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Contemporary Model of Conducting Investigation in Economic Crime Cases

(Współczesny model prowadzenia śledztwa w sprawach o przestępstwa gospodarcze)

SUMMARY

A doctoral dissertation prepared
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Taking care of observing rules of conducting correct economic transactions belongs to one of the basic obligations of the state as implied by the realization of social market economy idea. Since passing the Constitution of 2nd April 1997, this rule has been a fundament of Polish economic system and expresses the desired social order. The consequence of it is the admissibility of the state's intervention into the sphere of economic freedom justified by the necessity to satisfy certain social needs that would be impossible to achieve with totally free functioning of free market laws. The symptom of such intervention is also shaping of adequate criminal policy. The legislator, led by the need to protect current social and economic relations, creates a complex set of penal and legal prohibitions that limit citizens' freedom as regards their economic activities, which gives rise to following consequences concerning the state's obligations. As a result, it is obliged to organize a system that guarantees obeying established norms of the penal economic law. Their realization is ensured, most of all, by the introduction of procedural regulations as well as creation of enforcement organs that would promote meeting their statutory aims. The size and dynamic of development of economic criminality makes it a real threat for proper and sure economic transactions. Serious consequences of this phenomenon for all spheres of economy force its effective combatting and require construction of a model of conducting preliminary proceedings that would make it possible to effectively fight with economic crimes.

The object of the dissertation is the investigation in economic crime cases, with special emphasis put on evidence proceedings conducted as a part of it. The paper is not only dogmatic in character but attempts to present the above issues basing on practical examples. It is not, however, deprived of theoretical considerations that are a starting point for empirical research. Precise determination of criteria that differentiate economic crimes delineating borders of the present work becomes of key importance. Analysis of rich output of legal doctrine and court judgments allowed me to present juxtaposition of legal normative acts being a source of the economic penal law, which constituted a base for determining the scope of investigated prosecutor's files.

The aim of this doctoral dissertation was the creation of a currently valid model of conducting an investigation in economic crime cases. The adopted aim is a consequence of assumed hypothesis that investigations of that kind differ from other proceedings on economic crime cases so their evidence proceedings should be adapted to their characteristics. In the process of empirical verification of the hypothesis, it was necessary to solve some specific research problems. It has been established, first of all, what kind of activities are carried out by law enforcement organs during investigations of that kind of crimes and which are neglected. The solution of the first research problem is the specification of all activities as undertaken

within investigation process and aimed at solving economic crime cases. Such findings rise the need to examine sequence of investigation activities and determine the investigation stage at which they are undertaken. The solving of the third research problem required answering the question what relations and connections there are between specific activities in the course of investigation i.e. which activities should precede such activity and which should follow it and if they are a necessary condition for taking it up or if they are independent from it.

The creation of a model of conducting investigation was made in the way of applying the following research methods: dogmatic and legal one as well as historical, statistical and empirical ones. The dogmatic and legal method was used for the formulation of criteria of economic crime. The findings were made as a result of analyzing current legal regulations, court judgments and views by the representatives of law scholars, which, as a result, allowed to indicate also legal regulations referring to economic crimes. Additionally, also the historical method was applied examining also the evolution of the concept of economic crime. Its contemporary definitions are coined basing on the output of the previous law doctrine relying on no longer valid normative acts. The results of the conducted analysis became a basis for making a list of normative acts being a source of the penal economic law, which constituted the object borders of the dissertation. The statistical method was applied to carry out data analysis, both of those systematically collected by subjects, whose competences comprise solving such crimes i.e. reports by the Central Police Investigation Office or those established to fight money laundering i.e. reports by the General Inspector for Financial Information as well as data obtained as a result of one-off research ordered by the Prosecutor General. It allowed to present the size of economic criminality based on different sources.

The main research work realizing the aim of the dissertation was carried out with the use of the empirical method. It consisted in analyzing prosecutor's files concerning legal regulations contained in the present work's adopted list of economic penal law sources i.e. totally in 48 acts and concerned investigations completed in the years 1998-2014. The choice of the research time limits was dictated by the date of introducing key acts for this dissertation i.e. penal proceedings code and penal code as well as the date of taking up the empirical research (2014). It should also be mentioned that due to internal regulations making it legally possible to destroy files of completed investigations, the files of the oldest cases were no longer available. In order to gain reliable data and examine investigations of various levels of complexity, it was decided that it would be done in relation to case files conducted or supervised in units at various levels i.e. Local Prosecutor in Bydgoszcz and Regional Prosecutor's Office of Bydgoszcz-Północ in Bydgoszcz. As a result, the analysis comprised 486 investigations, 121 of which fall within the authority of the Local Prosecutor. From the analysis of statistical data

results that structure and proportions between type groups of crimes are similar on a national scale.

The construction of the dissertation is governed by the research assumption. It comprises, except the introduction, four chapters, summary containing the most important conclusions, bibliography and an annex. Chapter I was devoted to defining basic notions, most of all, the notion of an economic crime. It was dictated by the necessity to delineate object limits of the dissertation. The conducted considerations allowed to elaborate a list of economic penal law sources, and secondly determine a category of cases where investigations are conducted obligatorily. In the final part of the Chapter, subjects authorized to investigate economic crime cases were characterized. Chapter II presents a model of conducting investigation, including its determining factors such as image of contemporary economic crime and political conditioning. The scheme presents activities undertaken by law enforcement organs in the course of investigation and facilitates solving of research problems formulated at the work's beginning. It reflects the sequence of investigation activities and relations occurring between them. Chapter III discusses sources of first information on crimes, checking proceedings taken as a result of them as well as commencing and planning of investigation. Complex structure of economic crimes leads to the fact that exhausting and joint presentation of their course would be pointless. Due to that fact, Chapter IV presents a detailed analysis of evidence proceedings making a division of crimes into groups. The results of the analysis confirmed the rationale behind the model and indicated that it might be applied in the case of every economic crime.

