.)

regulations vary from country to country, to ensure fair play is one of the requirements that are to be met everywhere.

The fifth category of victims is the environment which is damaged by the industrialization of the last years to a great extent. In addition to environmental pollution, Cosson underlines also the economic significance of the regulations of environmental protection. For, the stricter these regulations, the higher the costs, and the international competitiveness of goods depends strongly on costs.

Finally, the last group includes the offences the victims of which are the enterprises. Various types of shop-lifting, frauds with cheque and credit card, insurance and computer frauds belong here.

Without evaluating the classification in detail, it is sufficient to turn our attention to the category where the employees of the enterprise and the State are equally victims as creditors. Such a measure of abstraction which allows that the financial interests of the State, the life and health of the employees could be included in the same category, evidently does not provide a useful criterion for the definition of the object of protection under criminal law. Still, the survey of this classification has not been superfluous, since the criminal offences that are usually enumerated among economic offences in the criminal sciences of the capitalist countries are included in the mentioned groups.

A similar sphere of crime has been characterized by the participants of a conference in the FRG, too, as forming economic crime and as violating or endangering the economic order in two ways: on the one hand, the perpetrator abuses the trust required in economic life or, on the other hand, he or she violates the regulations concerning the economic order.⁶²

The assertion has three elements, viz. /i/ the economic order; /ii/ trust required in economic life; /iii/ the regulations concerning the economic order.

/i/ If the economic order is identified with the meaning of the economic system, it will include property relations which serve as the basis of economic activity (see subsection 2), consequently, the regulations concerning the economic order and the trust required in economic life are used with justification as narrowing factors. Otherwise the distinction between economic order and prescriptions concerning the economic order would be meaningless. Given this distinction, the violation of the regulations of the economic order can be used to capture the legal object protected by economic criminal law, for it includes the common characteristic that economic administrative regulation have been established in order to protect certain interests. The regulations may equally protect the financial interests of the State, the consumers, the competitors and the employees. Although the interests are of different nature, the common trait is that the State regulates the economic activity to protect these interests. Thus, here the economic administrative rule itself may be the element to be grasped from the point of view of the protection under criminal law.

/ii/ The abuse of trust is fit to characterize the perpetration of the act, the way of the commission of the criminal offence and not the protected legal object. The mode of perpetration is characteristic of the offences violating property interests that have been

⁶² Langen, H., "Begrüssung und Einführung in das Thema." *Probleme in Gespräch*. 4. *Wirtschaftskriminalität*. Herbert Lang et Cie AG, Bern 1972, p. 9.

enumerated by Cosson. The abuse of trust can be recognized in the acts of the directors of an enterprise that cause damage to their own shareholders, but also fraudulent bankruptcy harming the creditors, or abuses committed with cheques and credit cards, etc. can be enumerated as abuse of trust. At the same time, the abuse of trust characterizes also acts violating traditionally other legal objects or some of such acts. The abuse of trust is characteristic of acts of corruption in general, but industrial espionage may be regarded also as an abuse of trust if it is committed by an employee to the injury of his own firm; this element is usually lacking in the case of industrial espionage committed by an outsider. So, if all the criminal offences that are characterized by the abuse of the trust required in economic life were classified as economic offences, we should have an extremely broad, almost unlimited sphere of acts.

/iii/ The violation of the economic administrative regulations and the abuse of trust characterize different groups of criminal offences committed in economic life. It is beyond doubt that both the acts committed through abusing trust and the acts violating the regulations of economic administration may cause injury to different victims. Still, the abuse of trust characterizes primarily the acts that are injurious to property interests as a traditionally protected legal object. As a matter of fact, the use of this criterion is to allow that certain types of property offences could be considered as part of economic crime, leading thereby to the circumstance that a duality comes into existence within the concept of economic crime. This duality can be found in Tiedemann's definitions of the narrower and broader concepts of economic criminal offences, even though Tiedemann has built the narrower and broader sense of the concept on partially different basis.⁶³ According to Tiedemann, the narrower concept of economic criminal law embraces the part of criminal law where the protected legal object is the economic order organized by the State, in short, the national economy. In this economic organization, the provisions of administrative law institutionalize the interests of the public and regulate them according to the economic policy. The economy-controlling role of the State gains significance primarily in the narrower concept of economic criminal law, through, for example, regulating prices, international trade or foreign exchange.

Economic offences in the broader sense of the term are not characterized by Tiedemann through the use of the term abuse of trust; a term that cannot be clearly defined. He finds the characteristic trait in such legal norms as regulate economic life not only for the protection of social interests but also for that of individual ones. In the background of this broader sense of economic criminal law it is also the economic order as regulated by other norms that can be found, thus criminal law protects this legally regulated order, however, the regulation may serve also individual interests here. Tiedemann mentions cartel law, the law of competition, the laws on credit, on foodstuff and wine, as the objects of protection; the laws on environmental protection and on labour safety are also enumerated here. In Tiedemann's conception, the narrower and broader spheres of economic offences have so far been characterized by the separate legislations that were issued by the State to regulate economic life, even if for the protection of individual interests. However, Tiedemann has broadened the

⁶³ Tiedemann, K., *Wirtschaftsrecht* . . . , pp. 54-55.

concept of economic offences, classifying certain forms of property crime (fraud, mismanagement of property) among them on account of the way of perpetration. Such are, among others, cheque forgery, credit frauds and the abuses of credit card. He extended the concept of economic offence to embrace certain offences of corruption in office, if they are committed in connection with economic interests. In another work, Tiedemann characterizes economic offences as acts injuring or endangering economic life or the order of the economy.⁶⁴ Although he underlines the protection of public interests also here, he also makes use of the violation of trust as one of the characteristics, particularly in the case of offences injuring banks and insurance companies. Finally, he mentions computer crime and the abuses of credit card as new forms of economic crime.

According to the described ideas, the community (the order of the economy) and individuals may equally be the victims of economic offences, understanding the term "individuals", of course, as designating enterprises which constitute part of the national economy, still are separate within that. The interests of the individual and of the community are not placed next to each other on the same side in the Resolutions of the Freiburg Colloquium—they represent opposite sides there. According to the Resolutions, economic criminal law protects collective interests. The majority of those are more difficult to identify, the Resolution say, than the traditional individual interests. In spite of the fact, that no common platform could be formed concerning the definition of collective interests protected by economic criminal law, it is significant that the participants of the Colloquium, whose majority represented the criminal sciences of capitalist countries, have not regarded individual interests, traditionally protected by criminal law, as the object of economic criminal law of today.

As is clearly expressed in other parts of the Resolutions, administrative regulations play an important role in economic criminal law, thus, their significance is uniformly admitted by the representatives of criminal sciences. With the violations of duties and prohibitions included in the provisions of administrative law, if individual interests are also violated, the injury is usually damage to property.

In our opinion, the injury of property interests may be linked to economic criminal law basically in two ways: either through the way of the perpetration, or based on the fact that the breach of the economic administrative rules involves also the violation of property interests. It is beyond argument that the violation of economic administrative regulations concerning prices, the quality of products or economic competition, usually causes the violation of someone's property interests. For example, if the consumer buys an overpriced or bad-quality product, he suffers damage which may be defined in terms of money. The reason why in such cases it is usually not a property offence that can be established is to be found among others in the fact that on account of the high number of victims, the establishment of responsibility for property offences would be extremely complicated, and because of that, it is more reasonable to place the violation of the administrative regulation (the breach of the rules of forming prices or quality regulations) in the central point of the establishment of responsibility. The reason, of course, does not alter the fact that the act has caused also property damage. — The violation of the rules of economic competition also means a violation of the

⁶⁴ Tiedemann, K., "Phenomenology of Economic Crime". *Collected studies* . . . , pp. 10–11.

property interests of the enterprises or the consumers (perhaps of both), either because the goods cost more or because the dumping is aimed at forcing out another enterprise from the market. The determination of the sphere of victims and of the damage in the cases of the violation of competition rules is not always possible either. For this reason, such acts are also easier to characterize by the violation of the economic administrative regulation and it is more expedient to place that regulation in the focal point of the establishment of responsibility. Let us repeat, however, that the reason does not alter the fact that the consumers or enterprises suffer property damage. It is not infrequent that the damage suffered by the State through a tax or customs duty offence can be determined in terms of sums of money. Yet, such acts are not enumerated among offences against property and in the formation of the system of the provisions of criminal law it is the violation of the administrative rules that is traditionally regarded as characteristic also here. Thus, the breaches of the regulations of economy control of the State cause, as a rule, either directly or indirectly, property damage as well, still, these violations of regulations are taken out from property offences and we characterize them as violating the economic administrative regulations. This view is the dominating one in both capitalist and socialist criminal sciences in connection with the judgement of financial offences. Thus, we may state that acts violating the economic administrative regulations are accompanied, as a rule, by damage to property. This fact, however, does not exclude that the administrative regulation should constitute the social interests in criminal law that can be regarded as the legal object.

The acts that are linked to economic activity by their mode of perpetration, are evaluated in a different way. We have seen how broadly the sphere of economic offence is drawn in the criminal science of the capitalist countries when the way of perpetration is used as the criterion of characterization. In the socialist countries, too, the views differ whether acts causing damage to the property of the enterprises through bad management, and not through larceny, should belong to economic criminal law or not. These acts are rather similar to the abuses by the managers of enterprises to the injury of the owners that qualify in the criminal law of capitalist countries as criminal mismanagement. In the socialist countries, bad management may equally damage the enterprise and the national economy and the way of the perpetration of the act is similar to the conduct defined in the economic offence since the causation of damage is usually a consequence of a breach of duty. The simultaneous presence of these two traits explains that the majority of the criminal codes of the socialist countries include under the category of economic offences also such breaches of duty as are related to the conduct of economic activity, and cause damage to the enterprise. We find the explanation for it in the fact that in the economic management system with planned directives, the organs and the interests of economic activity resp. economic management are frequently intermingled. Here the question arises whether the interests of conducting economic activity or those of economic management are separable from the point of view of criminal law protection or not.

2. Economic activity and economic management

The structure and the various chapters of modern criminal codes generally are based on the protected social interests, i.e. legal objects. It happens that one criminal offence violates several kinds of legally protected interests (e.g. robbery is injurious equally to personal and to property interests), still, the chapters of the Code provide guidelines to understand what was considered by the legislator as the legal object of protection under criminal law. Considering this, one may find that socialist criminal codes include criminal offences among economic offences—occasionally among white-collar offences or those in service⁶⁵—which damage social property.

According to the Bulgarian Criminal Code, the conduct of the official who does not display proper diligence toward the property entrusted to him for management, for control, for handling or for safe-keeping, causing thereby significant detriment to the national economy or the loss of property or other significant damage, constitutes an offence against the socialist economy.

The Czechoslovakian Criminal Code includes among offences against the discipline of economy the breach of an important duty originating from one's occupation, profession, position or office, if on account of that a disturbance is caused in the regular economic operations or activities of a State, co-operative or other socialist organization, or major damage is caused to socialist property. In the Polish Criminal Code it is in the chapter on economic offences that an offence is defined which consists in the breach of a duty in the realm of economic activity if it caused the loss of property or significant damage. The offence of neglecting duties related to social property if, owing to the neglect, significant loss occurred in the social property, is also included among economic offences. In the Romanian Criminal Code it is an offence of service if an official causes damage to social property through the breach of his duty related to his functions.

In the GDR, an act named "damaging the economy" is included in the chapter on offences against the national economy. The offence is committed if someone withdraws means of production from regular use and through that causes economic damage by intention. A person who damages a means of production, or other objects serving the aims of the economy, by negligence and through the breach of his duty originating from his occupation, and causes significant economic damage in this way, is also to be punished. In Soviet criminal law, the breach of a duty of office should be considered as white-collar offence, if it caused a considerable injury to State or social interests.

Reviewing the provisions of the socialist criminal codes, we have to see, that there are no offences against social property that could be compared to the offences called faithless management and negligent management in Hungarian criminal law. Thus, when the Hungarian Criminal Code of 1961 came into force, it was only in Hungarian criminal law that the duality existed that certain acts in the realm of economy causing

⁶⁵ In certain countries, the leading officers of economic organs qualify in criminal law as officials, consequently, certain breaches of duty related to their economic activity are considered as offences committed in office. Such legal situation had existed in Hungary before the Criminal Code of 1961 came into force. On the issue in detail see: Wiener, *A hivatali bűntettek* (White-collar crimes). Közgazdasági és Jogi Könyvkiadó, Budapest 1972, pp. 127 et seq.

damage to social property could equally qualify as offences against property (faithless management of property or negligent management of property) or economic offences (wasteful economic activity).⁶⁶ In turn, at present, it is the Hungarian Criminal Code that separates property offences and economic offences in the most consistent way.

The structure of the criminal codes of the socialist countries exerts an influence on the views appearing in criminal sciences. We may observe this phenomenon in criminology and in the doctrines of criminal law in Soviet criminal sciences. Following the system of the criminal code, they deal separately with offences against socialist property, white-collar offences and offences violating the regulations of economic activity.⁶⁷

In the criminal law of the GDR, the category of offences against the national economy also exists, but the category is in an extremely close connection with the offences against socialist property. The specialists of criminal law in the GDR explain this close relation by the fact that since the basis of the national economy is social property, offences against the national economy frequently have harmful effects on socialist property as well. And, certain offences against socialist property involve harmful effects on the national economy or on supplying the population. This view is related to the assertions of its representatives that economic criminal law provides protection for every element of the economic system defined by the Constitution. And the Constitution of the GDR, in its provisions concerning these issues, mentions in the first place that the national economy is based on socialist ownership over the means of production; in the second place: the goals of the operations of the national economy; in the third: it formulates the role of the socialist planned economy; fourth: the financial system is determined by the State; fifth: it is asserted that foreign trade and foreign exchange are the monopoly of the State.⁶⁸ The doctrine is consistent, by all means, since if economic criminal law provides protection to every element of the economic system defined in the Constitution, the protection of social property also should be considered there.

No uniform theory concerning the object of economic offences has been developed in the Polish theory of criminal law. There are authors who believe economic offences to be closely related to offences against social property, since economic offences attack the economic basis of the socialist State. Others refute this by asserting that economic offences are directed against economic activity. According to the opinion considered to be dominant at present, the legal objects of the economic offences are not homogeneous and these offences can be connected with each other more by the aspects of criminology and of criminalistics than by the principles of the doctrines of criminal law.—Two groups of economic offences are distinguished in the Polish theory of today, viz. /i/ the offences that violate the goods serving as the basis of economic activity (consequently, social property); /ii/ the offences that disturb the processes of economy.⁶⁹

⁶⁶ On the criminal law assessment of economic decisions causing property damage see Wiener, „A gazdasági tevékenységgel . . .”, pp. 397–403.

⁶⁷ Shoupilov, V. P., *Op. cit.*, p. 765.

⁶⁸ Duft, Zeidel, Weber, *Op. cit.*, p. 529.

⁶⁹ Krukowski, Zoll, *Op. cit.*, p. 495.

In Romania, the doctrines of criminal law find the legal object of economic offences in the social relations of the production and consumption of material goods;⁷⁰ and social property also belongs there.

The codification of criminal law in Yugoslavia is divided among the Federal Criminal Code and the codes of the States, but in criminal sciences the act of the manager of property that involves the violation of the duty of management and the damage to social property is considered as an economic offence.⁷¹

On the basis of the outlined views, we may conclude that the debate is still going on in the criminal sciences of the socialist countries. The issue is about what the criteria are on whose basis offences against socialist property and economic offences could be delimited clearly and unambiguously. The demarcation of these two types of offence was not made easier for scholars by the Hungarian Criminal Code of 1961 either. The present code, however, clarifies the delimitating criteria adequately.

We know perfectly well that the structure of the criminal code cannot settle the debates concerning theoretical issues. What is said on the legal object of economic offences does not directly depend on the provisions of criminal law. The interrelation may be discovered only in the sense that the legislator might take into consideration the results of scientific analyses, and in the formulation of the doctrinal definition of the legal object the provisions of criminal law also have to be taken into account.

