

AUTHOR'S REVIEW

Since people started living together, human life has been full of economic relations. Production and the distribution system of produced goods have determined the “troubled” or “trouble-free” medium of human co-operation from the beginning. The establishment of an untroubled distribution system has been a demand since people started living together, but its institutionalised form obviously assumes a certain level of society development. Examining the distribution system from the starting forms of people’s living together to the developed social structure, we can see in the connection system of economy and law the development of institution systems getting from public property to private property and then using them jointly, wishing to provide the protection of economy’s regular functioning. Thus, the demand for the protection of economy is not just the 21st-century people’s incontestable right, but it has been a kind of necessity since the beginning of production and the distribution of produced goods, which economic conditions got to institutional protection from the state of being embedded in family and national conditions.

From the system change of 1989 Hungary endeavoured to enter into partnership economically, culturally and politically as soon as possible with Western Europe, within this the European Economic Area, and the European Union that determines its functioning. The fundamental condition of joining the international institution system was to bring Hungary’s economic, social, political and legal system into consonance with the European Union member states’ uniform economic, political and legal norms. This change and demand have meant a great expense both to the state and its citizens. In the altered political and economic system numerous problems have occurred showing asynchrony in the functioning of the society’s legal and institutional background, as well as their compliance with each other. From the point of view of our subject asynchrony means that the legal regulation and the institution system applying it are not in compliance with each other. This means on the one hand the legal background’s technical and content imperfections, on the other hand that the organisation applying it is structurally unsuitable for the accurate implementation of the statutes. And imperfections coming from asynchrony induce the appearance and effectiveness of social phenomena menacing economy. Therefore, the social and professional interest for economy protection has significantly increased since the system change.

Interest was enhanced further by the fact that as a consequence of the accession to the European Union – owing to the accelerated changes – the demand for the approaching of the protection's new legal interpretation, appearing as a result of the economic and social processes' interconnection and the social phenomena menacing economy (economic crime), is especially conspicuous.

In favour of this, such a new examining method is needed as the comparative analysis of protection and control systems on the boundary of law and organisation sociology, where the two disciplines' approaching speciality helps questioning, research and analysis, the complex solution of this problem.

In my judgement, this double approach permits of the economy protection system's functioning by the knowledge of the economic participants and the identities lying in the economy protection institutions' state of being socially embedded.

As indicated by the collocation, economy protection consists of two basic categories: economy and protection. The specification of economy covers a socially accepted definition: it is decisively such a human and social activity that materialises by producing, allotting, distributing and consuming tangible assets.

However, when we define the concept of protection, the starting point shall be the terminology of security. Under security we mean a kind of demand or necessity for the regular functioning of economy from the point of view of economy protection. And the realisation of security assumes activity. Therefore, in this regard, protection is nothing else but an activity aiming to satisfy a certain kind of necessity defined by the demand of security, serving to preclude or prevent the menace to economy. Thus, the aim of economy protection is to ensure and protect the functioning of economy on the grounds of the statutes, as well as to decrease the threat. In a wider sense, economy protection means the ensuring of the statutory and institutional system necessary for the prevention of economic crime that offends economy and economic environment, as well as for the control of the economic processes; in a narrower sense, it means the exploration and sanctioning of unlawful conduct implemented in the course of or closely connected with economy.

The institutional system of economy protection consists of the society's business units appearing in the market, and the state's administrative bodies.

The purpose of the thesis is to examine and analyse the legal theoretical establishment of economy protection by the methods of legal theoretical and legal historical research.

It empirically examines the effects of the organisational specialities of the institution system that is related to economy protection on the functioning of the institution. It also presents and analyses economic crime as social phenomena menacing economy.

At the beginning of the research I formulated the following hypotheses:

Since people started living together, there has been a demand for the establishment and effective operation of an institution system that is to ensure the protection of the regular functioning of economy.

A significant part of the differences in the pace and character of the development of the legal and institutional background of economy protection follows from the utilisation of such institutional means that had no equivalent or just barely before the system change, and the elapsed period was also unsuccessful in establishing the legal and institutional synchrony of economic protection.

As a consequence of a radical social and economic environment change and the asynchrony of the legal and institutional system, economic crime has appeared as a danger directly menacing the society.

The protection of economy is a security matter, substantially influencing the citizens' sense of security, the confidence in the state institution systems, the public security.

