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Field of study: Finance and taxes

ECONOMIC CRIMINALITY IN THE CZECH REPUBLIC

(Bachelor thesis)

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 2. Nejčastěji páchaná hospodářská kriminalita v ČR
 3. Příčiny vzniku hospodářské kriminality
 4. Preventivní opatření proti páchání hospodářské kriminality
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I declare that I had elaborated my bachelor thesis myself separately under the direction of Mr. JUDr. Přemysl Michálek and I have stated all used literature and professional sources in the list of literature.

Kunovice, April 2007

A handwritten signature in black ink, consisting of a stylized capital letter 'R' followed by a horizontal line.

I thank to Mr. JUDr. Přemysl Michálek for his very useful methodical help, which he provided me during the elaboration of my bachelor dissertation.

Kunovice, April 2007
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Introduction

The need to respond to an ever increasing number of serious economic criminal acts on financial markets, in the bank sphere as well as in the civil sector, made my decision to write this bachelor dissertation.

As a target of my bachelor dissertation I have decided to explain the term and outline how the impact of committed economic financial criminality in the Czech Republic and in this way to state most often performed economic criminal activity and also the assessment of this activity.

The bachelor dissertation itself is divided into six thematic spheres. The first sphere is the definition of the term "economic criminality". I describe in this sphere what economic criminality actually is, its disutility, its connection to the organized crime, and a way how the economic criminality is usually disclosed and proven. In the second sphere I describe the most often committed forms of economic criminality in the Czech Republic according to their seriousness and number of occurrences. Third sphere outlines causes of economic criminality occurrences, the way and how it happens. The fourth sphere is prevention measures against the commission of economic criminality, where I have described how to avoid committing economic criminality. The fifth sphere includes the perception of legal rules in the context of civil subjects, where I have described the way in which the public gets to know about the committed economic criminality and what it actually means. In the sixth sphere I mention the committed economic criminality like statistical data.

My bachelor dissertation therefore consists of several related separate spheres that are connected in specific way. These spheres were elaborated so that when one reads them he will obtain a view of what economic criminality actually is and who can commit this economic criminality.

The description of the criminal assessment of stated economic criminal activity contained in my bachelor dissertation is based on the legal regulations that were valid at the end of 2006 year.

The research work of PricewaterhouseCoopers Company named Global Economic Crime Survey 2005 shows the seriousness as well as the increasing trend of committed economic criminal activity.

On a worldwide basis, the number of companies showing the financial losses connected with the economic criminality increased about all 50% since the year 2003.

The growth of economic criminality represents a major threat for the corporate sector. Almost half of all organizations became a victim of some kind of economic criminality on the worldwide basis during past two years. Concretely said, 63% of Czech companies were victimized by the economic criminality during past two years, which makes a growth about 133% compared to the year 2003.

On a worldwide basis, the number of companies that were victimized by the economic criminality increased from 37 to 45% since the year 2003. The costs for companies due to the losses arising from so-called „tangible frauds“, that show itself by immediate and direct financial losses, achieved the average amount 1,7 million USD. This kind of frauds includes property conversion of assets, unjustified claims and forgery.

In the survey, which is carried out bi-yearly, a total of 3 634 companies from 34 countries, including the Czech Republic and the German university of Martin Luther in Halle-Wittenberg, partook in the realization of this survey. From the survey findings it reported that total losses of 1 227 companies that were able to state their losses as concrete numbers, have exceeded the sum of 2 milliards USD during last two years; the number of companies showing the financial losses connected to the economic criminality had increased about 50 % since the year 2003.

The companies have mentioned on the worldwide basis, that they became a victim of different types of economic criminality at average of eight times since the 2003 year. Growing company size had also increased the probability of what was victimized by the economic criminality and what was detected. Large companies have stated on average 12 cases of economic criminality. Regardless of the size, no company or even branch, whether regulated or uncontrolled, were immune from the frauds.

„Although we have assumed the increased number of economic criminality cases against the year 2003, we were surprised at its dramatic increase in the Czech Republic,” says Roger Stanley, the partner of Department Investigative and Forensic Services PricewaterhouseCoopers Czech Republic. „However, it would be a mistake to assume that

this increase of announced cases is based only upon the increase of committed frauds. There are also positive trends that have contributed to the increase of announced cases, including greater awareness about economic criminality, successive removal of stigmas considering the economic criminality, which is not spoken about, and the introduction of more efficient controls and risk management systems, that will enable to the companies to disclose more cases of fraud.”