The structure of the Hungarian Criminal Code in force at present does not refute in itself the view which attributes only a relative importance to the criteria that demarcate offences against social property and economic offences. This view is based on the following reasoning: "The socialist system of the economy and social ownership over the means of production are in a functional relationship, one is dependent on the other. The injury of social property has an influence on the way of the effectuation of the socialist system of the economy and *vice versa*: disturbances materializing in the realm of the economy influence the volume of social property and the fulfilment of its functions in the expansion of the economy. Owing to this organic interrelation, the marks on the basis of which offences against social property and economic offences may be separated, are of a rather relative value. One (usually correct) criterion of delimitation is that economic offences are constituted by conducts belonging to the conceptual sphere of economic activity while offences against property are by no means acts belonging in the sphere of economic activity. This criterion, however, does not provide a solution in the cases of faithless management of property or negligent management of property and for one variety of the usurpation of intellectual property and for damaging creditors, since they are enumerated among property offences in the Code, although they are committed in the sphere of economic activity and, thus, they are injurious also to the national economy", wrote Antal Fonyó.⁷²—We believe, the uncertainty apparent in the above delimitation of property offences and economic offences is closely connected with the way the author characterizes economic offences. According to him, "the economic offences are such culpable violations of the socialist

⁷⁰ Bulai, C., *Op. cit.*, p. 659.

⁷¹ Kobe, P., *Op. cit.*, p. 779.

⁷² Fonyó, A., *Gazdasági bűncselekmények (Economic offences)*. In: Bodgál, Bodrogi, Erdősy, Fonyó, Gál, Gáspár, Kovács, Pintér, Wéber, p. 417.

system of economy and social relations determining the essence and operation of that system that endanger the regular development of the national economy. Since the precondition of that regular development is that economic activity is planned, the social dangerousness of economic offences appears usually in the disturbance of the plan."⁷³ In my opinion, in the characterization of economic offences, a differentiation should be made between the whole of the socialist system of economy and the planned economy. For, if the issue is that the socialist system of economy, to wit, the social relations, determining the essence and operation of the system are violated by the economic offences, then offences against social property have to be ranged among them since it would be difficult to deny that social ownership belongs to the essence of the socialist system of economy. It is precisely social ownership that determines the operations of the socialist economy fundamentally. However, the fact that the operation of the socialist economy is determined fundamentally by social ownership does not mean that the mechanism of the operation of the economy has no independent significance for studies concerning the object of the offences.

The system of economy as the totality of economic relations includes economic (production and property) relations and their forms of operation (i.e. the mechanism of the economy).⁷⁴ One of the parts of the mechanism of the economy is economic management. The central management of the economy has basically two kinds of means: direct and indirect. The direct means of economic management are the directives, obligatory decisions; the indirect means are price, tax and income regulations, the regulations of amortization, credit and financial aid, etc.⁷⁵

In the conceptual system of economics, property relations and the operational forms of economic relations and central economy control within the latter are clearly distinguished from each other. The delimitation which expresses social realities may be used also at the definition of the legal object. Considering that, it appears to be more correct to regard only one of the elements of the economic system, and not the economic system as a whole, as the social interest violated by economic offences. And that element is central economy control forming one of the parts of the mechanism of economy.

Property relations and central (State) control as part of the operational mechanism of property relations appear in criminal law as separate legal objects where property relations have been treated as independent legal objects for a long time. There are also traditions in criminal law to assist State economy control in certain instances with the means of criminal law. Both the capitalist and the socialist States employ means for the direct control of the economic activity. The oldest of these are the financial regulations that serve to control the economy and to ensure State revenues. For this reason, financial offences are traditional part of criminal law besides offences against property.

Neither the traditions of criminal law nor the scientific concepts of economics are contradicted if we say that economic offences do not violate the whole of the economic

⁷³ *Loc. cit.*

⁷⁴ *Közgazdasági ABC* (Economic alphabet). Mezőgazdasági Könyvkiadó and Közgazdasági és Jogi Könyvkiadó, Budapest 1973, p. 179.

⁷⁵ Economy control: controlling (planning, organizing and regulating) activities related to the national economy and its institutional frameworks. *Közgazdasági Kislexikon* (Economic small lexicon). Kossuth Könyvkiadó, Budapest 1977.

system, they violate only an element of that, i.e. State economy control. In the socialist economic system, planned economic activity appears as a mode of State control, as a form of the effectuation of State direction.

What has been said above is not refuted, we believe, by the argument according to which economic offences "are constituted by conducts belonging to the conceptual sphere of economic activity while offences against property are by no means acts belonging to economic activity".⁷⁶ The quoted assertion is refuted by its author through the description of a number of acts enumerated by the Code among property offences. In itself, it would not provide a serious argument for scientific systematization that certain offences are defined in one chapter or in another of the Criminal Code. We deem it, however, a weighty argument that economic offences cannot be characterized from the point of view of the definition of the legal object by saying that they are "constituted by conducts belonging to the conceptual sphere of economic activity". In connection with that, we only refer to the numerous acts described in earlier parts that can be drawn in the conceptual sphere of economic activity and are injurious to life or bodily integrity through the violation of regulations concerning environmental protection or the safety of work conditions or through the violation of various rules of safety.

We have a further argument here, namely, the fact that the economic policy of the last more than ten years in Hungary consistently strived for the separation of economic activity from economic management. The essence of economic activity of the economic organs—even if they are enterprises owned by the State—lies not in the implementation of the directives of the control of economy. Moreover we do not consider it as an argument in the debate on the definition of the legal object of economic offences that the mentioned property offences "are injurious also to the national economy". Traffic offences, too, are injurious to the national economy, because traffic offences cause considerable damage, still, nobody denies that these offences have their own legal basis usable in connection with the systematization of criminal law.

When defining the legal aspects of economic offences, it is not that we take into account the consequences of the offences in the broadest sense, for, on such a basis a great variety of offences should be included in one theoretical category. A more direct injury of interests can be found if the conducting of economic activity by using social property and the central (State) economy control are not treated as one single category of homogeneous social interests from the point of view of criminal law systematization. The demarcation between them is justified also by the fact that it is possible to conduct economic activity in a way that causes damage to social property even if all the directives of economy control are observed, or, social property can be increased through the breach of duties prescribed by the economy control organs of the State. Thus, the two types of injury of interests may be separate from each other. For this reason, when defining the legal object of economic offences, we consider State economy control as an independently protected social value.

If we considered only State economy control as the legal object of economic offences, a number of offences should be excluded from economic offences which do

⁷⁶ Fonyó, A., *Op. cit.*, p. 417.

not violate that object. Still, these conducts are enumerated among economic offences. In socialist countries, financial offences belong to economic offences, although a great part of them are not committed in the course of economic activity. They are similar to the offences violating the economic control of the State as far as they violate duties prescribed in an economic administrative norm. Financial offences committed by citizens decrease, as a rule, the incomes of the State, consequently, they violate State budgetary interests in the same way as if taxes, duties and other dues were evaded in the course of economic activity. That identity of the injuries renders it justified that the financial offences of the citizens should not be excluded from economic offences. Such an exclusion is the less necessary since the common legal object that is violated in every case can easily be discovered, which is the economic activity of the State. It includes both budgetary activity and the State control of the national economy.

3. The economic activity of the State as the object of protection

Legal scholars as well as legislators try to find the methods of establishing the various elements of planned socialist economic activity in the form of legal institutions and to create accordance between the various forms of legal liability and service to the objectives of economic policy. The problems are primarily those of other branches of law, but it is not indifferent for criminal law either what the provisions of law are concerning social property and the commodity property of the enterprises, how the contractual relations of the economic organizations and the relations between the organs of economy control and economic organizations are regulated and what kind and level of liability forms are employed in connection with economic activities.

At the discussion of the principles of criminal liability it is not indifferent either whether the enterprises conduct their economic activity independently within the framework of planned economy or they primarily follow directives. For, if the enterprises are merely the executive organs of the State economy control, the rules of criminal liability have to be formed in a way which expresses the subordination also in criminal law. In that case the relation to be seized by criminal law is the nonfeasance of the directives and the harmful consequence is the injury or endangerment of the interests served by the directive. On the other hand, if the enterprises conduct their economic activity fundamentally independently, criminal law has to take this fact into account.

In the theoretical analysis of the object of criminal law protection, it is not necessary to dissect the detailed issues of property as an economic or legal or sociological concept, particularly because the concepts of the various disciplines are not always the same. In the discussion of criminal liability, however, it is absolutely necessary to keep in mind that social property expresses the ideological totality of the exercise of several functions of ownership.

Property is traditionally a legal concept and as Tamás Sárközy has written, "the proprietor is who has the right to possess, use and dispose of a thing with an absolute effect, excluding everybody else. The proprietor has only the rights whereas everybody else has the negative obligation of not limiting the proprietor in the exercise of his

proprietary rights. Perhaps it can be seen from the definition that the concept, as a matter of fact, expresses commodity property and it has never been perfectly suitable to express the contents of socialist State ownership or, in a broader sense, of social property. The State, at least on the level of the whole State, does not possess certain means of production and does not use them, but it controls the State enterprises. The direct rights of use and disposal over the particular objects of property belong to the enterprises. Concerning the use of assets of social ownership, the State has not only rights. The State, as the representative of the whole of society, has the obligation to provide for the use according to rules of the property belonging to the people."⁷⁷

From the point of view of the protection provided by criminal law, the essence of social ownership cannot be captured through only possession and use either; the exercise of the proprietary functions also have to be considered. And in this respect, there is a difference "between proprietary functions concerning fundamental, strategical decisions and proprietary functions of lesser importance, related to the regular, continuous operation of the economic organization.

"Strategical proprietary functions consist of three parts: Decisions concerning the business policy of the economic organization and decisions concerning the basic ways of using the profit; this may be called the function of capital realization.—Decisions concerning the fundamental organizational measures related to enterprises (founding an enterprise, fusing enterprises, liquidation, etc.); this may be called the function of organization.—The fundamental decisions concerning the personnel or the management of the enterprise; this may be called the function of enterprise management.

"In bigger companies, the separation of strategical and tactical functions is a necessity, since the intermingling of these functions hinders the efficiency of economic activity. The exercise of tactical proprietary functions, including the exercise of the rights of commodity ownership over certain means of production, may be entrusted to the management of the enterprise, given the participation and the supervision of the collective. In turn, strategical proprietary decisions generally may not be left to the management of the enterprise since the management of the enterprise is biased by necessity in matters concerning its own organization and its development. Thus, it is not an effective way of the development of the independence of the enterprises if the strategical proprietary rights are also transferred to the enterprises. The independence of the enterprises should be increased in the realm of proprietary rights, in economic activity and in the continuous operation of the enterprises.

"In turn, the organization making the strategical proprietary decisions does not need proprietary rights over the means of production (they even make its activities 'sluggish'). The functions of moving capitals, organizing, selecting directors and agencies of supervision provide enough powers for this operative organization.

"If we really wish to operate the enterprises in a significant part of national economy as real business enterprises, if the central economy control is really aimed at regulating market-like relations of enterprises, State property in the traffic of commodities may not be considered as undivided."⁷⁸

⁷⁷ Sárközy, T., „A szocialista vállalkozás tulajdonelméleti kérdéseiről" (To the questions of the theory of ownership in relation of socialist enterprise). *Társadalmi Szemle*, January, 1983, p. 44.

⁷⁸ Sárközy, T., *Op. cit.*, p. 46.

"The unity and indivisibility of State property is related, in fact, to proprietary decisions. Such decisions, apart from enterprises with a low number of employees, may not generally be decentralized and assigned to the enterprises."⁷⁹

It is not a settled issue in the practice and it is the subject-matter also of theoretical debates, what State organs exercise the strategical proprietary functions, still, it may be stated that "the ownership of State administration hinders the performance of the true functions of economic administration, the performance of the tasks of the authority in an impartial and professional way. Precisely for this reason, it is a theoretical necessity to think about the creation of a proprietary organ of the State (an organ for managing property) which would be independent of the ministry responsible for the given branch of the economy. Of course, owing to their functions of economic policy and of State administration, they would not become superfluous even in that case."⁸⁰

Although the structural system of the exercise of strategical proprietary functions has not developed yet, the representation of the interests of the enterprises is ensured also structurally. "The interest representation of enterprises is possible, even necessary, also within the sphere of State property; of course, not against the State, as a whole, but against State public administration."⁸¹

The independence of the enterprises finds an expression also in the provision of the Civil Code, according to which the Code, while reinforcing the unity and indivisibility of State ownership, regards the enterprises managing State property as owners in civil law relations and declares that they, in accordance with the provisions of law, exercise the rights due to, and fulfil the obligations falling on, the owner. A State enterprise independently manages the property entrusted to the enterprise, in a way, and with the responsibilities, defined in the law.

In addition to what has been said above, at the determination of the object of protection under criminal law, we always have to keep in mind that as far as the property of co-operatives (one of the forms of social property) is concerned, the State does not exercise even the function of strategical decision. In other words, there is a form of social property the management of which is influenced by the State only through public economic administration. The function of public economy administration, in turn, embraces the whole national economy, thus, the economic activities of State enterprises, of co-operatives, and of private citizens.

Private citizens may carry on economic activity with their own property within the limits determined by the State economy control. The latter determines the limits of economic activities, prescribes the obligation of having a license for carrying on certain economic activity, and permitted economic activities are limited by the obligations prescribed by the economic administration, concerning, for example, prices, the quality of products, taxes, etc. In connection with the economic activity of the citizens, the object of protection by criminal law are these obligations. In the sphere of citizens' economic activities, however, the management of property itself does not lay the burden of duties, relevant to criminal law, on the citizen, since if he damages his own property through bad management, it is irrelevant to criminal law.

⁷⁹ *Loc. cit.*

⁸⁰ Sárközy, T., *Op. cit.*, p. 47.

⁸¹ Sárközy, T., *Op. cit.*, p. 42.

The duties related to the management of others' property do not originate from norms of State economic administration but from the management of the property. It is not a speciality of socialist law that the person managing others' property bears the burden of duties originating from the management and has liability for the breaches of such duties. And, the person who manages social property, naturally carries on economic activity with property not his own, consequently, he bears the duties originating from his managerial position. One of the forms of the performance of these duties is the exercise of the proprietary functions in the form either of strategic or tactical decision making.

From the point of view of criminal liability, the difference does not consist only in what the sources of the duties are, i.e. whether they are prescribed by the economic administration or originate from the managerial post, but also in whether the performance of the duties requires simple implementation only or independent decision-making is also involved. (The significance of that distinction will be discussed later.) Here we wish to emphasize only that concerning social property the strategic decision making—independently of whether it is executed by an organ of State administration or by an enterprise—appears for the purposes of criminal law as the performance of duties originating from a managerial position.

If strategic proprietary functions are exercised by ministries responsible for various branches of the economy, it may seem that the public economic administration of the State and the exercise of the functions in connection with social property coincide in the course of the activities of the organs of State administration. This coincidence, however, is only an appearance, since in the exercise of the proprietary functions the given organ of State administration (e.g. a ministry) makes the decisions of a manager of property and, in turn, when it issues an economic administrative norm, it exercises public authority in the given field of economic administration. In the former case, its act effects only one or several enterprises, in the latter case it effects everyone whose economic activity is connected in some way with the issued norms. These norms appear in an economic administrative regulation and the most important ones of them are objects of protection by criminal law.

It is beyond doubt that the exercise of the strategic proprietary functions concerning big enterprises has greater significance for the national economy than if the same functions are exercised in connection with the smaller assets of a smaller enterprise. According to the distinction, the decision-making organs vary but the nature of the activity, from the point of view of criminal law, does not vary depending on whether the right of decision-making is exercised by a central State organ or by an enterprise. If the exercise of strategic proprietary functions has to be assessed, should it concern either a smaller or a bigger enterprise, we may say that the decision has to be considered as part of property management.