The research's hypotheses contain an assumption according to which the relation of economy, law and society fundamentally influences the functioning of the economy protection system, in which the state plays an important role in respect of both the wider and the narrower interpretation of economy protection.

The research's fundamental method was the studying of works published in the domain of economy, law and society, discussing the multidisciplinary field's key problems. The research work included the empirical examination of the institution system related to economy protection, the analysis of the given data, as well as the statistical and graphical analysis of the composition and the shape of economic crimes. The dissertation did not avoid the multidisciplinary approach of the partial issues. For instance, the factual organisational analysis of the economy protecting institution system made the utilisation of the methodology of organisation-sociological analysis necessary, while the exploration of the connections of economic law, the analysis of civil, economic and financial law and economic crime necessitated the interpretation of criminal substantive and procedural laws.

I divided the dissertation into the following parts:

After Part I, the theoretical questions of the relationships of economy and law, I introduce the main features of the development relating to the economic institutions' legal

regulation from the Antiquity to the birth of the united Europe's common economic policy. In this part of the dissertation I wish to back the hypothesis according to which the demand for the establishment of an institution system that would ensure the protection of the regular functioning of economy has existed since the start of the distribution of produced goods.

I introduce the institution system of economy protection in a wider sense – accepting Montesquieu's separation of powers – in the second part of the dissertation. The general description is followed by the examination and analysis of a given county duty office – emphasised within the institution system of economy protection. In this part of the dissertation I wish to back the hypothesis according to which the legal and the institutional background's compliance with each other has not materialised and shows asynchrony due to the (political, economic, legal) effect of the radical environment change taken place in Hungary. The institutions are unable to follow the legal codification being too fast because of their organisational characteristics, they do not fill the economy protective function in a wider sense in the society.

In the third part of the treatise I introduce economic crime as a phenomenon menacing society, appearing due to the effect of environment change, and the policing institution system created for its reconnaissance, the effectiveness of which I examine by the method of factual statistical analysis. In this part of the dissertation I wish to back the hypothesis according to which economic crime means danger to the society through economy, and economy protection is a security matter.

On the grounds of studying the technical literature I found that economy, law and society are phenomena affecting each other. As a norm system, law is the aggregate of coexistence and co-operation rules concerning various areas of life, legitimising forms of human behaviour and institution operations.

Although the regulation of the production's place, means and entitlement above its result related to economic life already in the ancient, the Antique and the Mediaeval law, this remained the part of domestic law for a long time. Commercial law developed from these legal acts of the Antiquity and the Middle Ages, and the rights of merchants. Private interest became separated from public interest. This became complete during the period of the Antique law, and we count the distinction between public and private law constituting the basis of the present legal system articulation from that time. It was public law that loosed due to the compelling effect of economic market interests, and opened private law security provision concerning the so-called strange merchants' market conditions of the flow of goods.

Legal sphere was set by the market borderlines, law surrendered to the demand of the market, and this way they mutually formed each other affecting each other from the two fields.

This was the unnoticed way of how the intermediary, multidisciplinary combined technical law between public and private law, the commercial law, today economic law, developed still unconsciously in jurisprudence, at the end of the period of the ancient law and at the beginning of the Antique law. Within public law, a regulation started to develop simultaneously, taking care of the undisturbed course of regular marketing.

The predecessors of the present economy protecting institution system, market supervision and market surveillance, appeared already in the early Antique law. For public authority soon realised that a major stabilising factor of its controlling position is the smooth ensuring of economic life, food supply at that time. In consequence of it, economy supervisory administration appeared besides public order administration, establishing a specific branch of public law, administrative law which split on into various specialities. Therefore, in favour of the smooth ensuring of economic processes occurring as a social demand, the state gradually established commercial-economic law, trying to make it effective in the past and nowadays as well through its economy supervisory institutions.

The analysis of the branches of state power that have significance in economy governance and control, underlined in Part II, shows perfectly that the organisations implementing the control activity of the legislative and the executive power act as functional organisations in accordance with the organisational structure developed by a tradition of several decades. The form of functional organisation can be considered as one of the oldest structural solutions.

With respect to the character of the structure, a typical example of the one-dimensional and multi-dimensional organisations is where the primary division of labour takes place according to the organisational functions.

In case of functional organisations, it is the centralisation of decision making powers that mainly characterises the scopes of authority, the major part of organisation strategy and operative decision making powers belongs to the upper management.