The summary comprises the most important conclusions of the dissertation, including most of all, those concerning contemporary model of conducting investigation in economic crime cases. It presents preliminary procedures by law enforcing organs leading to immediate issuing a document on commencing an investigation, refusal to start it or start a checking procedure - in the case when held information does not justify any of the mentioned decisions. The necessity to prepare a plan of investigation immediately after its commencement was also emphasized. The complexity of case proceedings requires proper planning of activities already in their first stage and neglecting such obligation may considerably extend the investigation or contribute to overlooking a proof, and even losing it. This action influences positively on ordering initial information and allows to evaluate needs as regards collecting of evidence.

Investigations into economic crimes are differentiated by a key way of obtaining source of information. The conducted research allowed to establish that the process of collecting and protecting documents occupies a special place in the proceedings process. Knowledge obtained during their analysis creates a direction of further proceedings. According

to it, the material truth behind other evidence is verified, including especially witness' evidence, whose truthfulness must be evaluated at any time. Important role of documents in economic crime investigations results in the fact that on their basis more actual findings are made than in the case of other crimes. Alongside the protection of documents, also hearings of first witnesses are carried out. In such a way, it is revealed, among others, what additional documents should be retained. The fact of existence of internal documents of a business entity need not be known to law enforcement organs. After ordering and filing into catalogues of documents and receiving first hearing statements, a critical evaluation of investigation findings takes place as well as completing the investigation's plan. In cases of some minor importance and smaller complexity already at this moment, one may take subject matter decision and discontinue the proceedings or present accusations to the culprit and then send the case to a court. In most cases, however, some additional activities are necessary such as: preparing a specialist report, criminal analysis, demand to provide correspondence, postal packages, list of telecommunication connections and other information transfers, hearings of other witnesses or on-site inspection.

The conducted research revealed the problem of attaching excessive importance to witness testimonies. The amount of collected evidence material in the form of documents make enforcement organs replace its analysis with findings made as a results of witness hearings that are not properly evaluated as regards their reliability nor verified.

The model of conducting investigation in the presented shape is determined by many factors. In the first place, image of economic criminality and political conditioning are placed. Striving for effective investigating of economic crimes requires adapting of started investigation activities to reality, especially the size and structure of such economic criminality. The analysis of available statistical data has revealed that the number of cases concerning economic crime is constantly increasing. Ever increasing size of economic criminality and costs connected with it by the society allow to formulate a hypothesis that concentration on active combatting of it should be the authorities' obligation. The realization of this proposal could be fulfilled by organizational activities aimed at establishing such structure of the law that would enable enforcement organs to contribute to meeting their aims of fighting with this kind of crimes. Comparing of investigation results conducted by local prosecutor's offices with those conducted by regional prosecutor's offices is in favour of the offices of higher level. It should be admitted that this is a result of establishing there departments for organized crimes and therefore higher level of specialization of their prosecutors as well as their larger experience.

Analysis of proceedings conducted in cases of some specific economic crimes

confirmed the rationale behind the model and allowed to make some additional remarks. The majority of first information on crime is obtained from some form of notifications (about half of which come from victims). Remaining information comes, most of all, from one's own sources of law enforcement organs and are a result of their professional activities or operational and investigation ones. Anonymous reports, self-accusations or results of activities of checking institutions are of marginal share in obtaining crime information.

Investigations in cases connected with economic wastefulness especially clearly illustrate conclusions of the presented model. Actual findings are made, most of all, basing on obtained documents and witness' statements. In such cases, one may most often perceive the need of establishing an expert. Specialist knowledge is necessary when evaluating economic justification of actions committed on behalf of a business entity is done.

Investigation concerning money laundering crimes to a large extent is determined by the activities of the General Inspector for Financial Information. Monitoring suspicious transactions in banking system is a basic source of first information on crimes in these cases. Its analysis constitute a considerable help at the first stage of investigations. At the same time, its authorizations to block banking account of a suspected person makes law enforcement organs collect immediately evidence material for fear that it might be removed by an alarmed culprit.

Crimes breaching creditors' interests constitute economic crime that is second in numbers. However, efficiency of their penalizing is not high, which may be ascribed to their effect character. For a crime to exist, an effect must occur in the form of frustrating or decreasing satisfying creditors. If, therefore, it is established that a culprit possesses some sufficient property or settles due amounts in the course of an investigation, the case is discontinued. The dissertation puts forwards *de lege ferenda* proposal to transform the crime of not satisfying creditors into a formal crime.

Evidence proceedings in cases concerning interfering with tenders encounter serious problems. Proving tender collusion with the lack of incriminating evidence of its participants or materials from operational and investigation activities is almost impossible. The consequence of this is a low efficiency of conducted investigations and exceptionally small percentage of those finishing with making formal accusations.

Economic criminality constitutes real threat for conducting proper and sure economic transactions. One may hope that its size and progress dynamic will influence the state to take up more active preventive actions and increase the efficiency of combatting economic crimes.

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