On the basis of what have been said above, we find the legal object of economic offences in the economic activity of the State as a public authority. This activity may take two forms, viz. /i/ the determination of the State revenues and their collection; /ii/ the function of organizing the economy, i.e. managing the whole national economy. From the point of view of protection by criminal law it does not require a distinction whether the State applies certain taxes, duties and other dues so that it could cover certain budgetary expenses or so that it could effectuate its economic policy through

these means and could fulfil its function of managing the economy. For the formulation of the provisions of criminal law, the only relevant matter is that the State has levied the taxes, duties, etc., and those who are obligated have to pay. Of course, it is not revenue aims that a number of the means of the economic control function serve directly. They may serve other aims, like the economic interests of the population, the undisturbed co-operation of economic organizations and, in the socialist system, the whole operation of the economy according to the plan.

The provisions of criminal law that are to protect the economic activity of the State have also other specialities than their specific legal object. We have examined these characteristic features from the aspects of criminal policy and of the sanctions and we are going to examine them also from the aspects of the techniques of codification. These specific traits cannot be found in the provisions of criminal law that are to serve the protection of property and concern the breaches of duties connected with the management of property. From the point of view of criminal law, an important element of the duties related to property management and manifested in economic decisions is risk-taking. Concerning this, we shall present our idea in the next Chapter.

Chapter V

The economic activity of the enterprises and the duty of property management

Preliminary. 1. The duty of property management; 2. Taking risks by enterprises; 3. Economic decision *versus* the duty of property management

Preliminary

The changes of economic policy that concern the mechanism of the economic operations of the enterprises and of the control of the economy by the State may not be disregarded in criminal law. These changes necessarily effect also criminal liability concerning the management of social property. From the point of view of criminal liability, it is the delimitation of taking economic risks and making economic decisions that presents a problem in this realm. Discussing that problem, we intend to prove that risk-taking on behalf of an enterprise obtains significance for criminal law as a part of the duty of property management. The verification of this theorem is closely related also to our assertion according to which the risk-taking of an enterprise is not an institution of economic criminal law.

The decisions on behalf of the enterprise that manifest the duties of property management, from the point of view of criminal liability, belong to more than one category. To form these categories, we take into consideration the elements of the decisions that are relevant to criminal law. A classification by such criteria in itself prompts the conclusion that the institutions of criminal law are suitable to establish the correctness or incorrectness of economic decisions only in a narrow area.

1. The duty of property management

The acts of the manager of property that are injurious to the owner are punished in both capitalist and socialist law. Such acts frequently take the form of traditional property offences (fraud, embezzlement) and, as we have seen, these traditional property offences are regarded, primarily on the basis of criminological considerations, as a part of economic crime if the perpetration is related to economic activities. One can find provisions also in the criminal law of capitalist countries which, in addition to fraud and embezzlement, mention the breaches of duty on the part of the manager of the property if that breach of duty causes damage.⁸² The criminal codes of

⁸² For example, §153 in the 1974 Austrian Criminal Code.

the socialist countries, as a rule, have their provisions concerning the breach of the duty of property management among economic offences and less frequently, among offences against property. In the preparatory work of the Hungarian Criminal Code as well, certain views were voiced which suggested that the provisions concerning the punishment of the breach of the duty of property management should be ranged among economic offences.⁸³ The solution of this problem of codification is closely related to the theoretical issues of the delimitation of offences against social property and economic offences; for this reason, it is necessary to consider what forms of conduct may belong to the concept of the duty of property management and, consequently, what the meaning of the duty of property management is from the point of view of criminal liability.

Although it is possible for the citizens also in a socialist planned economy to carry on economic activities with their own property within a limited scope, economic activities are carried on primarily in the form of managing social property in the economic operations of State enterprises and co-operatives. On a social scale, economic activity in the socialist countries is performed through the management of social property. The latter may be examined by means of various kinds of scientific approach. It is studied according to different aspects by sociology, economics or administrative law or by civil law. Criminal law focuses on criminal liability for the management of social property. In the case of this approach, the first question to ask is what should be understood as property management, what kinds of conduct may be understood at all as property management. We emphasize that, from the point of view of criminal law, the exercise of the strategical and tactical rights of decision means the management of social property in the same way as the activity of the night watchman of the enterprise who guards the property entrusted to him. Thus, the duties of property management range from simple guarding to the exercise of any of partial proprietary rights.

As far as individuals participating in economic activity are concerned, the duties related to property management are determined fundamentally by their position and functions within the organization. The economic activity of the economic organization (i.e. enterprise or co-operative) may be industrial or agricultural production, services, commerce, transportation, or other operations. In profit-oriented capitalist economic activities the aim of the management of property (private capital) is profit-making. For this reason, it is only natural that the duty of the manager of the property is to make the highest possible profit. The profit is made through satisfying economic needs, because if the results of the economic activity (the goods or services) are not required by the market, the profit cannot be realized. Thus, satisfying economic needs is characteristic also of capitalistic economic activity. The standard of the direct measurement of the economic activity is the profit realized in the market.

In the system of plan-directives related to the control of the socialist economy, the goal of the economic activities of the enterprises is not necessarily profit-making, since the success of the economic activity in the system of directed economy is not measured on the level of the enterprises but on the level of the national economy. However, if the

⁸³ Erdősy, E. "A hűtlen és hanyag kezelés viszonya a gazdasági bűncselekményekhez" (The relation of misappropriation and negligent management to economic offences). *Jogtudományi Közlöny*, 1977, No. 2.

standard of measuring the successfulness of the economic activity of an enterprise is not the profit, how it is possible to say that the enterprise operates well and achieves the State's economic goals? For such measurements the criterion is whether the enterprises perform the obligations prescribed for them by the central organs of economy control or not. Naturally, the fulfilment of the obligations can be the standard for measuring the successfulness of the economic activities of the enterprises because the detailed prescription of obligations is the method of control of the economy. Under this system of control, parts of the duties of the enterprises are determined in statutes of economic administration. It is prescribed for the enterprises what and how much has to be produced and to whom and in what manner the produced goods have to be transferred. In addition, the prescription can concern also the technology of production, the goods kept in stock or other circumstances related to economic activity. In prescribing the obligations of the enterprises, no distinction is made (since it has no significance) according to whether the obligations are prescribed by the State as owner or as the authority of economy administration. However, the obligations included in the statutes can have various aims. The prescriptions of the technology to be used for producing a certain product can serve the aim of the protection of the health or bodily integrity of the workers participating in the process of production. They can serve the protection of the interests of the consumers or the protection of their health and bodily integrity, but the prescriptions of technology protects also the interests of the national economy if the prescriptions limit the use of certain raw materials or energy and, finally, the same prescriptions serve economical production as well. Also, economic administrative directives concerning the goods kept in stock can serve different purposes; e.g. they ensure the protection of the interests of the national economy when the central administration of the economy plans to put certain products under its own control. In a number of cases, for example, the maximum quantity of goods in stock is predetermined in order to ensure economical production.

The State as the owner exercises its functions of tactical decision-making when it determines what technology is economical to produce a certain product or what the maximum of the quantity of goods to be kept in stock at certain enterprises is, because its aim is to ensure the reasonable use of the working capital. Thus, in the system of plan directives, the central organs of economy administration use the means of obligatory directives to achieve various goals, and among the objectives both the rationality of economic activity and economical production are present, since the activity of the enterprises is not profit-oriented.

In the system of economy control based on market relations and independent decision-making on the part of the enterprises, in turn, it is the enterprises that exercise the rights of tactical decision-making belonging to the owner, and profit has become the direct measure of successfulness and social usefulness of the activity of enterprises. (Naturally, the considerations of national economy may sometimes justify economic activity with loss and such activities are subsidized appropriately by the organs of the central economy administration. However, even through the extent of subsidies, the economy of the activity of enterprises can be measured.)

The management of social property in that new system of economy control includes the economical management of the property of the enterprise, enlarging this property and making profit. Through these, on the level of the enterprise, the

performance of the duties of property management becomes measurable. However, the profit made by the enterprise in itself does not show whether the duties of property management have been properly performed, because if the profit was gained in a way that ruined the future of the enterprise, it is not the performance of the obligations of property management but its breach that should be established. At the same time, the losses suffered in a certain period do not signify by necessity the breach of duty of property management, since the losses may be compensated for by other economic gains. Moreover, the breach of duty may not be established either, if the loss has been a necessary accompanying factor of the economic activity. From the point of view of criminal liability, all this means that in a system of economy control where independent decision-making on the part of enterprises is a widely exercised right, the breach of duty of property management may not be established in the same way as earlier. When the performance of the duties of the manager of property does not mean more than the mere implementation of directives, the non-feasance of the directives is really a breach of duty. But when the duty of property management is to conduct economic activity under the conditions of the market, the establishment of the breach of duty requires the evaluation of the whole of the economic activity.

In principle, it is possible that the State as owner declares its strategical decisions in the form of directives and as long as the organs exercising economy administration as public authorities are not separated organizationally from the State organs exercising proprietary rights, the directives of the owner take the form of economy administrative directives. In spite of the possible identity in the forms, the difference is that while strategical proprietary decisions create a duty of property management at the enterprise from the point of view of criminal liability, the duties prescribed by the organs exercising public economic administrative authority do not serve the aims of enlarging the property.

Thus, if the authority exercising public power in economic administration issues a statute prescribing the technology of a production process, the violations of this statute may constitute various criminal offences, depending on the aim of the statute and on the results of the breach of duty prescribed in the statute, but never an offence against property. If the directive prescribing a certain technology protects the life or bodily integrity of the workers or of the consumers, the breach of the duty determined in the directive may qualify as an offence against the health of the public or against life or bodily integrity. If the directive is to serve the protection of the environment, its breach may constitute an offence against the environment. If the directive prescribing a technology regulates the use of raw materials or energy because it is important for the national economy, the breach of the prescribed duty may constitute an economic offence. What has been stated above is, of course, valid for keeping goods in stock, for the prohibition of, or the obligation of producing certain goods and for other duties determined in directives of economy administration. Their common trait is that they are to serve the interests of not the economy and of not profitability of production, services, trade, etc., but of other social aims.

The evaluation of the nature of breach of duty (and together with that the distinction between offences against social property and economic offences) is rendered more difficult by the fact that a damage in the property of an enterprise may occur also as a result of a breach of a duty prescribed in a directive of the organ

exercising the public authority of economy administration. As an example we mention the directive concerning the technology to be used for serving the protection of the consumers' interests, in other words, the purpose of the directive is to ensure that the goods intended for consumers should be of appropriate quality. As a consequence of neglecting the directive, goods of inferior quality may be produced and due to the impossibility of selling them, the enterprise may suffer losses. If the enterprise is not able to sell the products of inferior quality, the production of such goods constitutes a breach of a property managerial duty (if liability cannot be excluded by justified risk-taking) and the property damage (the actual loss or the lost profits) is caused by that. In turn, no economic criminal offence may be established (i.e. no offence violating the quality requirements of goods), since the inferior goods have not been sold as products of good quality. On the other hand, if inferior goods are sold as products of good quality, the enterprise will not suffer property damage but national economy interests related to the preservation of the good quality of products are violated. One should note that the distinction of the two kinds of breach of duty is of significance not only for the distinction between economic and social property offences but also for the criminal law evaluation of risk-taking.

To emphasize the difference between the duty prescribed in an economy administrative regulation (and issued by the organ of public authority) and the duty of property management is necessary also because in earlier judicial practice the breach of a directive concerning technology which was aimed at serving economical (rational) production was deemed to be an economic offence, although, in fact, only the breach of the duties of the property manager should have been examined. In a noted case, the managers of the enterprise broke a technological regulation which prescribed the production of an experimental series before starting regular serial production. On certain considerations of economy, the directors of enterprise decided to start serial production as soon as the prototype was ready and as a result the enterprise suffered certain property losses. Although the criminal judgement recognized the economic advantages the enterprise had achieved through the production of the particular article in question, the benefits were not reckoned against the property loss and the judgement took only the breach of duty, and the caused damage, into consideration when it qualified the act as an economic offence. Such a way of evaluating the act can not be approved of since the directive of economy control did not serve economy administrative aims, it was to serve only the aims of the economical (rational) production of goods. Consequently, the breach of duty could be no more than the breach of the duty of property management. In the process of managing property, the aspects of economy may be weighed, and when the weighing is assessed, other economic advantages have also to be considered.

On the bases what have been said above, we have to emphasize, that in the system of economy control based on the independent decision-making of the enterprises the duties of property management do not originate from the norms of economic administration but from work performed in the realm of the management of social property. In such a system of economy control the organs of economic administration do not prescribe duties serving the aims of the economy of production, trade, services or other forms of economic activity, the aims of the profitable operations of the enterprise. The economic administration only creates the conditions, regulates the

market and price conditions in such a way that the enterprises could operate economically, i.e. profitable, in making and implementing their own decisions. And if certain administrative regulations of the old system—which are to serve the aims of the rational and profitable operation of enterprises instead of the economy administration of the public authority—still remain, these norms as well should be regarded as provisions prescribing duties of social property management. The distinction is significant since no weighing and deliberation and risk-taking may be allowed in connection with duties prescribed by economy administrative public authorities, while risk-taking is an important element in making tactical proprietary decisions, i.e. decisions concerning economical and rational production, commercial operations, etc.

In the socialist system, the management of social property, is, as a rule, connected with duties originating from one's position at work although the Hungarian law in force mentions duties originating from commission. However, the commission usually originates from duties related to the occupied position, since social property is managed by enterprises and co-operatives and, within the economic organizations, those who manage the property occupy certain defined position.

We have to make a distinction between directorial and implemental positions. Directorial work is characterized by deliberation and decision-making, implemental work is characterized by the performance of certain determined tasks. Such a distinction within the duties of property management is significant from the point of view of criminal liability. The more complicated the economic decision-making, the more the factors of uncertainty have to be taken into consideration; and the simpler the task the more we may demand its precise implementation. This is true not only for the process of conducting economic activity but also for the tasks of protecting the property entrusted to a person. It is evident that the manager of the property—in any area of economic activity—has, as his most elementary obligation, the duty to protect the property entrusted to him or her. The duty of protecting the property is related to the position occupied by a person within an economic organization. The director has the duty to create a system, or introduce one, which ensures the appropriate protection of the property. This duty is realized in setting up the system, in prescribing the various partial tasks and supervising the operation of the whole system. The performance of this function requires of a series of decisions, and at the making of the decisions, a number of factors have to be considered. For example, the costs of the protective measures have to be compared with the damage that may occur and the director may not be held liable for the damage if it could have been avoided only by employing disproportionately expensive measures. Thus, a director does not breach his duty of property management if his decision is based on considerations of economy. In turn, the duty of a guard is the operation and supervision of security installations. The performance of that duty does not require any deliberation and the breach of such a duty may be established in the case of even simple neglect.

The duty of property management is not characterized only by being related to a duty belonging to a position occupied in the economic activity but also by the fact that the consequences of the breach of such a duty is a detriment suffered by the property of the economic organ (enterprise or co-operative) that may be expressed in terms of money (actual damage or loss of profit). This trait, too, is important for the demarcation of property and economic offences. Economic offences, too, may cause

damage which can be expressed in terms of money, but that damage appears in an economic organization other than the one where the offence was committed. For example, if the enterprise does not pay taxes, the damage appears at the fiscal organs of the State and if the taxes are not paid it is a gain for the enterprise and not loss. If an enterprise sells its products at a price higher than the prescribed one, the consumers suffer damage but the income of the enterprise increases. Other economic offences may cause a detriment to the national economy which cannot be expressed in terms of money, e.g. if the production of certain goods is mandatory for an enterprise in order to ensure adequate supply for the population, and the enterprise does not perform the obligation prescribed by the organs of economy administration because the production of other kind of goods is more profitable. In such a case, although the enterprise makes a higher profit, the national economic interests of supplying the needed goods for the population suffer an injury. The violation of the duty of property management, in turn, causes damage to the organization conducting economic activity by using social property. The property of the enterprise is damaged by theft, by fraud or by embezzlement in the same way as by the breach of property management duty. The enterprise suffers the same loss, if a product is stolen from the store or the store-keeper embezzles it or if the product deteriorates because of its having been incorrectly treated in the ware-house and cannot be sold. Thus, from the point of view of the loss suffered by social property, the breach of property managerial duties is not different from theft, fraud or embezzlement. These criminal offences are different, from the breach of managerial duties in terms of conduct and perhaps in terms of the form of culpability, but from the point of view of the result, relevant to criminal law, i.e. the damage of property, their significance is the same. From this it also follows, that the breach of property managerial duties causes losses of property in the same way as the offences against property.