A further characteristic of functional organisations is the effort for having powerful regulation in case of both the division of labour and the establishment of authorities. In case of the operation of a functional organisation, vertical coordination plays the main role; the structure of the organisation gives less chance for horizontal coordination.

The need of horizontal coordination can be satisfied for the most part only by upper management activity or the expansion of technocratic-type means of coordination, as well as the utilisation of additional structural means of coordination.

We can state as a general approach that functional organisations have numerous advantages in case they perform a relatively easily perspicuous activity in stable surroundings. However, the system change meant a radical change in the external environment of the organisations, continuously necessitating the flexibility of the organisations. At the same time we see that the organisational structure survived in spite of the political system change, and the basic structure of the economy governing and controlling institution system, established already in the 80's, before the system change, was attempted to be adapted to the new civil conditions developing it by smaller modifications.

This showed up, for instance, in measures aiming towards the suppression of co-operatives, which was both politically intended and in contradiction with economic interests, in managed bankruptcy, liquidation and transformation proceedings promoting the suppression, in the privatisation's bureaucratic completion contradicting with economic aspects, as well as in restarting the over-regulating process of economy. A significant reason for all these was the lack of constitutional settlement concerning economy, namely, economic constitution.

Its significance is given by that on the one hand it would protect the stabilisation of the institution system of economy; on the other hand it would mean legal certainty in connection with the activity of the participants of economy. In the lack of economic constitution, in the compound dynamic environment an organic organisation is needed that is suitable for handling uncertainty and ensuring the protection of economy, and where the management style based on employee participation, the decentralisation of decision making and the utilisation of mechanisms ensuring the coordination of organisational units come to the front.

By the organisational analysis of the Duty Office I proved that the given structure is able to comply with its tasks required by the law in accordance with the deadlines defined in the procedural statutes not even with high efficiency. Daily coordination with other organs (land office), citizen organisation control in connection with imposing activity (economy protecting activity) and on-site raid control of appraisers in order to avoid corruption (internal control) are made impossible for the organisation by the difficulties in complying with the basic activity at such a level. Therefore the examination shows well that the basic activity ensuring the organisation's efficiency is not performed on the grounds of the statutes. The organisation is unable to complete the purpose of its functioning, thus, to collect taxes before the deadline

regulated by the statute, and to complete its controlling tasks serving as the base of imposition.

The staff of the office unequivocally considers the asynchrony of the legal background and the organisational structure as its reason. And asynchrony provides an opportunity in the lack of economy protecting process completion on the grounds of the statutes (duty payment regulation, analysis composing duty base, duty collection) for economic crime, a social phenomenon directly menacing economy, to appear. Therefore, well-grounded is the opinion according to which instead of the functional, centralised management style, the management style based on employee participation, the decentralisation of decision making and the utilisation of mechanisms ensuring the coordination of organisational units are reasonable.

After studying available literature and the analyses I organised into tables and charts, I was able to ascertain that economic and business administration crimes as well as the people that commit them are significant quality factors that affect the general criminal situation. Also, depending on whether the legal and institutional backgrounds of business administration are synchronised or not, such crimes may have a large and more lasting impact on public safety and the citizens' sense of security, along with their trust in jurisdiction and authorities, thus causing severe damage to the national economy, legal entities, organisations without a legal entity and natural entities. Breaches of law committed in connection with business administration are not solely economic crimes; they also constitute crimes against property. Committing and disguise of the deeds are usually made possible by a position established by means of corruption. Breaches of law are most commonly seen in the fields of financial and capital market transactions, insurance, commerce, tax and social security, privatisation, state and EU subsidies, rules of accountancy, environment protection and nature conservation, IT systems, copyright law and authors' rights. A portion of economic crimes are organised and reach across country borders, with particular elements committed in various countries. With regard to crimes related to business administration, losses, damages, financial detriments and lost incomes are of extremely high levels, seriously burdening the national economy. A significant number of business organisations involved in business administration crimes also perform illegal operations. Some perpetrators attempt to acquire a position in public administration bodies that make economic decisions, exercise supervision or authority duties, thus contributing to the enhancement of the negative asynchrony of the legal background and the framework of material law affecting public institutions.