Increase of different types of economic criminality

The Study also proved the increase of different types of economic criminality that may happen in the society – from the property fraud up to the forgery. On a worldwide basis, 140% increase of number of presented cases of the distortion of financial information, 133% increase of number of presented cases for the legalization of revenues from criminal activity and 71% increase of number of presented cases of corruption and bribery.

„While no company in the Czech Republic admitted that it would provide a bribe or there was offered a bribe to it in the year 2003, two years later it was stated by a total 43% of companies that they met with this kind of economic criminality. I trust, that this increase is the result of positive change concerning the relation of companies to the corruption and bribery that were for a long time generally perceived as acceptable business standard,” says Stanley.

In the Czech Republic, the perpetrators for economic criminality are nearly 83% men aged from 31 to 40 years, with a lower than university degree of education. Less than 40% from these persons make the staff of companies that became a victim of peculation, and almost half of them represent middle and higher management.

The study confirmed that the larger number of control mechanisms the company has, the higher its chances to disclose the frauds and recover lost assets. The companies with the higher number of control mechanisms proved to find out better the extent of damages that economic criminality caused them and they detected three times greater number of losses than the companies with smaller quantity of control mechanisms. Furthermore, companies asserting more than five control measures against frauds showed better results in terms of recovery of lost assets (52%) than the companies whose number of control measures was lower than five (43%).

Therefore the companies must not remit with their vigilance. They must continue

building new control mechanisms and deepening the loyalty of their employees so, that the occurrence of environment exposed to economic criminality will be avoided.¹

^[1] PricewaterHouseCoopers, výzkum [online]. 2005 - 2007 [cit. 2005-11-25]. Dostupný z WWW: <http://www.pwc.com/cz/cze/about/press-rm/2005/pressrm33_05_cz.html>.

1. Determination of the term „Economic criminality“

1.1 Term

The term “economic criminality” is used by the lay person as well as professional public with absolute matter of fact, without thinking over more closely over its content and relation to economics or financial criminality. At the moment, when the concrete content is given the term, there is detected disunity in the clearness of definition of terms, including a nearly void correlation between them. The terms are interpreted in different ways, in a number of cases they are interpreted tendentious or professional.

The basic term is the economic criminality doubtless, or also the economic criminal activity. The following readings show evidence of differences, views and profuseness of the interpretation of the term “economic criminality”.

It is fact that the Czech criminal law works with the institute of economic criminal law², whose substance is the term economic criminality. It is a question of longer-term polemic of expert capacities from the area of juristic theory, as from the juristic practice, that concrete negotiations to be subordinated under the term economic criminal offence and whether the economic criminal offences to leave in special part of the criminal code in general or to create separate codified code of laws of economic criminal law, or to include criminal economic offences into the Commercial code, or even into unique codex of civil law, that would arise by the connection of civil, trade and labor laws. For the inclusion of facts of the economic criminal activity into the Commercial Code it tells the fact, that the enterprise sphere (also the persons in „other“ enterprise forms for example privately farming farmer) knows the Commercial Code especially as the basic norm conditioning the business enterprise. And also during its study does not overlook the provision about criminal law responsibility, which has basic influence upon the formalization of entrepreneurial legal environment and prevention in this environment.

As a question more theoretical than practical appears the consideration of separate codification of economic criminal law. There is special criminal code for the sanctioning of economic criminal activity, for example in the Netherlands and Portugal (for example for special types of frauds like investment, bank, computer, insurance premium frauds, and corruption). It is evident that the basic question for the solution of above outlined problem

^[2] ŠÁMAL, P.; PÚRY, F.; RIZMAN, S. *Trestní zákon*. Praha : C.H.Beck, 2004. 641 – 1170 s. ISBN 80-7179-896-7.

is to define the economic criminality.

There is a number of definitions of economic criminality especially of economic criminal activity ("economic criminal activity" is a narrower term than "economic criminality", the opposite of course does not apply).