It is not necessary to give a lengthy explanation if we assert that the consequence of a breach of duty in the course of implemental work may be property damage. Even if, in a process of production, only one single partial task is performed incorrectly, a great quantity of product may be ruined and it is a loss for the enterprise that may be expressed in terms of money. Property damage may be caused in connection with any type of economic activity and not only in connection with production. For example, property damage is caused by the cashier if he hands out more money than he should or by the clerk preparing the bill if it is smaller than the value actually sold to a customer. Thus, the breach of duty may assume various forms causing property damage. Moreover, property damage may be caused also through the strategical and tactical proprietary decision. The gravest form of property damage caused through directorial decision is when the enterprise is bankrupt. In Hungary, it happened several times up to now that co-operatives became bankrupt and it is possible that State enterprises conducting independent economic activity will go bankrupt in the future. In addition to the latter extreme form, a number of directorial decisions may cause damage or it may happen, as a consequence of the wrong decision, that the expected profit cannot be realized. As a result of the wrong decision on the part of the managers, the property of the enterprise does not increase appropriately, or even decreases.

On the basis of all this we may state that the source and consequence of the duty of property management and also the ways of the establishment of the breach of the duty

have characteristic traits that can serve as criteria for the demarcation of economic offences and offences against social property. The essence of these characteristic traits is that the duty of property management does not originate from an economic administrative statute but from the position and function of the individuals within the economic units managing the property. And the consequences of the breach of the duty of property management is the property damage suffered by the economic unit managing social property.

If the manager of the property violates his duties intentionally and causes damage intentionally to the property managed by him, his criminal liability is based on *dolus malus*, thus, the traditional principles of criminal law may prevail completely. In the criminal law of the socialist countries in general, and also in Hungarian criminal law, damaging social property through negligence may establish criminal liability. However, the connection between the decisions made in the course of property management and criminal law negligence raises problems which should be discussed in more detail. It has to be clarified what the conditions are of qualifying economic decisions, made with considerations to market relations, in criminal law as breaches of duty if they produced damage to property.—Considering the fact that the economic decision under the conditions of market and commodity relations usually involve certain elements of risk, it is the assumption of economic risks that has to be examined from the aspects of criminal liability.

2. Taking risks by enterprises

In the doctrines of criminal law it has already been a much discussed problem that the general development of technology endangers certain interests protected by criminal law. In connection with the development of technology, many types of economic activity involving the danger of producing harm have appeared. The examples could be enumerated from the steam-engine to rockets and from mining to atomic piles. In addition to economic activity, other forms of social activity create danger sources, so, for example, medical activity also involves certain dangers. In spite of the possible harmful consequences, these forms of activity may not be prohibited in general, on the contrary, they qualify as socially useful activities. In the literature of criminal law, the problem is usually discussed in connection with the assumption of risk, and the authors exclude liability for the occurring harmful result on the basis of the lacking unlawfulness or culpability.⁸⁴ Legal scholars discuss the problems of the risks of technological development, of experimenting and of production, both in the capitalist and the socialist countries.⁸⁵

The present system of the socialist economy management in Hungary, the independence of the enterprises in the management of property under the conditions of

⁸⁴ A review of the earlier literature of risk has been given by Meckel, F. (See: References.)—In modern literature, risk is evaluated in connection with unlawfulness by Schönke, Schröder, p. 524; Baumann, J., p. 251; Jeschek, H.-H., p. 263.—It is discussed in connection with culpability by Rehberg, J.; Roeder, H.

⁸⁵ Cf. Seidel, D., Grinberg, M. S., Orloncz, F., "A gazdasági kockázat és a büntetőjog" (Economic risk and criminal law). *Magyar Jog és Külföldi Jogi Szemle* 1968, No. 8; Erdősy, E., "A termelési kockázat és a büntetőjogi felelősség" (Production risk and criminal law liability). *Jogtudományi Közlöny*, 1971, No. 7.

market and commodity relations, raise new problems for criminal law in connection with judging economic decision-making, involving the assumption of risks. The two levels of economic decision-making and risk assumption are separated from each other. The assumption of risks involved by the central economic decisions concern the whole society, and may be called the assumption of national economic risks. In addition to that, there are the economic decisions of the enterprises and they involve the assumption of risks by the enterprises.⁸⁶ Central economic decisions are influenced by general political and economic policy considerations. All the interests that are protected in economic criminal law, i.e. the economic activity of the State and the control of the whole national economy, also play a role there. In the central economic decisions, the interests and functions of the proprietor and of the public authority may be intermingled and the assessment of the decisions is usually beyond the scope of criminal law. Liability for central economic decisions is primarily political liability.

The decisions of the enterprises, in turn, have to be assessed from the point of view of criminal law in a different way. Although the decisions of an enterprise involve the whole national economy, indirectly, through the loss of social net profit,⁸⁷ in the decision of the enterprises and in the assumption of risks by the enterprises, other factors than in the case of central economic decisions should be considered, at least from the point of view of criminal law.

First of all, it has to be clarified, the violations of what kind of legally protected interests may be tolerated in criminal law in connection with the assumption of risks as part of the economic activity of enterprises. For, as a result of the economic decisions of enterprises, among others life and bodily integrity, the environment, the economic activities of the State and the property of the enterprise may equally be violated.—

It is superfluous to prove that as a result of economic decisions of the enterprises, the life or bodily integrity of both the workers or consumers may suffer harm or may be endangered. And it is well known that economic activities may cause serious damage to the environment as the object of protection of criminal law. To avoid injuries to these legal objects usually financial expenditures are needed and the property of the enterprise may be increased only through the violation or endangerment of the mentioned legal objects. In other words, refraining from installing and operating security equipment or from introducing the adequate technology may increase the property of the enterprise, nevertheless, the violation of these legal objects may not be tolerated by criminal law as a matter of risk assumption. We believe that such a self-evident principle of criminal policy does not need any further explanation.⁸⁸ It is however a question whether the violation of interests protected by economic criminal law may be tolerated within the frames of the assumption of risks by enterprise, or not. The answer to the question depends on what is considered to be the legal object of economic offences. Moreover, if the Criminal Code has provisions concerning the

⁸⁶ Bácskai, Huszti, Meszéna, Mikó, Szép, p. 14.

⁸⁷ *Loc. cit.*

⁸⁸ Of course, economic activities may be injurious to life or bodily integrity (e.g. in the case of experiments); in such cases liability is excluded if the valid security regulations are observed or the risk is knowingly taken by the injured party.

assumption of risks, for what offences is liability excluded by the Code as a matter of justified assumption of risks.

It is the criminal codes of the GDR and Poland among the codes of the socialist countries that have provisions concerning the assumption of risks. As we have seen, these codes range the breaches of property managerial duties among economic offences. In the case of such codification, the provision concerning the assumption of risks may be included in economic criminal law.⁸⁹

In turn, the provision of the Hungarian Criminal Code concerning the breach of the duty of property management is included among the offences against property. In connection with the explanation of this law, we consider the following statement to be incorrect: "To assess risk-taking, to judge the incorrect (uneconomical, unreasonable) decision on the part of the enterprise, are a special problem of the regulation of offences against the economy and of the application of law in that area."⁹⁰

In our opinion, the incorrect (uneconomical, unreasonable) decision on behalf of the enterprise may be the breach of the duty of property management at most, and may not be considered as the breach of a duty prescribed by the economy administrative authorities. This is one of the reasons why the assessment of the assumption of a risk on behalf of an enterprise is not a problem of economic criminal law. The other reason is that the performance of duties that are protected by economic criminal law and are defined in economic administrative directives is not an issue of deliberation on the level of enterprises, thus, the property benefits enjoyed by the enterprises cannot compensate for the violation of the interests protected by economic criminal law. Although the property of the enterprise may increase through the neglect of the duty of paying taxes, through overpricing, or through lowering the quality of goods, etc., in other words, through the violation of those interests that are intended to be protected by the provisions of economic criminal law, but, just for ensuring advantages for the enterprises, neither the injury of State budget nor the violation of the interests protected and regulated by the economic administration may be tolerated.

It may happen that the central economic administrative bodies direct an enterprise to conduct an activity which is harmful, or at least unprofitable, from the point of view of the property of the enterprise. If the directive may be traced back to the exercise of proprietary rights, its contents will form part of the duty of property management. And the breach of the duty of property management is not an economic offence.

If the duty prescribed in the economic directive is established by the authority of economic administration and the performance of the duty decreases the property of the enterprise or does not increase it, the harmful consequences of the breach of duty may not be compensated for by the profit of the enterprise. For, the authorities of economic administration prescribe duties to serve such interests (like ensuring public supplies) as always have priority over the interests of increasing the property of the enterprise. It is because of what have been said above that we profess the view according to which only the damage to the property managed by the enterprise can be tolerated by criminal law in the realm of assuming risks by the enterprise.

⁸⁹ See Section 163 of the code of the GDR and Section 217 of that of Poland.

⁹⁰ Fonyó, A., *Op. cit.*, pp. 416-417.

For the assessment of the further elements of the assumption of risks on behalf of the enterprise, such as the extent of the risk, the correctness of risking and its usefulness, criminal law cannot do more than to set up a general model that has to be filled with economic expertise. According to the model that can be formed by criminal law, in the evaluation of the assumption of risks on behalf of the enterprise, one has to take into consideration the volume of the advantages to be achieved and the volume of the possible property detriment, the probability of the realization of the benefits and of the occurrence of the detriment, the ways elected to attain the aims and to avoid the harmful consequence, i.e. a number of components of the economic decision-making on behalf of the enterprise.

It may be established even on the level of the general model that the assumption of risks by the enterprise is closely connected to the extent of the duty of property management since the extent of the possible harmful consequence is defined by the tasks of the manager of the property. He may assume risks to such an extent as it is necessary to accept the hazards to perform his duties. The bigger the property a person manages, and the broader is the scale on which he has decisional rights, the greater the property detriment the risk of which he may assume.

Opposed to the possibility of property detriment there is the aspiration to increase the managed property through the increase of the profit of the enterprise. In the criminal law evaluation it has to be taken into consideration that in the assumption of a risk it is not only the direct financial gain that may be regarded as the useful economic aim. In addition to the profit, other economic advantages also may be useful for the enterprise, even if it cannot be realized until later. Such are, for example, winning the market, introducing advanced technology, training workers, i.e. the development of the enterprise in general.

All this shows clearly that criminal law in itself can take a stand only in the issue the violations of what legal objects may be tolerated as the assumption of risks by the enterprises. However, as far as property benefits and detriments are concerned, it is the considerations of economics and not of criminal law that have to prevail. For, the answer to the questions, how big advantage could be expected at the moment of making the economic decision and how high the probability of the expectation was, moreover, what detriments and with what probability could these be taken into consideration, requires economic expertise. In the evaluation of economic risk, criminal law has to rely on the value judgment of the competent economists, as is the case in the evaluation of the assumption of medical risks. It is a generally accepted practice that if the curing activity of the physician leads to a harmful result (death or deterioration of health) in a particular case, criminal law takes into consideration the professional medical evaluation, and the breach of duty on the part of the physician is established only if the medical evaluation considers his conduct as a breach of professional duty. It is the pattern that should be followed when viewing the assumption of a risk on the part of the enterprise as a segment of the duty of property management. Such an approach allows not only that the professional value judgment can be taken into account but it is also in accordance with the use of the principles and institutions of criminal law.

3. Economic decision versus the duty of property management

At the definition of the concept of the assumption of economic risks, the literature of economics discusses the uncertainty factors playing a role in economic decision-making. Distinction is made between factors of uncertainty the probability of which may be assessed and uncertainty factors of unassessable probability. The opinions vary concerning the issue whether the unassessable factors belong to the concept of the assumption of economic risks or not. It is also a debated issue whether the divergence from the expected result may be only loss or may be gain as well.⁹¹

From the point of view of criminal liability the latter is not even an issue since an economic decision can be relevant to it only if the result is loss and not profit. And the factor called assessable in the literature of economics has the same significance from the aspects of criminal law as the objectively foreseeable harmful consequence.⁹²

The elements of economic decision-making that may be seized from the point of view of evaluation are: the harmful consequence, the foreseeing of it (or the lack of such a foresight), and the weighing of the probability relations of profit and loss. These elements are important for both the economic and the criminal law evaluations, even if from different points of view. For criminal law evaluation one more element is needed, namely, whether the decision that is deemed faulty is reprehensible or not.

Thus, from the point of view of criminal liability, four categories of economic decision can be distinguished: /i/ the loss is objectively unforeseeable (on the grounds of reasonableness); /ii/ the loss is foreseeable but the assumption of the risk is reasonable or necessary; /iii/ the assumption of the risk (and through that, the decision itself) proves to be faulty (wrong) but the fault is not reprehensible; /iv/ the fault is reprehensible.

In criminal law the economic decision that results in an objectively unforeseeable harmful consequence is not considered to be a breach of duty; the decision of assuming a risk may not be a breach of duty if the assumption of the risk is judged correct, necessary, reasonable, from economic points of view. In the case of item /i/, the assumption of risk in the sense of criminal law is out of question since the causing of such consequences that are objectively unforeseeable, and for this reason cannot be avoided, may not be condemned by criminal law.⁹³ This category of economic decision has to be excluded from the scope of criminal liability because of the objective unforeseeableness of the result, independently of whether the literature on economic questions considers such decisions as assuming of risks or not.

In order to avoid any misunderstanding, we have to note: if, at the moment of making the decision, it should have been foreseen that the decision might result in

⁹¹ Bácskai et al., *Op. cit.*, pp. 15-16.

⁹² It is a much discussed issue in criminal law literature whether the objective possibility of foreseeing the result should be taken into consideration in the assessment of unlawfulness or culpability. See: Békés, L., pp. 218 et seq.; Viski, L., *Közlekedési büntetőjog* (Traffic Criminal Law). Közgazdasági és Jogi Könyvkiadó, Budapest 1974, pp. 326 et seq. (In English: see Viski, *Road Traffic Offenders* . . . in References.)

⁹³ In such cases, the decision may not be subjected to legal evaluation. This means that establishing one single element of the decision-making, i. e. the objective unforeseeability of the result, excludes any further assessment or evaluation.

"unassessable" harmful consequences, it is not a case of item /i/ but of item /ii/. From the point of view of criminal liability it is the decision belonging to item /ii/ that can be considered an assumption of risk which requires evaluation. In judging the decision from the point of view of the correctness and reasonableness of the assumption of the risk, the value judgement of economics has to be used in criminal law. The professional value judgement which considers a decision correct and reasonable implies that the assumption of the risk was not a breach of the duty of property management. And, in the lack of the breach of the duty of property management, criminal liability may not be established merely for the causation of property damage.

If property damage is caused, the breach of property managerial duty may be established in the instances mentioned in item /iii/ and /iv/. The decisions mentioned there are deemed faulty by professional standards and this may lay the foundations for establishing the breach of duty. Although the decisions falling under items /iii/ and /iv/ are equally faulty, they fundamentally differ from each other from the point of view of criminal liability. The difference is based on criminal law evaluation, on the application of the principle of culpability. The professional value judgement may not be left out of consideration even if the principle of culpability is employed, since the model of diligence in a profession is formed by the canons of the profession and divergence from the model may be evaluated in criminal law as culpability. The evaluation of culpability requires the weighing of a number of factors together and includes also the examination of particular circumstances.