Such crimes are typically planned and organised. The primary objective of economy protection, therefore, is for the police to perform its investigative activities without intervening in economic and market trends, while reacting quickly to adverse economic events. To this end, it is essential to continuously analyse and evaluate the situation of economic crimes, and to monitor economic changes that take place in society so that the causes and circumstances that make it possible for crimes to be committed may be revealed and the appropriate crime prevention measures may be taken in time.

The section of the study that deals with the history of economy protection bodies clearly shows that once economy protection units became independent within the parent organisations, the rate of exposure rose significantly with regard to economic crimes. There is an enormous latency in this field. This trend is obviously due to the strengthened investigative operations of the authorities rather than an increasing activity on the part of criminals. All initiatives and legal authorisations that assist the more effective exposure and sanctioning of unlawful actions performed in the course of or closely related to business administration through establishing competent investigative authorities are to be welcomed. Historically, such bodies included the Criminal Directorate of the Tax Authority and its regional organisations that operated in addition to the economic protection units of the police. They had an indubitable impact on tax and social security fraud and other related crimes due to their effective actions and preventive effect.

The above facts underline that, especially considering the need for specialist knowledge related to particular fields of economy, investigative organisations other than the police may also play a necessary and active role with regard to economy protection. This must obviously be done in a manner that enables integration into the existing legal and institutional framework.

Exceptionally fast and dynamic changes aside, the necessary social consciousness, commercial culture, legal knowledge or staff of experts (commercial lawyers, commercial judges and public notaries, auditors, asset evaluators, economy protection detectives, etc.) are still lacking, similarly to the required organisational structure (computerised company registry, company balance sheet preparation and accounting, organisations protecting credit institutes and customers, economy protection organisations). Hence the numerous anomalies, misfeasance and other negative effects that manifest in addition to positive trends in

connection with the creation, application and operation of the laws and institutional framework for the change in the economic system.

The debate over whether such abuses are to be merely acknowledged temporarily, and background conditions are to be continuously changed to minimise their adverse effects (“liberal” point of view), or immediate and firm action is to be taken against the anomalies by means of administrative state measures, and regulations are to be made stricter (“etatist” line) first broke out in 1989, and it has not been concluded ever since. Policy-makers seem to amalgamate these two directions in the newly created laws.

As for the current situation, 16 years of development produced economic laws the quantity of which is approximately suitable, but the quality of which clearly falls short of the requirements, while the degree of ensuring legality by means of the application of laws and the structure of the institutional background are also unsatisfactory.

This means that the concepts underlying economic laws are not matured enough, a number of internal contradictions still exist, and the composition of laws is not ideal from a purely technical point of view, either. There are many codification errors (structural mistakes, faulty wording, etc.), laws are not suitably harmonised with each other, and contain many a mutually contradictory regulation. The current legal framework is uneven, meaning that certain areas are by far more developed than others, nor is the legal framework stable, since new laws are made and modified to an unreasonable extent for short-term purposes, mostly due to day-to-day political considerations (impatience, aggressive lobbying, etc.).

The relatively low level of quality is a typical characteristic of the transitory period, an objective result of the not yet matured social, economic and political circumstances and the requirement to make laws in an accelerated manner.

Economic law-making in Hungary has so far been necessarily advancing more rapidly than the development of the institutional framework (so-called advance law-making, program-defining laws). New institutions were introduced on several occasions without the required personnel and organisational preconditions in place (e.g. company court supervision over all business organisations with the actual court hardly operational; application of an accounting act that follows the Western pattern without a staff of skilled auditors and asset evaluators; enacting a stock exchange law without any suitable stock exchange players, etc.). This naturally led to constant clashes between laws and practices, and many opportunities for economic crimes arose. This asynchrony, however, must be resolved through the elimination

of the lag of the institutional framework rather than by “readjusting” too advanced laws and reducing market elements to alleviate the pressure from operational errors (faulty practices).

Establishing the institutional background for economy protection, however, means more than merely providing a legal basis. More appropriate personnel and organisational conditions are to be ensured in the field of modern law application. The reforms launched by several organisations (jurisdiction, public security, etc.), lasting for several years, are also aimed at this objective.

Active and creative law application is a must, i.e. an institutional framework which is based on the relevant laws, assists the natural operation of the economy, is capable of efficiently applying laws and is free of redundancies must be established. The overregulated, so-called under-generated method of law-making is not appropriate. Economic codification must resist pressure towards causal law-making.