It is not a simple matter to determine the general definition of the term "economic criminality". The specialists engaged in the theory of law divide upon this definition what the inclusion of individual forms concerns so there is no generally valid definition at disposal. For the purposes of this dissertation I incline to the working definition, when we can understand under the term of economic criminality, the caused behavior (injurious to the public) described in the special part of the penal law, and such behavior injures or endangers the economic order, system of economic and related legislative relations, their functioning, rights and rightful interests of subjects of these relations.

1.2 Characteristic of the economic criminality

1.2.1 Injuriousness

The high injuriousness of the economic criminality is caused not only by the high financial or physical damages, but also by the high social injuriousness. The German criminologist Eisenberg³ in the 1985 year already formulated the thesis, that by means of economic torts there is killed more persons than what is owned by the criminal offences of murder or homicide yearly. His theses are based on the published scandals (public outcries) relating to junk food, adulteration of medicines, and also to suicides due to the economic crash or corruption scandals. The cases of serious economic torts, often connected with the politic background and scandals, are then more and more the centre of attention from media and scandal-oriented journals. Generally it is possible to say, that the assessment of actual damage caused by the economic criminal activity is not easy and it is particularly problematic. It is often very difficult to find out the actual damage, not only legally, but also factual, especially concerning the immaterial damages, whose activity has long-term effect (for example environmental damages, computer system attack, thefts of copyrights and related rights etc.).

It is also a problem to find out so called indirect damages rising in connection with

^[3] EISENBERG, U. *Kriminologie*. München : Beck, 2000. 615 s. ISBN 3-406-46285-5.

the primary damage. For example, computer data damage can cause the damage to the affected enterpriser in that way, that this enterpriser will lose his view of agreed contracts, terms or fulfillment of orders, schedules of due dates, which may have immense consequences resulting in the factual liquidation of the enterpriser.

Seriousness of the economic criminality lies especially in:

- a) High damages, that may be higher than from the total criminality overall share in the total criminality amounts only round 10%, but the damages move to around 20 milliard Czech crown yearly, although the detection rate is high, it makes round 90%, but generally there is expected high latency (delitescence)
- b) Violation of the confidence of the citizen in the economy
- c) Certain anonymity, because there is mostly no relation between the perpetrator and the victim as for example by thefts
- d) Lower criminal sensitiveness – according to research it belongs between the tolerated criminal offences in the company
- e) Connection to organized crime

There is lower statistical value on economic criminality, because there were such criminal activities like the theft of socialistic property, breach of authority of public agent, corruptness included into the economic criminality before. Before the year 1989 presented the economic criminality 1/3 of total criminality, but then followed the decrease, which was influenced especially by legislative changes and also the increase of property criminality. The decrease stopped in the year 1991 and since this time is again increasing.

1.2.2 Connection to the organized crime

On last time it happens more frequent recording of connections of the economic criminality on the organized crime with the utilization of especially booming foreign markets, international trade, development of computer technology, dealing like noncash system of payment, accumulation of financial resources in the worldwide connected nets of banking-houses, fusions and other development trends, which yet further increases their seriousness.

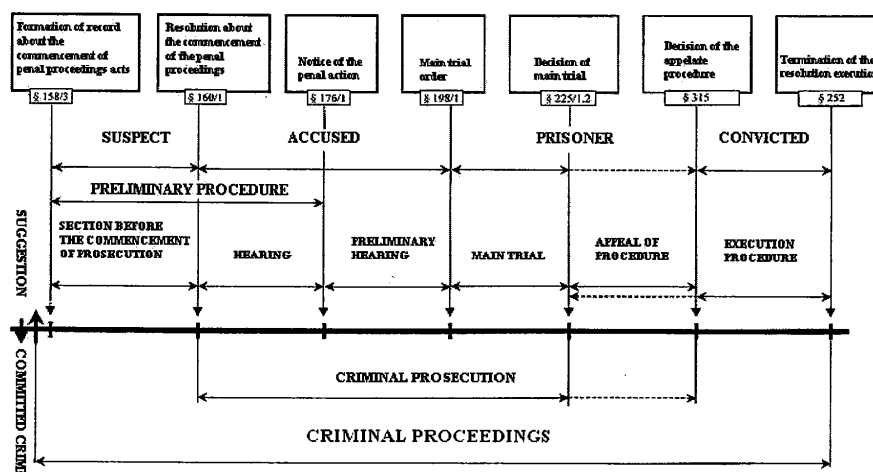
1.2.3 Difficultness with the detection and proofs