Of the countless factors, we would like to call attention to only a single one—namely, the difference between routine and creative decision—which influences the process of evaluating the economic decision from the aspects of criminal law, i.e. influences the way of examining liability. Routine decisions are made by following the traditional ways of action, the directives of higher organs, regulations, rules of decision-making, detailed plans or programmes. In turn, creative decisions are not periodical, they are in connection with some new problem, they have a complicated nature and their causal interrelations are extremely complex.⁹⁴ The routine decision made by the manager of the property involves a risk by necessity, but the expectable result is assessable and the harmful consequences may be prevented. Following from that, there is a basis for the evaluation of routine decisions, a standard, by which a particular decision may be measured, i.e. the decision may be deemed faulty in an objective sense. In creative decision-making the objective basis is usually not available. In the evaluation of a creative decision, the examination cannot go beyond seeing whether the property manager observed the general professional principles of the decisional process, or not. In the evaluation of routine decisions it may be examined from the point of view of both criminal law and economics whether the decision-maker evaluated the expectable advantages and disadvantages correctly and, as a result of the evaluation, he selected the right mode of action, or not. In turn, in the case of creative decisions the only thing that may be subjected to evaluation is whether the process of decision-making itself was correct or not, i.e. the decision-maker attempted to assess the possible advantages and disadvantages, or not. The essence of a creative decision is precisely the fact that no model or standard is available that would show the

⁹⁴ Cf. Bene, L., p. 452.

probabilities of the outcome of the decision, of the assumption of the risk, at least in their main trends.

Thus, creative decisions, as a rule, belong to the economic decision category mentioned in item /i/, i.e. to the category of decisions resulting in objectively unforeseeable loss. Routine decisions may be categorized according to items /ii/, /iii/ and /iv/ depending on whether the decision should be deemed objectively correct or faulty and the fault is reprehensible or not. Faulty decisions may be traced back to subjective faults, thus, the first question to be answered is where the mistakes may be committed.

In routine decision-making, the determination of the target itself may be faulty, if the decision-maker believes he sets a useful economic aim but the aim turns out not to be correct. Everything happens according to his plans and the desired goals are also attained, the result however is not useful in terms of economy. In connection with setting the aim, the assessment of the extent or probability of the desired effect also may be faulty. For example, the favourable effect is not of the extent foreseen by the decision-maker and, owing to this, it is disproportional to the expenditures. It also may happen that the probability of the favourable effects is much lower than presumed by the decision-maker. A subjective fault may occur also when the decision-maker is incorrect in the assessment of the extent or probability of the consequences, and the effect is not the foreseen one or the probability of the occurrence of harm actually was higher than thought by him. Finally, the operation of proportioning itself may also be faulty. The decision-maker could see the objective and the extent and probability of the harmful consequence, but his evaluation was incorrect, since the assumption of the risk was not useful under the circumstances. When the subjective mistake in decision-making is assessed from the point of view of criminal law, first of all a distinction has to be made between the intentional breach of managerial duties and such as breach by negligence. We believe the intentional breach of the duty of property management is beyond the realm of the assumption of risk. It may not be considered as the assumption of an economic risk if the decision-maker does not act in order to increase the property or to ensure other economic benefits. It is not risk assumption either, if he deliberately makes wrong assessments or selects a way of action unfit to attain a useful aim. Thus, a mistake made deliberately in economic decision-making should not be considered as the assumption of risk, it should be regarded as the intentional violation of the duty of property management.

The subjective mistake not made by intention in economic decision-making, concerning the assumption of a risk, is reprehensible (according to the general rules concerning negligence in criminal law) only if it may be traced back to the irresponsibility, carelessness of the decision-maker. For, the means of criminal law are appropriate only against factors which may be influenced by punishment.

If the subjective fault may be traced back to the lack of professional expertise, i.e. it may be established that the decision-maker erred in weighing the possibilities because of his lacking professional expertise, the use of the means of criminal law is aimless, since the imposition of a punishment would not extend his professional knowledge.⁹⁵ Thus, if the decision-maker on his own part did everything he could, considering his

⁹⁵ *Bírózági Határozatok* (Decisions of Hungarian courts), 1955, No. 10, Decision No. 102, p. 4.

professional abilities, in order to make the proper decision, he displayed "the care and circumspection expectable of him", he was not negligent in the sense of criminal law, consequently the defect of the decision may not be considered to be his fault.

It also follows from what has been said above that criminal law may not detach the evaluation of the assumption of risk from the duty of property management. The assumption of risk on behalf of the enterprise may only be viewed as part of the duty of managing the property, and, for this reason, this form of the assumption of a risk is not an independent category of criminal law. Owing to that fact, the assumption of risks on behalf of the enterprise does not have to be treated in the doctrines of criminal law or regulated in criminal law as an independent cause excluding punishability.

An assumption of risk if it is considered professionally correct may not be regarded by criminal law as the breach of the duty of property management. And, since the breach of duty on the part of the manager of the property is one of the elements of the statutory definition of criminal offence, in the given case it is the lack of one of the elements of the definition that excludes criminal liability. And the faulty decision where the mistake is not reprehensible may not establish criminal liability because of the lack of culpability. In turn, if the mistake in the decision-making is reprehensible and the breach of the property managerial duty by negligence can be established by that, it would be a contradiction of logic to use economic risk-assumption as an independent cause excluding culpability. For, if it is established on the level of the breach of duty (i.e. on the level of the act fitting to the definition of the offence) that the decision (the assumption of the risk) was faulty both subjectively and objectively, and the subjective fault is reprehensible, there is no further element of the activity which would form the foundations for considering the assumption of risk as a cause excluding punishability. Thus, we may deem the observation reinforced according to which the assumption of risks on behalf of the enterprise may obtain relevance for criminal law only as part of the duty of property management and may not constitute a category deserving independent treatment in criminal law, detached from the managerial duties. Finally, we have to note that criminal liability has a narrow field as far as decisions, assumptions of risk on behalf of the enterprise are concerned. If social property is managed by enterprises conducting economic activity in the conditions of the market, the duty of property management involves broad discretion in decision-making. The broader discretion the manager of property has by virtue of his position, the less the sanctions of criminal law are applicable in order to force the performance of the duty. The use of criminal liability for damage caused by decisions made by using broad discretionary powers is further limited by two additional factors. The first is the fact that the activity of the property manager authorized to use broad discretion is embodied not in single and isolated decisions but in a series of interrelated decisions, thus, an incorrect decision may be compensated for by a number of correct ones. And, if the managed property increases owing to the manager's activity, the work of the manager will be approved by the "owner" and not disapproved. A fundamentally wrong criminal policy approach would be reflected by a view which, contrary to the "owner's" evaluation, would seize a single incorrect decision in the series and would consider it as a breach of duty in the sense of criminal law.—The other factor that limits criminal liability is the fact that decisions requiring broad discretion are not usually made by single persons, even if the decision-making is connected to a single person in

the final analysis. It is, however, the artificially isolated act of a single person, taken out from the process of decision-making, that criminal law may be able to evaluate and such a treatment is contrary to the realities of the process of decision-making, from the very outset.

Although the opinion of the public is not always an approving one, it remains a fact following from the very essence of criminal liability that criminal law can be used to punish the driver who uses the truck of the enterprise to his own purposes but it is frequently impossible to use it against acts having caused losses of a magnitude of several million forints in the course of property management activity. In the first case, intention as the form of culpability is quite clear, in the latter, even negligence is very difficult to establish with the exception of a very narrow area. Conducting economic activity with social property under the conditions of market and commodity relations is influenced by factors of which only one, the diligence of the manager of property, may be affected by the use of criminal law. If the loss is not the consequence of negligence, reprehensible in criminal law, on the part of the property manager, property loss may be decreased through the correct exercise of strategical proprietary functions, including the choice of the staff, and not by using the means of criminal law.

The codification of economic criminal law

Preliminary.—1. Changes in the technique of codification; 2. The basic principles of criminal law and the skeleton regulations (referential techniques of codification)

Preliminary

Economic criminal law regulations are included either in the Criminal Code or in separate statutes. These two ways of regulation may exist also together. It is usually the combination of the two fundamental methods that is employed by the legislations of the various countries. It was so also in Hungary before the promulgation of Act V of 1961. From that time on, the provisions of economic criminal law have been included in the Criminal Code.

The advantage of the creation of separate statutes is that the method is more suitable to follow the needs of the changes in economic policy. If a statute of economic administration prescribes a duty which will be enforced through the application of criminal law sanctions, the sanction to be applied is directly referred to in the prescription of the duty. From the point of view of the *nullum crimen sine lege* principle, the significance of the promulgation of separate statutes is that within this system all the elements of the definitions of the particular offences are included in the same statute. Nevertheless, the practice of legislation has shown that even the separate statutes include skeleton provisions which are given contents by other administrative statutes or rules of authority. Moreover, the adoption of separate statutes has fairly frequently led to the creation of a usually extensive material of criminal law, in addition to the Criminal Code.

Should the legislator employ either of the two methods at the description of the criteria of the criminal offence, when the definition of criminal law is formulated, it is not only aspects of economic policy that should be taken into consideration; the definitions have to be formulated in a way making possible that they should be in accordance with the principles of criminal law, i.e. with the principle of *nullum crimen sine lege*; that of culpability; and of the system of institutions of criminal liability. And, from this aspect, what has primary importance is whether the offence is defined as a formal or material offence (i.e. whether the statutory definition includes or does not include the harm caused by the conduct as an element of criminal act).

Surveying the development of the techniques of codification, we intend to summarize below the issues having been raised in connection with the special use of economic criminal law and which still are in need of solution, at least partially.

1. Changes in the technique of codification

In view of the history of Hungarian economic criminal law, it is not only the effects of economic policy exerted on criminal law that may be observed but also the problems related to the techniques of codification that the practice had to solve. Two kinds of problems are encountered here, viz. /i/ the interpretation of the elements of the statutory definition of the offence that require evaluation, and /ii/ how the rules constituting the skeleton provision may be fitted into the criminal statute. The first problem has always been present since economic criminal law appeared. The interpretation—we should say—manifested itself in the effectuation of economic policy, while the relation between the administrative law provisions—filling the skeleton rules—and the criminal law raised issues differing from one historical period to another. Three historical periods can be distinguished here; /i/ before 1950; /ii/ before and /iii/ after the enactment of the Criminal Code of 1961.

During World War I and directly after that, the statutes of criminal law enacted in that period mentioned, and referred to, licences issued and prices determined by authorities and administrative statutes but they also used concepts that had to be evaluated in the course of the application of law, taking the changing conditions of the economy into consideration. Such concepts were, for example, consumers' goods, gain beyond fair profit, taking advantage of someone's difficulties, the aim of profiteering, etc. During World War II—when the means of criminal law were used to enforce State administrative norms aimed at regulating the production, the consumption and the use of goods—the structure of the norms of criminal law and the tasks of the application of law became changed. The statutes of that period attributed a lesser significance to the elements of the definition that required interpretation (such as activity contrary to the rules of regular economic activity). As a result, the provisions of administrative law filling the skeleton rules of criminal law gained fundamental significance. In connection with the application of the statutes it was not necessary to interpret what and how had to be produced, put into circulation and used, since the duties were prescribed by norms of administrative law or by authorities, to wit, in the application of law the economic administrative prescriptions of the latter were taken into consideration. Although criminal liability was conditioned by the Criminal Code on the grave endangerment of public interests, in addition to the violation of a rule—and it had to be weighed in the course of the application of law—from other provisions of the Code it appeared that the grave endangerment did by far not have to be understood as a detriment of national significance. The criminal law protection of the provisions of administrative law regulating production was formal, as far as the essence was concerned. In the course of establishing liability it was unnecessary and also impossible to weigh either the individual or the societal aspects of the economy. The only thing that had to be established was whether the private persons engaged in economic activity violated or not the prescriptions of the authorities limiting the freedom of the proprietor; whether they violated or not the obligations determined by norms of economic administration. For example: "...any person failing to declare, to produce or to supply energy or raw material as required by the administrative regulation shall be liable..."

Following World War II, criminal sanctions were referred to in a number of economic administrative statutes, issued in the extraordinary situation after the War by necessity, or in order to serve the formation of the new socio-economic conditions. These statutes, as a rule, were not long in force and they meant for the application of law that the authorities had to apply the sanction defined in a separate statute in cases of the breach of duty.

In that historical period, extending to 1950, the existence of skeleton provisions raised two issues, viz. /i/ the validity of the law in time, and /ii/ the definition of error in law. Neither theoreticians nor law-appliers could find a common platform for their settlement. The roots of these problems could be found in the fact that an answer was needed to the question whether the provisions of the administrative statutes, filling the skeleton provisions of criminal law, were to be regarded as part of criminal law or not. The prevailing theoretical opinion was that the economic administrative rules were part of the norm of criminal law and the changes of the administrative norms were to be taken into consideration in the examination of the criminal law norm's validity in time. According to Angyal, from this point of view the contents of "law should be examined as a whole, thus, if the judgement is passed after that the relevant prohibition ceased to be in force any more, the applicable law is the one which does not order the imposition of a punishment for the act at issue."⁹⁶

In the practice of the courts the opposite view was in consistent use. What the courts examined was whether the obligations defined in the administrative norms, filling the skeleton provision of criminal law, were violated or not at the time of the perpetration of the act. At the examination of the validity of the law in time, the changes in the statutes, filling the frames of the skeleton regulation, were not taken into consideration. The administrative norm giving substance to the skeleton rule was not regarded as part of the norm of criminal law.

The *Curia* (Supreme Court) held the view that the ignorance of legal regulations was not an error in fact but an error in criminal law, and, as such, did not exclude punishability. Angyal pointed out the difference between legal regulations in administrative norms resp. the Criminal Code, and also the incorrectness of the argument according to which the two were identical. The judgement mentioned the ignorance of the administrative legal regulations while, on the basis of the Criminal Code, it was a consequence of the ignorance of the provision of the Code or of its incorrect interpretation that punishability was not excluded.

The practice of the courts was not consistent with itself either, for, in addition to the circumstance that the statutes filling the skeleton provisions were published, making thereby possible the learning of the issue of the statute, it took into consideration the perpetrator's education, too, in the evaluation of the circumstances of the error. As far as the administrative norms—filling the skeleton provisions of criminal law—were concerned, the only argued issue was whether those norms formed part of criminal law or not. In the historical period concerned, it was not a question what norms filled the frames provided by criminal law since only the norms issued by the organs of public economic administration did so.

⁹⁶ Angyal, P., 1941, p. 142.

In the early years of the 1950s, new principles of criminal policy appeared in both legislation and the application of law. They, on the one hand, met the requirements of economic policy, and, on the other hand, limited the role of the guarantees established in criminal law.

The law-decree on the protection of the planned economy expressed the economic policy conception of direct economic control. The norms of economic administration (decrees, instructions, etc.) prescribed in detail duties related to production, and to the breach of such duties criminal liability was attached. The economic policy conception mentioned above could, however, have been served also without limiting the guarantees created in criminal law. For, the so-called formal liability is not alien to the system of institutions existing in criminal law, and in such a system of liability the only issue to be examined in the course of the application of law is whether the existing rule has been observed or not, the prescribed duty has been performed or breached.

From the point of view of guarantees, the precondition of the establishment of liability would have been the precise determination of the relevance of the duties to criminal law. However, the criminal policy conception concerning the protection of the planned economy was manifested in such a manner, even in the phase of legislation, that the delimitation of the various types of liability (criminal, administrative or labour law liability) was uncertain from the very outset.

After 1956, the economic policy evaluation of the use of the means of administrative law changed and the criminal policy approach to the guarantees of criminal law was also fundamentally modified. The changes in the approach were shown among others by the fact that the courts in the course of rendering judgement took into consideration the aim the administrative norm filling the skeleton provision of criminal law was to serve. It was necessary, because an extremely high number of economic administrative norms prescribing duties existed in the system of plan directives and these directives were fit to fill the frames of the skeleton provisions of criminal law. The judiciary was trying to find the common aim of the norms of criminal law and those of administrative law when it was set to the task of filling up the framework of criminal law by the administrative norms. All this, of course, was far from the delimitation of proprietary management and public administration, still it was an attempt to select from the mass of administrative norms according to certain material standards. As a result, administrative statutes were not deemed to be norms filling the skeleton provisions if the duty prescribed in the administrative statute was not to serve the same aim the provision of criminal law was created for. For example, regulation concerning the cattle licence was not considered by the court as part of retail trading regulations because its aim was not to protect the economic order but the animal welfare.⁹⁷

At that time scholars also raised the demand that the administrative norm, filling the skeleton rule of criminal law, should expressly refer to the provision of criminal law because without that the breach of the duty written in the administrative norm would not constitute a criminal offence. The practice of the courts did not declare the above principle with general validity, but there were decisions in which it was examined

⁹⁷ *Bírózági Határozatok* (Decisions of Hungarian courts), 1958, No. 8, Supreme Court, Decision No. 281 of the Criminal Division.

whether the administrative statute, filling the skeleton provision, had referred to the provision of criminal law or not.⁹⁸ Thus, from the 1950s on, the problem was not any more whether the norm, filling the skeleton provision of criminal law, was or was not part of criminal law, it was rather the issue of which one of the great number of administrative norms filled the skeleton provision. And that problem involved also the effectuation of the *nullum crimen sine lege* principle.