Laws that indulge in details and over-regulate practically every field will make the work of those that apply laws and those who work in the protective system more convenient, but they also make them prone to disclaim responsibility and hamper the functionality of actual application. Market economies are best served by “general”, “high-level” laws that do not unnecessarily limit the freedom of enterprises. These can be adapted by actors in economy protection to suit particular cases with an eye on the various factors that need to be considered.

The decision-making processes of economy protection organisations are to be made quicker and more reliable, along with the implementation of those decisions, in an effort to prevent corruption.

In order to ensure the natural (market-driven) operation of the economy, a number of different approaches and legal theories may be assumed in the course of defining the required institutional background, but the cross-border expansion of economy protection (internationalisation) is a reality of our days in any case.

The objective of the Rome Convention, namely an increasingly close cooperation of European nations, affected economy first due to the European integration process (free trade, prohibition of discriminative internal taxation – i.e. the tax levied upon foreign products may not be higher than the one that applies to home products). Hence the requirement to ensure economy protection.

The requirement of security is apparent among manufacturers, vendors and consumers alike. According to the complex interpretation of security, the legal regulation of business activities and the lawful operation of economy control are essential tasks of the institutional

background, and also serve as a kind of framework for business activities and the operation of the underlying institutional system. With the increasing internationalisation of business activities, a more efficient and expansive international regulation of economy protection is called for. International guarantees that ensure the economic safety of international market actors and the protection of the interests of both manufacturers and consumers are required. Considering that market actors are individuals, individual security is to be put more emphasis on, along with economic and social security. An effort is to be made to ensure the harmonic operation of the legal and organisational systems and to synchronise the two. To this end, a new functional architecture should be drawn up for the protection sphere, defining the competences and organisational framework of each body in detail.

The institutional background of economy protection is to be integrated into this system, thus creating the uniform legal basis and meeting the preconditions of its operation and cooperation.

In addition to the defining the legal regulations that govern the economy, the coming years should also see the reform of bodies that apply laws in the field of economy protection, implemented along the methodology described above.

As means towards modernisation and the enhancement of efficiency, I make the following recommendations: the missing primary market economy acts and the remaining laws governing particular branches of industry are to be made. Immoderate state intervention is to be reduced, and the autonomy of economic actors, namely private entrepreneurs and business organisations needs to be increased in line with the market economy approach. It is also essential to eliminate the internal and mutual contradictions in and between laws and other legal regulations, and to implement the European directives for law harmonisation. The institutional background of economy protection is to be restructured immediately, also in compliance with the market economy approach. Shared authorities of supervision may thus be eliminated. It is necessary to ensure personnel conditions suitable for the changed legal and economic environment, to expand the circle of investigative bodies competent in the field of economy protection, and to secure the institutionalised coordination of these bodies.

It has been examined and ascertained from the conclusion drawn from a historical study of the historical relationships between economy and law that there has from the very dawn of human communities, been a social demand for a legal and institutional framework that supports the regular operating of the economy and its protection.

It has been demonstrated and verified through an analysis of a particular organisation how close the relationship between the legal and institutional backgrounds of economy

protection. It has been proven that the rate and type of development of the legal and institutional backgrounds of economy protection differ, and that since the change in the political system, the harmonisation of laws and the institutional framework has failed to be completed.

It has been concluded that the asynchrony between laws and the institutional framework is not a primary, although not the sole cause behind a social phenomenon that directly threatens economy, namely the strengthening of economic crime.

It has been proven that the protection of the economy is a security issue, and the elimination of the threats to economy that arise in the course of the production, distribution, marketing and consumption of the products of market actors has to be regulated by the operations of an institutional background set up by the state.

The most important discussion platform may be education. Within the framework of Hungarian higher education, the targeted areas may be where economic law and its history are taught – along with the history of economy protection.

Students must definitely become familiar with the relationships among economy, laws and society, as well as the legal and institutional background of economy protection. To my knowledge, no study or textbook has been made covering this field.

Another field of use for this study may be in administration, especially in supervisory bodies. The analysis guidelines introduced may be used in the course of assessing the performance and efficiency of the organisations at hand, along with their legal compliance.

Finally, the study may be made good use of at a specialist level of administration, namely during designing the organisational architecture of investigative bodies, especially considering the finding of the study that the increasing participation of economy protection units correlates with the share economic crimes within all investigated and exposed crimes.

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