Act V of 1961 abandoned the formal protection of the planned economy and included the harmful economic consequence, as the result, among the elements of the statutory definition of the criminal offence. According to the criminal policy conception expressed by the Act, the courts were supposed to evaluate in merits the effects of the breach of duty on the national economy.

In the earlier system of economy control when the enterprises implemented the directives of the organs of economic administration, it was difficult to distinguish between damage suffered by social property and detriment caused to the national economy. This fact is one of the explanations why the provision of the Criminal Code on wasteful economic activity was not used in the practice. (In 1968, when the new system of economy control was introduced, it was much discussed in the literature of criminal law whether the provisions of criminal law in force at that time could be applied at all in the new system. The debate, owing precisely to the lack of the practice of applying the relevant provisions, remained a theoretical one.) After the promulgation of Act V of 1961, the use of the two institutions of law (mentioned earlier) could not mean a problem any more. The view accepted by the judicature earlier, according to which the administrative norm filling the skeleton provision of criminal law does not constitute part of the provision of criminal law, became accepted by the scholars as well. The new provisions concerning error eliminated the problem related to error in the terms of the administrative rules, filling the skeleton provision of criminal law, at least on the level of the legal institution. The solution was provided by the regulation of the concept of error in dangerousness to society. (Section 24 /2/: Whoever shall have committed an act in the erroneous assumption that it is not dangerous to society and had well-founded reasons for this assumption shall not be punished.) Act V of 1961 also raised a new problem of codification techniques, namely the question of how the detriment to the national economy (or the injury of its interests) could fulfil the function of being an element of the statutory definition of the criminal offence. Moreover, the Act did not answer the question of whether the breaches of what duties prescribed by the statutes of economic administration constitute the conduct forming an offence. The *nullum crimen sine lege* principle required the answer of this question, too.

⁹⁸ *Bírószági Határozatok* (Decisions of Hungarian courts) 1958, No. 3, Decision No. 1869.

2. The basic principles of criminal law and the skeleton regulations (referential techniques of codification)

The skeleton rules of criminal law have the peculiarity that the legislator formulating the provision of criminal law, evidently, does not define every element of the concept of the particular offence; the frames set up by the skeleton provisions are filled with substance by other statutes or mandatory prescriptions not qualifying as statutes, and issued under the authorization of the legislator. Apart from that peculiarity, the general principles concerning criminal liability are valid for the skeleton provisions as well. Thus, the *nullum crimen sine lege* and the culpability principles are valid also for offences defined in a skeleton rule. For this reason, skeleton statutory definitions should be formulated in a way that allows the effectuation of the culpability principles.

In defining the criminal offence, the legislator (effectuating the principle of *nullum crimen sine lege*) describes in the statutory definition either the criminal conduct or the harmful economic consequence, as the result, or both. This general rule of codification techniques is valid for the statutory definition of every kind of criminal offence. Formulating skeleton rules, the legislator describes an element of the statutory definition of the criminal offence by referring to another rule (such as a statute, mandatory prescription, like a rule of a profession). The significance of the referential techniques obviously changes according to whether the criminal conduct or the harmful consequence is defined by the provision of criminal law itself or not.

If the harmful consequence is defined by the criminal law provision itself, the reference to the rule filling the skeleton provision usually has the significance of delimiting liability. The best known examples of the techniques of codification in this respect are to be found among traffic offences. Traffic offences violate human life and bodily integrity in their capacity as legally protected objects. The harm to the legal object, as an element of the definition of the offence, is determined by the provision of criminal law itself. In other words, criminal liability is indicated by the bodily injury or death, as the harmful consequence of the criminal conduct. If the violation of traffic rules is not mentioned expressly, the causation of the harm is to be judged according to the general provisions concerned with the causation of bodily injury or homicide. The court has even in such cases to examine the conduct; however, in such cases criminal conduct is not to be considered as the violation of a traffic rule but as that of the general obligation of diligence (in the case of offence by negligence). Thus, the traffic rule as an element of the definition of the offence plays a delimiting role so that the court does not examine the general obligation of diligence, but compares the conduct with the rules of traffic. If the rules of traffic were observed and the harmful consequence mentioned in the definition still came about, criminal liability is excluded by the lack of criminal conduct. The same formula is valid for offences committed through the breach of the rules of an occupation or by causing damage through the breach of the duty of property management. Thus, if the mentioned techniques of codification are used, there is a consequence, which, on the one hand, expresses the injury suffered by the interests protected by criminal law, and, on the other hand, this injury is defined as a

criminal consequence by the provision of criminal law itself. If the causation of the harmful consequence is a criminal offence even without the breach of administrative rules filling the skeleton provision (like the causation of bodily injury or the causation of someone's death), the cases, not regulated by the special rules that fill the skeleton provisions, should be judged according to the general rules. For example, if the rules of an occupation or profession do not prescribe obligations for a certain situation, and a person causes bodily injury or death in such a situation, his criminal liability is not excluded in principle, since it has to be examined whether his or her conduct was in accordance with the general obligation of diligence or not. Thus, in such a case, criminal liability is excluded either by the observance of the rules of the profession or by fulfilling the general obligation of diligence.

In turn, in the case of formal criminal offences (i.e. when no result is mentioned in the skeleton rule, for example, in the case of offences against currency regulations) the function of the administrative provisions is quite different from those to be applied in criminal law. In the case of formal offences, the administrative statutes have a role also in the definition of the behaviour constituting the offence, but their significance is higher. For, in such cases, a person's behaviour equalling the conduct described in the definition by the administrative rule can constitute an offence. For this reason, the rules filling the skeleton provision are built into the relevant provision of criminal law as elements constituting the criteria of criminal liability. This is true also for the case when the criminal conduct is defined fully by the rules filling the skeleton provision and also when only one of the elements of the conduct is described by the rules filling the skeleton rule.

Offences having a harmful consequence, and also formal offences, are different from the point of view of the effectuation of the principle of culpability. The condition of the establishment of liability in the case of offences having a harmful consequence is that intent, or if it is also punishable by the law, negligence, should expand also to harmful consequences. The establishment of criminal liability is excluded in the case of even the intentional violation of the regulation filling the skeleton rule if the perpetrator's culpability required concerning the harmful consequence may not be established.

If the skeleton provisions are formulated by the legislator as offences with harmful consequence, the rules filling the skeleton provision have only a secondary role in the application of the principle of culpability, since criminal liability depends primarily on what kind of culpability is required by the legislator with respect to the harmful consequence in the statutory definition of the offence in question and on whether the required form of culpability can be established in the given case or not.

If the statutory definition of an offence is in a skeleton provision, the conduct constituting the offence is, as a rule, the breach of a duty and the harmful consequence described in the definition is produced by the breach of the duty. When the statutory definition of an offence is formulated, it is a requirement originating from the principle of culpability that the harmful consequence described in the definition should be one that can be foreseen by the person bearing the duty. The ability to foresee what is involved here is not necessarily identical with the human ability to foresee harmful consequences in general, since, for example, the occupational rules or administrative regulations filling the frames are addressed to persons in this way precisely because

they pursue a particular activity or occupation. And the person who has the duty has to foresee the harmful consequences of the breach of his duty at least as far as they are included in the definition of the offence in the form of determining the criteria of harmful consequences. (Depending on the form of culpability, the perpetrator foresaw the harmful consequence at the time of the commission or he should have foreseen it.) The culpability principle requires techniques of codification that allow the inclusion only of such a harmful consequence in the statutory definition of the offence that the bearer of the duty is able to foresee and criminal law may require him to foresee it.

In the case of a formal offence, culpability is related to the criminal conduct constituting the offence and, within that, to the administrative statutes filling the skeleton rule. Consequently, in the establishment of criminal liability, the statutes filling the frames have an emphasized role also from the aspects of the culpability principle. It is in the case of skeleton regulations formulated as containing the criteria of formal offences that the question arises, whether or not the statute filling the skeleton rule of criminal law should be regarded as part of the penal statute and, accordingly, whether the ignorance of the law does, or does not, exclude liability.

The Hungarian Criminal Code in force deals with the above problem in connection with that of error with a consequence of dangerousness to society. In the judgement of the latter cases, the only thing we can start from is the circumstance that the bearer of the duty is familiar with the administrative or occupation regulations of his activity, he knows them. The fact that the person knows the duties included in the statutes filling the skeleton rule does not have to be proven, similarly as the fact does not require proving either that the perpetrator is aware of the dangerousness of his criminal offence to society. The provision of law concerning mistake in the evaluation of dangerousness to society is applicable only in the exceptional cases when, owing to certain special circumstances, the bearer of the duty does not know his duties.

Thus, as far as the techniques of codification are concerned, changing economic policy is put into the stable provisions of criminal law by the administrative statutes, on the one hand, and by the elements of the offence's statutory definition that require assessment, on the other hand.

When the offence definitions are applied that refer to statutes filling the frames of the skeleton provision, the rule of economic administration relays the aspects of economic policy unambiguously to those who apply the rules of criminal law, thus the application of criminal law cannot conflict with economic policy. (Of course, criminal law is not able to correct wrong economic policy here, on the contrary, by enforcing the wrong economic policy, criminal law even increases its negative social effects.)

The definitions of criminal offences that include elements of evaluation put the burden of interpreting the provisions of law in accordance with the changes of economic policy on the person applying criminal law. The creation of harmony may be assisted by the economic administrative rules which, although they are not integrated directly into criminal law, may express the changes in economic policy. The aspects of economic policy may, of course, be reflected by not only economic administrative rules but also by other types of economic policy decisions.

Chapter VII

Basic concepts

Preliminary.—1. Economic criminal offences—economic criminal law; 2.
Economic crime—crime related to economic activities

Preliminary

In the final analysis, all kinds of the criminal science serve a common goal, the struggle against crime. However, in the service of the common aim they employ different means, depending on the direct tasks of the various areas of science. The direct tasks and the methods used to perform the latter have an impact also on the formation of concepts since it would be senseless to operate with concepts which are incompatible with the methods of science and are not fit to help the performance of the tasks.

Let us now summarize the aspects directing criminal law and criminology in the development of the concepts of economic criminal offences and economic crime. The aspects of conceptualization in criminal law and criminology are not determined, we believe, by the social system either in the capitalist or the socialist world. We do not mean to assert that economic crime as a social phenomenon is the same in socialist and capitalist countries, but the theoretical problems of criminal law and criminology are independent from the social system in many respects. So, when we give the reasons of our view, according to which the criminal law concept of economic offences embraces social phenomena different from the ones belonging to the criminological concept of economic crime, our aim does not extend to expressing the traits of the social system in the scientific conceptualization.

In the criminal sciences of both capitalist and socialist countries, some scholars employ a narrower and a broader concept of economic criminal offences. They want to express through this distinction the traits that are suitable to characterize a smaller or a larger group of the studied social phenomenon. So, a number of scholars realized that crime related to economic activity should be divided into several scientific categories and we assert that the conceptual marks of the categories depend on the aim of conceptualization. The conceptual system of the doctrines of criminal law serves other aims than that of criminology. This explains whether a narrower or broader range of offences is included in one or another common concept. We find the justification of the use of the two types of concept in the different tasks and methods of the two disciplines. Thus, instead of trying to find the criteria of the narrower or broader concepts of economic offences, we distinguish between criminal law concepts and criminological ones.

1. Economic criminal offences—economic criminal law

In criminal law, the concepts of the different types of offence are formed on the basis of the legal object. The doctrinal definition of the legal object may have an effect on the structure of the system of the Code since the special part of the Code is divided into chapters according to the protected legal object. In connection with division into chapters, but also independently of that, the protected legal objects are significant in the course of the application of law. It is first of all on the basis of the protected legal object that the apparently competing provisions of law may be delimited by the legal object, since it puts dangerousness to society into concrete form and manifests the violated legal object, provides guide-lines for the interpretation of various elements of the act's statutory definition.

The social reality that is violated or endangered by a certain defined group of offences may be recognized and delimited from other interests protected by criminal law. This social interest in economic criminal law is the economic activity of the State, i.e. its budgetary activity and its public economic administration.

In addition to the independent legal object, the concept of economic criminal law (economic offences) has further traits that are characteristic only of the concept of economic criminal law within criminal law. Such traits are its connection with economic policy and with the regulations of economic administration and also the special techniques of codification. These traits belong to the basic category of problems of criminal law, i.e. the issue of liability. In other groups of offences the changes in economic policy do not effect criminal liability directly, do not broaden or narrow down the scope of punishable behaviour.

Owing to the characteristic features mentioned above, both the legislator and the applier of criminal law have particular obligations. The growing number of economic offences almost certainly does not demand the application of graver sanctions, the phenomenon more probably is to be taken as a warning for economic policy, since it is only against behaviour differing from the common, appearing on the level of the exceptional, that the sanctions of criminal law can be effectively used. If criminal sanctions are applied for conduct regularly displayed under ordinary economic conditions, i.e. for conduct accepted in practice, criminal law will have neither general nor special preventive effect. Criminal sanctions may be effective only if they are approved by society. If everybody is an "offender" in principle, the convicts will not be condemned by society but will enjoy society's sympathy. Thus, if an activity which is accepted by everyday practice in the realm of the economy may be considered legally a criminal offence, it is the fault either of the provisions of criminal law or of the regulations of economic administration filling a skeleton rule. It would be a serious mistake to crown this fault with the mass-employment of criminal sanctions. So, the increase in the number of offences does not demand by necessity the effectuation of the criminal policy principle which says that in such cases the severity of the use of criminal law should be intensified. It follows from the peculiar techniques of codification that the discipline of criminal law has the task to examine and criticize the formulation of skeleton rules from the point of view of the principles of criminal law, particularly the principle of *nullum crimen sine lege* and the principle of culpability. The Resolutions accepted by the Freiburg Colloquium also underline the requirements the special

techniques of codification should comply with. The Resolutions point out the dangers of delegating too much of the legislative powers and formulate the demand that the conduct constituting the criminal act or its consequences should be determined by criminal law. It is suggested that general clauses should be avoided as far as possible. *Per se* banks (abstrakte Gefährdungsdelikte, délits-obstacle) should be formulated only when the prohibited action is clearly defined and the prohibition is related to clearly identified protected interests. The Resolutions show clearly that the special techniques of codification are general phenomena which may be considered as characteristic traits.

On the basis of what has been said above, we formulate the following scientific concept: Economic offences violate or endanger the economic activity (the budget and the public administration of the economy) of the State. Legislation concerning economic offences (economic criminal law) and its application is directly related to the economic policy of the State in the given time and to the regulations of economy administration expressing that policy.

Our concept of economic offences is clearly fit to solve the problem of delimitation, discussed so much in the socialist literature of criminal law, in connection with the management of social property. Offences violating the economic activity of the State as a protected interest should be regarded as economic offences, in turn, acts causing property damage should be considered as offences against property. The two kinds of offence can be distinguished also by the conduct constituting the act, since in the latter case it is a breach of the duty of property management that is perpetrated while in the case of the former, it is conduct determined precisely by criminal law or by a regulation of economic administration that is displayed. Thus, it also follows from the delimitation that the assumption of risks on behalf of the enterprise is relevant only to the performance of one's duty of property management, and the assumption of a risk may not exclude liability for an economic offence.

As far as the demarcation of economic offences and offences against social property is concerned, our view is in harmony with the model of economy control (existing, at present, mostly in theory and put into practice only in respect of certain of its elements) which has been in the process of formation since the introduction of the new system in Hungarian economic control. The distinction between proprietary supervision and public economic administration is not only a theoretical demand formulated in the discipline of criminal law, it is also a reality of economic policy, as can be read in the Party Resolution in Hungary, defining the tasks of economic policy: "The role of the State has to be strengthened in the creation and co-ordination of the economic and institutional conditions ensuring the planned development of the national economy, and in the performance of proprietary supervision."⁹⁹

Thus, the criminal law concept of economic offences expresses the traits characterizing economic criminal law from the point of view of criminal liability, moreover, the concept is adequate also from the aspects of economic policy related to the control of the economy. In turn, the traits of economic criminal law do not fit the

⁹⁹ Quotation from Chapter III, entitled "Economic building" in the *Resolutions concerning the Work Done since the XIIth Congress and the Tasks of the Party*. Central Committee Session of the Hungarian Socialist Workers' Party, April 12-13, 1983.

criteria of the criminal offences which alongside of the economic offences can be drawn in the concept of economic crime. Thus, first of all, in connection with the offences against property that may be included in economic crime, economic policy and the administration of the economy do not influence criminal liability either on the level of legislation or on the level of the application of law, moreover the legal object of these offences is different also. In the Hungarian Code in force we do not have any more provisions like the one on wasteful economic activity used to be, in which the interests of the national economy and those of the enterprise could not be clearly distinguished. In the last codification, the offence violating the property interests of consumers has been included in another chapter of the Code. (This kind of offence does not violate the State's economic activity as a protected legal object.) Economic policy and economic administration have no direct connection with the criminal offences which—although they are committed in connection with economic activity—violate other, independently protected social interests (economic corruption, industrial espionage, etc.). Previously, economic corruption was enumerated by the legislator among economic offences. The Code in force at present, with considerations to the kind of social interests protected in this respect, enumerates that offence among offences against the purity of public life.¹⁰⁰

We may exclude from the concept of economic offences also the offences violating the environment and the protection of labour safety. True, we can find economic administrative regulations in connection with these offences as well. However, from the point of view of criminal liability, the function of these regulations is fundamentally different from the role of the administrative regulations employed in economic criminal law. The administrative regulations concerning the environment and the security of work conditions serve the aims of prevention from the point of view of the protected legal object. In other words, the aim of the latter type of norms of administrative law is to prevent the injury of the object under the protection of criminal law (the health of the public, the life of workers, their health individually). The injury of the protected legal object is independent of whether economic administrative regulations have been created or not, at most the violation of the legal object is effectuated through the breach of the rules, if there are rules at all. The life and bodily integrity of the workers may suffer injuries also in the lack of administrative rules, the environment may be polluted also when no administrative rule exists concerning the pollution of environment. Thus, in the case of these acts, the rules of economic administration do not form and shape the interests protected by criminal law. In turn, in the case of economic offences, the rules of economic administration are of essential importance for criminal liability, for in the case of economic offences that are defined as skeleton rules referring to a rule of administrative law, in the lack of administrative rules filling the frames of the skeleton rule, criminal liability does not exist. On the basis of what has been said, we exclude acts violating the environment and the security of work conditions from the scientific concept of economic offences. They are characterized beyond doubt by the fact that they are, or some of them are, committed in connection with economic activity, nevertheless, the circumstance of their

¹⁰⁰ On the criticism of the structure of the previous Code see: Wiener, A. I., *Magyar Jog*, 1975, pp. 376–382.

perpetration do not have the importance of a criterion for conceptualization. Economic criminal law may not be characterized by this trait, if for nothing else, because, for example, financial offences may be committed not only in the realm of economic activity. Since, however, criminology may take the circumstances of commission into consideration when crime is viewed as a social phenomenon, and in any event, the discipline of criminology takes different aspects into account when it formulates the concepts—according to its tasks and methods—separate studies are needed to decide what group of social phenomenon has to be drawn under the criminological concept of economic crime.

2. Economic crime—crime related to economic activities

The fundamental traits of economic crime as a social phenomenon are formed by the socio-economic conditions in which the crime is committed. Thus, as far as the facts are concerned, criminology finds different phenomena in socialist and in capitalist countries when it studies economic crime. Nevertheless, the object of the criminological study is not determined only by the fundamental socio-economic conditions, it does not vary depending only on whether the economy is built on socialist or capitalist property relations. One of the peculiarities of economic offences is precisely the fact that the changes of economic policy exert an impact on both the provisions of criminal law, i.e. on criminalization, and, within the various types of offence, on the forms of perpetration, on the actual commission of crimes. The object of criminological study (i.e. economic crime as a social phenomenon) is different in capitalist and socialist countries, and the object of study changes from time to time and from place to place even when the socio-economic basis is the same. Nevertheless, as has been stated in the foregoing, the tasks and methods of criminologists studying economic crime are identical in both capitalist and socialist countries. Criminology has to describe the forms of manifestation of crime (morphology), it has to study the causes of crime (etiology) and it has to find the ways of prevention (prophylaxis).¹⁰¹

As far as a major part of economic offences is concerned, criminal sciences do not have a traditional value system on the basis of which certain forms of behaviour should be qualified as socially harmful, censurable or punishable. For this reason, we have to agree with the observation that in this field what is "good or bad" depends in every country on the economic system just current.¹⁰² Thus, the scientific study of economic crime may not be separated from the economic system, including also the economy policy valid at the given time, in addition to the fundamental socio-economic conditions. As a consequence, the description of economic crime means a special task for criminologists, since it is not simply the various forms of perpetration that have to be described here, the changing provisions of law have to be taken into consideration, too. If criminology analyses traditional offences (homicide, robbery, theft, etc.), the legal description of the offences is not too important, since the essence of the legal

¹⁰¹ Vermes, M., *Kriminológia (Criminology)*. In: *Állam és Jogtudományi Enciklopédia (Encyclopedia of the science of State and laws)*. Akadémiai Kiadó, Budapest 1980.

¹⁰² Sieber, M., *Op. cit.*, p. 35.

regulations is identical independently of time and place and the differences appearing in the details of the legal regulation do not concern the essence of the social phenomenon. In turn, in the description of economic crime, at least in the part describing the economic offences, the description of the provisions of criminal law or the rules of administrative law filling the framework of the skeleton rule, may not be omitted.

Morphology, etiology and prophylaxis are closely related to each other in the discipline of criminology. According to that relation those phenomena should be studied together whose causes, and the means taken to prevent them, show similarities. Although it is possible to speak about crime prevention in general, the different forms of crime are influenced by different criminogenic factors and the prevention of the different types of offences requires different methods. Because of that, "in creating the system of prevention we have to focus our attention on the groups of phenomenon that exert primarily criminogenic effects on the particular type of offence. This circumstance, of course, effects the prophylactic activity of other State and social organs, too, in addition to that of organs of criminal law enforcement and of the administration of criminal justice, or puts the emphasis on the prophylactic activity of different State and social organs or it requires these organs to take measures varying from one organ to another. Thus, the point is that the specialities manifesting themselves in the particular phenomena of crime define basically the limits, the aims, the contents and methods of this type of prevention".¹⁰³

Consequently, criminology has to employ categorization by the causes of crime and by the taken measures of prevention and has to determine the object of study according to that. It would be senseless to separate in criminology the phenomena the etiology and prophylaxis of which show close relations. In our opinion, this is true for the criminology of both socialist and capitalist countries.

We do not find fundamental differences between capitalist and socialist views concerning the evaluation of the role of criminal law in the prevention of economic crime. Criminal law as the means of the prevention of economic crime is ranked last by the dominant criminological views of both capitalist and socialist countries among the means of prevention of such offences. Criminal law is indisputably preceded by the organizational means and sanctions of other branches of law. We may enumerate the provisions of economic administrative law, civil law, labour law (depending on the system of law) among the means and sanctions as preceding criminal law. We mention as the last the means considered to be the most important in the prevention of economic offences, namely, the socio-economic measures (organization, supervision, etc.).¹⁰⁴ Thus, when economic crime as a social phenomenon is studied in criminology, all the forms of behaviour that show common traits from the aspects of morphology, of etiology and of prophylaxis have to be drawn under one concept. And, these common traits may be found not only in the group of social phenomenon that violate the State's economic activity as the legal object of economic offences.

¹⁰³ Gödöny, J., pp. 443-444.

¹⁰⁴ The organizational measures are ranked first among the means of prevention by Panev, B. (*Op. cit.*, p. 387), and by Sieber, M. (*Op. cit.*, p. 28).

In both capitalist and socialist countries, it would be useless to create a concept for criminology which were to serve the aims exclusively of the discipline of criminal law. For this reason it is only natural that criminology employs also concepts which are not significant for criminal law or which have a different meaning in criminal law. For example, recidivism is a precisely defined concept in criminal law, still, in criminology it is possible to consider different convictions as the basis of recidivism; in criminal law the victim is important only in the case of certain offences, in victimology, in turn, victim is a central concept. We could enumerate further examples (crime of violence, female criminality, etc.) to show how the tasks and methods influence the aspects of conceptualization within criminal sciences. However, we are of the opinion that all that has been said above is enough to demonstrate that criminology uses concepts differing from those of criminal law.

According to the aspects of criminology, in addition to economic offences, certain offences against property if committed in connection with economic activity, moreover, offences violating also other economic interests, constitute part of economic crime. Independently of where, in which Chapter of the Code they can be found, such are the various forms of economic corruption, economic espionage, because these offences cause also economic harm. On the basis of that trait, certain offences of office may also be part of economic crime, either because the bribery of an official caused some kind of economic damage or because some of the socialist codes consider the economic heads of the enterprises to be officials.

Harm to the interests of economy, thus, may be a criterion of the criminological concept of economic crime. Harm to the interests of economy in this sense includes the injury of the interests of those who participate in the economic activity, in addition to the injury suffered by the interests of national economy. In criminological conceptualization, the circumstances of perpetration, the position of the perpetrator in the social division of labour or the motive of perpetration may be criteria, too. The place of the perpetration and the perpetrator's position in the social division of labour refer to the fact that the offence was committed in connection with economic activity, the motive expresses that the offence was committed for obtaining economic benefits.

Viewing the mentioned criteria we find two distinguishable groups of social phenomenon: one of them may be called that of economic crimes and the other as that of crimes committed in the course of economic activity.

The offences that may be called offences committed in the course of economic activity, are offences perpetrated in the course of either legal or illegal economic activity.¹⁰⁵ If the criterion of the classification is the economic activity, such offences will be classifiable among offences committed in the course of economic activity as violate interests of not an economic nature, like the environment or human life or bodily integrity.¹⁰⁶ Injuring the life or health of workers and consumers may be

¹⁰⁵ See item I in Chapter I of the present volume concerning Träskman's classification of economic crime.

¹⁰⁶ Offences injurious to the environment and the ones injurious to labour safety are considered to be part of economic crime by Jastrebov, V. B. (Cf. "Prestupleniya soversaemye v narodnom hoziaistvo, kak kriminologicheskaya kategoriya", in *Prestupleniya* . . . , p. 258.)

regarded as such injury.¹⁰⁷ However, crime related to economic activity embraces such a broad sphere of social phenomena that it would be difficult to recognize common morphological, etiological and prophylactic traits in it. There are so many kinds of offence which may be committed in connection with economic activity that their joint criminological study seems aimless. Consequently, when crime related to economic activity is studied in criminology, a selection has to be made within this group of phenomenon. The selection will be a meaningful one, if we take another criterion in addition to economic activity as a form of social activity, for example we take the causation of injury to economic interests. The social phenomenon selected by the joint use of the two criteria may be called economic crime. Economic crime in this sense is not a precisely defined concept either. However, we believe, no precise definition is needed since further selection is necessary even within that phenomenon so that we could find common criminogenic factors or prophylactic solutions.

The scientific concept of economic crime as a generic concept may serve, at most, as a means with the use of which we can summarize the various criminogenic factors and prophylactic methods that criminology recognized in the course of the studies of the phenomenon forming the part of the whole. Contrary to the concept of economic offences which may be defined in the discipline of criminal law with general validity, we consider the criminological concept of economic crime to be a concept expressing different groups of social phenomena depending on place and time.

¹⁰⁷ Criminal proceedings were initiated against the maker of an automobile for manslaughter when an accident resulted in a persons' death. This case is discussed by Ottley in the sphere of economic crime. (*Op. cit.*, 146.)

Appendix

Relevant sections of Act IV of 1978 on the Criminal Code

Chapter XVII.—Offences against the economy

Title I—Offences violating obligations of economic activity

Breach of obligation related to economic activity

Section 287. /1/ A person who violates his duty laid down in a statute or in the disposition of the entitled to issue such a statute, concerning the production, use, marketing, reporting, making available, keeping in stock or handling of products, or produces and by this, even if through negligence, violates the interests of the national economy, commits a misdemeanour and shall be punished with deprivation of liberty up to two years.

/2/ The punishment is deprivation of liberty up to five years for a felony if the offence causes detriment to the national economy.

Misleading the organs of the national economy

Section 288. /1/ A person who, with the intention of procuring an unlawful economic advantage, misleads an organ of the national economy competent to make decisions, and causes a significant detriment by doing so, commits a misdemeanour and shall be punished with deprivation of liberty up to two years.

/2/ The punishment is deprivation of liberty up to five years for a felony if the offence causes detriment to the national economy.

Frustration of supervision of economic activity

Section 289. A person who entirely or partially frustrates the supervision of economic activity by a regular omission of keeping records of accounting as prescribed by a statute, or by the disposition of an organ authorized to issue such a statute, or in any other way, commits a misdemeanour and shall be punished with deprivation of liberty up to one year, or with reformatory and educative labour, or with a fine.

Infringing discipline of investments

Section 290. /1/ A person who, by violating the obligations or prohibitions provided in statutes governing investments: /a/ uses state funds authorized for a given investment for other purpose than the one set; /b/ implements an investment plan with funds other than those allotted to it—and by this, significantly injures the interests

attached to the order of investments, commits a misdemeanour and shall be punished with deprivation of liberty up to two years.

/2/ The punishment is deprivation of liberty up to five years for a felony if the offence causes detriment to the national economy.

Infringing financial discipline

Section 291. /1/ A person who, by violating the obligation or prohibition provided in statutes governing the credit system or money circulation: /a/ grants, or avails himself of credit, /b/ uses a credit granted for a definite purpose for another end, and, by this, significantly injures the interests attached to the order of the credit system or money circulation, commits a felony and shall be punished with deprivation of liberty up to two years.

/2/ The punishment is deprivation of liberty up to five years for a felony, where the offence produces detriment to the national economy.

Putting on market articles of bad quality

Section 292. /1/ An employee having a managerial position in an economic organization who takes measures so that articles of bad quality of a significant quantity or value are sold, released into use, or distributed as goods of good quality, commits a felony and shall be punished with deprivation of liberty up to three years.

/2/ A person who commits the offence through negligence shall be punished for a misdemeanour with deprivation of liberty up to one year, or with reformatory and educative labour, or with a fine.

Section 293. A person who infringes the rules for the establishment of the quality of products and, by this, allows the sale, release or marketing of articles of bad quality, of a significant quantity or value, as being of a better class than they are in reality, commits a felony and shall be punished with deprivation of liberty up to three years.

Section 294. /1/ A product falling under the specifications of a Hungarian standard is of bad quality if it fails to meet even the lowest requirements specified in the standard, or, where departure from standard specifications is permissible, it fails to meet the lowest requirements stipulated in the agreement of the parties.

/2/ If in a foreign trade transaction, the quality of the product is established on a basis other than a Hungarian standard, the article is deemed to be of bad quality when it does not meet the stipulations of the contract and, for this reason, it is unfit for fulfilment, or is fit for this only at the price of significant detriment. /3/ In addition to the cases defined in Paras /1/ and /2/, a product is of bad quality if it is unfit for proper use, or its usefulness is significantly diminished.

False certification of quality

Section 295. /1/ A person who, in a certificate of quality, verifies untrue data in respect of the quality of a product of significant quantity or value, commits a felony and shall be punished with deprivation of liberty up to three years.

/2/ A person who commits the offence through negligence shall be punished for a misdemeanour with deprivation of liberty up to one year, or with reformatory and educative labour, or with a fine.

Use of false mark of products

Section 296. A person who puts on market, or takes measures for marketing, products of significant quantity under a mark representing qualities the product does not have, unless the act constitutes a graver offence, shall be punished with deprivation of liberty up to three years for a felony.

Unauthorized foreign trade activity

Section 297. /1/ A person who carries on foreign trade activity without proper authorization, commits a misdemeanour and shall be punished with deprivation of liberty up to two years.

/2/ The punishment is deprivation of liberty up to five years for a felony if the offence causes detriment to the national economy.

Foreign trade activity without permit

Section 298. /1/ The person who even if he or she is authorized to carry on foreign trade activities enters into such a foreign trade activity injuring thereby the interests of foreign trade for which a special permit is required and he or she has not received one, commits a misdemeanour and shall be punished with deprivation of liberty up to one year, or with reformatory and educative labour, or with a fine.

/2/ The punishment is deprivation of liberty up to three years for a felony if the offence causes detriment to the national economy.

Title II—Offences against the order of economy

Profiteering

Section 229. /1/ A person who: /a/ carries on commercial activity, or runs a commercial enterprise without a licence, /b/ carries on economically unjustified intermediating trade or profiteers with commodities in any other ways fit for inflating prices, commits a misdemeanour and shall be punished with deprivation of liberty up to two years.

/2/ The punishment is deprivation of liberty up to five years for a felony if speculation is committed: /a/ as a trade; /b/ in a criminal alliance; /c/ involving commodities of a significant quantity or value; /d/ in connection with the violation of currency regulations (Section 309, para 1), with smuggling or receiving smuggled commodities (Section 312, para 1); /e/ camouflaged as a lawful operation of an economic organization.

/3/ The punishment is deprivation of liberty from two to eight years if the offence causes detriment to the national economy.

Section 300. Whoever lends money as a trade commits a felony and shall be punished with deprivation of liberty up to three years.

Inflating prices

Section 301. /1/ A person who: /a/ demands, stipulates or accepts a price higher than the officially fixed one for a particular commodity or otherwise obligatory for him; /b/ in the absence of an officially fixed price, demands a price for, or maintains the price of, commodities in a way that the selling price includes unfair profit—commits a misdemeanour and shall be punished with deprivation of liberty up to two years.

/2/ The punishment is deprivation of liberty up to five years for a felony if the inflating of prices is committed: /a/ as a trade; /b/ in a criminal alliance; /c/ involving a considerable quantity of commodities; /d/ with the purpose of making profit.

/3/ The punishment is deprivation of liberty from two to eight years if the offence causes detriment to the national economy.

/4/ A person who commits the offence through negligence shall be punished for misdemeanour with a fine.

Section 302. /1/ The act of a person asking, stipulating or accepting a price officially fixed for a commodity of a quality superior to that of the one in question, equally constitutes inflating prices as defined in Section 301, para /1/, clause /a/.

/2/ Section 301, para /1/, clause /b/ does not apply to a person who does not exceed the directive price, fixed or approved officially.

Endangering public supplies

Section 303. /1/ A person who, by injuring the interests of public supplies: /a/ destroys, renders unfit for use, hides, conceals or uses products in his handling, in spite of prohibition by a statute or contrary to the rules of proper economic management, /b/ acquires products in excess of his needs and, by this, makes it considerably difficult for others to procure them, /c/ obtains a licence for the acquisition, putting on market or transport of products by deception, or profiteers with such a licence, commits a misdemeanour and shall be punished with deprivation of liberty up to two years.

/2/ The punishment is deprivation of liberty up to five years for a felony if the offence involves products of a significant quantity or value.

/3/ A person who commits the offence through negligence shall be punished for a misdemeanour with a fine.

Title III—Money and stamp counterfeiting

Money counterfeiting

Section 304. /1/ A person who: /a/ imitates or falsely alters money in current tender with the purpose of putting it into circulation, /b/ acquires counterfeit or forged money with the purpose of putting it into circulation, /c/ puts counterfeit or forged money into circulation, commits a felony and shall be punished with deprivation of liberty from two to eight years.

/2/ The punishment is deprivation of liberty from five to ten years if counterfeiting money is committed: /a/ in a criminal alliance, /b/ involving money of considerable amount or value.

/3/ The punishment is deprivation of liberty up to five years if the object is small coin, or when the quantity or value of the forged money is not significant.

/4/ A person who commits preparations for money counterfeiting shall be punished with deprivation of liberty up to one year for a misdemeanour.

/5/ In the case of counterfeiting money, confiscation of property may be inflicted as a supplementary punishment.

Section 305. For the application of Section 304, /a/ such alteration of money withdrawn from circulation as makes it appear to be money in current tender is considered to be imitation of current money, /b/ the application or removal of a mark that serves for indicating that the money is valid in a certain country only, as well as the reduction of the noble metal content of coins, are likewise considered as being falsely altering of money.

Uttering counterfeit money

Section 306. /1/ A person who puts counterfeit or forged money, acquired by him lawfully as being genuine, into circulation, commits a misdemeanour and shall be punished with deprivation of liberty up to one year, or with reformatory and educative labour, or with a fine.

/2/ The punishment is deprivation of liberty up to three years for a felony if the offence involves money of considerable amount or value.

Counterfeiting stamps

Section 307. /1/ A person who, with the purpose of putting into circulation or use: /a/ imitates or falsely alters stamps, /b/ acquires forged or counterfeit stamps, commits a felony and shall be punished with deprivation of liberty up to three years.

/2/ A person who puts counterfeit or forged or cancelled stamps into circulation or uses them as genuine, or as unused, shall be punished in accordance with para /1/.

/3/ The punishment is deprivation of liberty up to five years if counterfeiting of stamps is committed: /a/ in a criminal alliance, /b/ for large quantity or value of stamps.

/4/ The punishment is deprivation of liberty up to one year, or reformatory and educative labour, or a fine for a misdemeanour, if the quantity or value of the stamps counterfeited, forged or reused is not significant.

Section 308. /1/ For the application of Section 307, putting stamps into circulation also means circulation for stamp collecting, and counterfeiting also includes the unlawful alteration of the stamp for the purposes of collecting.

/3/ Foreign stamps are under the same protection as those of Hungary.

Title IV—Financial offences

Offences against currency regulations

Section 309. /1/ A person who violates an obligation or an interdiction defined by statutes on planned currency regulations, if the offence involves a lesser value, shall be punished for a misdemeanour with deprivation of liberty up to one year, or with reformatory and educative labour, or with a fine.

/2/ The punishment is deprivation of liberty up to three years for a felony if the offence is committed: /a/ as a trade, /b/ in a criminal alliance, /c/ involving considerable value, /d/ involving a museum piece.

/3/ The punishment is deprivation of liberty from one to five years for a felony if the offence is committed: /a/ involving a significant value, /b/ as a trade, or in a criminal alliance, involving considerable value.

/4/ The punishment is deprivation of liberty from two to eight years if the offence is committed: /a/ involving a particularly great value, /b/ as a trade, or in a criminal alliance, for a significant value.

/5/ A person who commits the offence involving significant value through negligence shall be punished for a misdemeanour with a fine.

Tax evasion

Section 310. /1/ A person who presents untruthful facts (data) of importance with respect to his tax assessment to the authority, or conceals such facts (data) and, by this or other misleading conduct, reduces revenue from taxation, commits a misdemeanour and shall be punished with deprivation of liberty up to one year, or with reformatory and educative labour, or with a fine.

/2/ The punishment is deprivation of liberty up to three years for a felony if, in consequence of the offence, revenue from taxation decreases significantly.

Abuse of revenue

Section 311. /1/ A person who produces, without fulfilling the conditions defined in the statute or without a licence, a product upon which revenue is imposed or withdraws such a product from revenue check, or, for procuring profit, requires a product withdrawn by another person, or hides it or co-operates in its sale, commits a misdemeanour and shall be punished with deprivation of liberty up to one year, or with reformatory and educative labour, or with a fine.

/2/ The punishment is deprivation of liberty up to three years for a felony if, in consequence of the offence, the revenue from taxation decreases significantly.

Smuggling and receiving smuggled commodities

Section 312. /1/ A person who: /a/ withdraws dutiable commodities from customs examination, or makes an untrue declaration to the authority concerning the conditions important with respect to customs (smuggling), /b/ acquires or hides smuggled dutiable commodities or co-operates in their sales (receiving smuggled commodities), commits a misdemeanour and shall be punished with deprivation of liberty up to one year, or with reformatory and educative labour, or with a fine.

/2/ The punishment is deprivation of liberty up to three years for a felony if the offence is committed /a/ as a trade, /b/ in a criminal alliance, /c/ involving dutiable commodities of significant value, /d/ involving a museum piece.

/3/ The punishment is deprivation of liberty up to five years if the offence is committed as a trade, or in a criminal alliance and involving dutiable commodities of significant value.

Cheque without coverage

Section 313. A person who issues or puts into circulation a cheque without coverage, unless the act constitutes a graver offence, commits a misdemeanour and shall be punished with deprivation of liberty up to one year, or with reformatory and educative labour, or with a fine.

Title V—Miscellaneous dispositions

Confiscation

Section 314. /1/ In case of violation of obligation of management, profiteering, inflating prices, endangering public supplies, offence against the currency regulations and abuse of revenue, the thing involved in the offence, if it is the property of the perpetrator, shall be confiscated.

/2/ Confiscation may be applied also when the thing is not the property of the perpetrator, but its owner had a previous knowledge of the offence.

/3/ In case of smuggling and receiving smuggled goods, the articles forming the object of the offence shall be confiscated, except if they are the property of a State organ or of a co-operative.

/4/ Instead of confiscation the obligation of paying the value substituting for the object may be imposed if confiscation would inflict an inequitable detriment upon the offender, out of proportion with the gravity of the offence.

/5/ Confiscation, or the obligation of paying the value substituting for the object instead, may entirely or partially be omitted if it would inflict an inequitable detriment on the perpetrator, out of proportion with the gravity of the offence.

Explanatory provision

Section 315. In the application of this Chapter the term commodity means also industrial and other services falling within the scope of economy, and price means any consideration of property value due for the commodity (service).

From Chapter XVIII.—Offences against property

Malversation

Section 319. /1/ A person who, being entrusted with the management of another person's property causes, by violating his duty issuing from his commission, detriment to property, commits malversation.

/2/ The punishment is deprivation of liberty up to one year for a misdemeanour, or reformatory and educative labour, or a fine, if malversation causes a lesser detriment to property.

/3/ The punishment for a felony is: /a/ deprivation of liberty up to three years if malversation causes a considerable detriment to property, /b/ deprivation of liberty

from one to five years if malversation causes a significant detriment to property, /c/ deprivation of liberty from two to eight years if malversation causes a particularly great detriment to property.

Negligent management

Section 320. /1/ A person who, being entrusted with the management or supervision of social property, causes detriment to property by infringing or neglecting his duty issuing from his commission, and through negligence, commits a misdemeanour and shall be punished with deprivation of liberty up to one year, or with reformatory and educative labour, or with a fine.

/2/ The punishment is deprivation of liberty up to three years if negligent management produces particularly great detriment to property.

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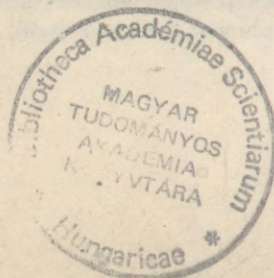
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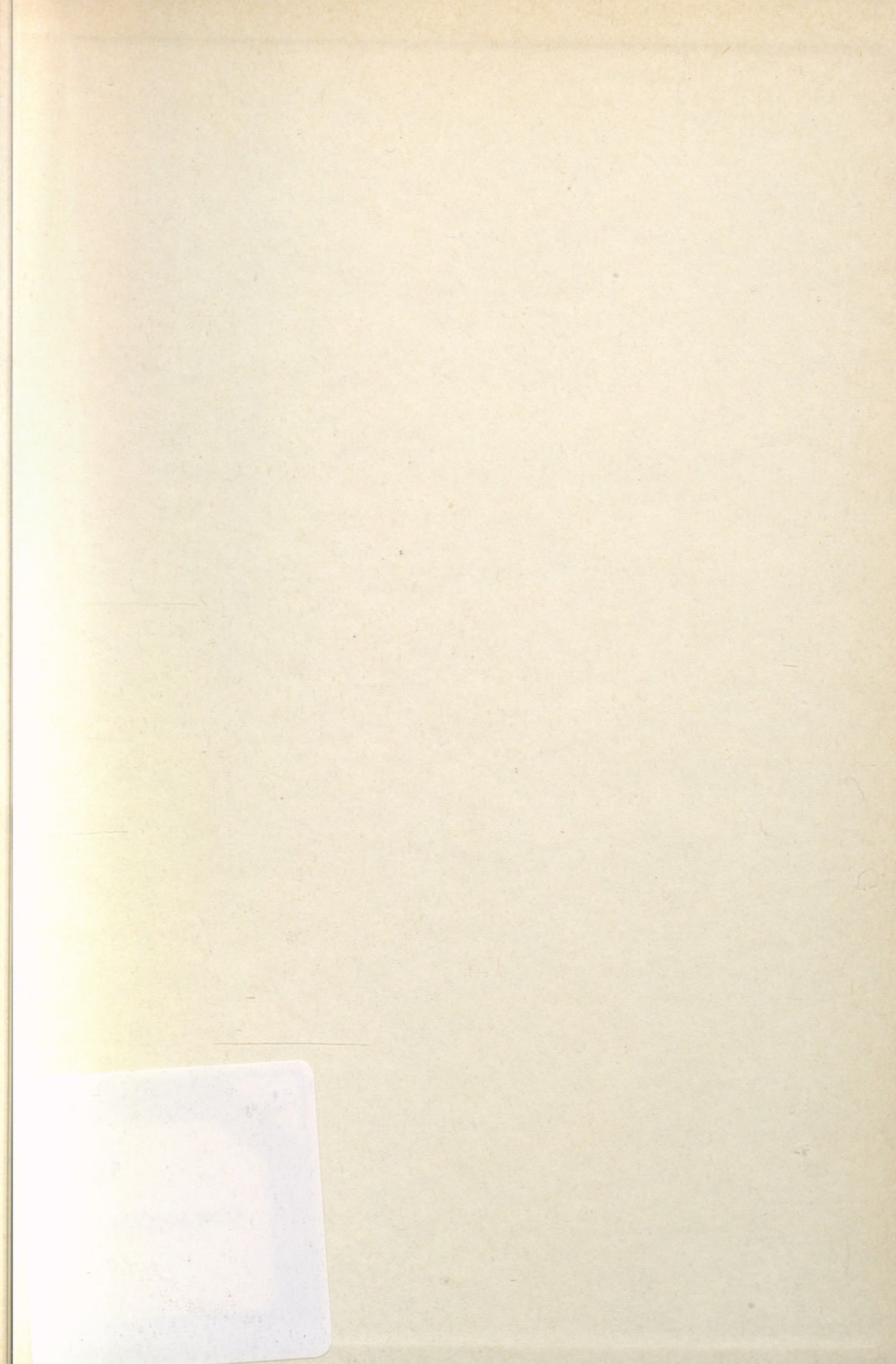
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In the course of analysing the part played by criminal law amidst the changed circumstances of economic management in Hungary, the author presents a critical assessment of the positions adopted by criminal science in the various socialist countries. The book, which utilizes a new, comparative, economic-political approach, is the first of its kind in the literature.

The main issues—economic policy and criminal policy as well as the protected interest of society—are examined through an assessment of the lines taken in advanced economies of both capitalist and socialist States. Looking at managerial methods in enterprises—methods which are increasingly geared towards devolved and independent decision-taking—proves exactly how far the taking of risks may extend from the point of view of criminal liability. The notion of economic offences and the notion of offences against public property are dealt with in depth, as is the way in which the criminal law organs distinguish between them.

This volume will interest both theoreticians and practical workers in the field. It is emphasized that the work is unlikely to appeal to the general reader.