The problems concerning the detection and proofs of economic criminality are related especially to the complexity of relations in the economic sphere that is adjusted by quite a number of standards, whereas no small part of these standards is not purely of economic character. Here intervene the civil law, administrative law, financial and further legal areas. The high expertness, that is many times necessary in terms of complexity of verification of individual false steps (dummy or incomplete documents, that are necessary to check, or completely missing documents) consequently, with its complex leading to the checked economic tort, evokes the need to assume the experts, elaboration of expert evidences, audits of the economy of relevant part of company etc., which leads to excess extension of criminal prosecution in the final consequence, when it lasts also several years.

Perpetrators themselves by their behaviours, which are often on the border of legality or at least appear, use especially the legislative lacks, as for example its equivocation, mutual unchain of individual fields of legal rules, which often cause large difficulties during the determination of the border between the allowed economic risk and the tort dealing.

Checking and investigation of economic torts itself is to a large extent complicated due to the fact that most of these acts are blank standards, so are the standards referring to the provisions in other sources of the law than in the Penal Code itself.

STAGES OF THE PENAL PROCEEDINGS



1.2.4 Anonymity element

Under the anonymity to be understood the personal distance between the perpetrator and the victim. At the fraudulent elicitation of credit, subvention, at customs, insurance or tax frauds there are not affected the interests of concrete persons directly. It is the attack on the system that is not personal, it has not its own face. There use to be aggrieved the socially important subjects, where the state has for example its share of the property up to now, aggrieved use to be also government-issue cash office, the economy of somebody else.

1.2.5 Latency

High latency is supposed especially with some criminal acts, ranked among the economic criminality, as is the copyright breaking, computer criminality, tax and other frauds and last but not least corruption. The economic criminality leaves behind it only slight traces, that are not evident at first sight and it is possible to simply overlook them or they remain unacknowledged by the innocent environment. Therefore detection mainly depends upon the activity of the police bodies and their specialized parts as well as on the quality and experiences of individual policemen performing the investigation.

In an exemplary way it is possible to state the unwillingness of principals as well as of the institutions to announce the economic criminal activity (for example the fraud of computer equipment by the employees for private purposes, different fraudulent fakery in connection with the granting of credits etc.) due to the fear of good reputation damage of the relevant company or owing to the fear, that during the checking or during the investigation other criminal activity perpetrated by the principal, company top management may come to light or owing to the fear for unnecessary time lost during repeated rendering of the meanings at the police bodies or at the court.

1.3 Classification of the economic criminality

With the disunited determination of the term economic criminality are of course connected big hesitations concerning the question, which criminal acts to be included in

this area of criminality. The situation is in this way also complicated by strong inosculation of typical economic criminal acts with a number of further criminal acts mainly of the property nature, but also by the criminal activity against the order in the public matters.

From today's view, it is already for a long time clear, that the facts of the economic crimes are not stated only in the second head of the Penal Code, but these facts of economic crimes run in the whole extent of the Penal Code, mainly in the head nine, where after the year 1990 there were amended several provisions coming under the economic criminality.

There is also the disunity concerning the facts that are declared statistically like the economic criminal activity by the bodies in the Department of Ministry of Justice and between those which are examined by the police as the economic criminal activity and the police seeks to show these facts like economic criminal activity. It is the standard status absolutely, when specialized employees of the economic criminality department perform due to directive reasons of examination of things that belongs to the general criminality, on the ground of checking complexity or by own interpretation of the term economic criminality by the leading of individual police sections.

The economic criminality is presented from the criminological view by the incongruous conglomerate (list) of criminal acts from thefts, peculations, frauds, up to the abuse of public agent authority and the corrupt practices.

There is certain quandary when this term is determined, which acts to include in mentioned category. Moreover, the situation is supported by the still valid Penal Code that is internally divided according to the needs of 60 years (advanced socialism time) and does not correspond to current needs of the market economy.

Facts of the economic crimes are contained in the II. Head of special part of the Penal Code in our country that are divided generically into four sections:

- 1) Crimes against the economy
- 2) Crimes against the economic discipline
- 3) Crimes against the currency and tax criminal activity
- 4) Crimes against the regulations concerning the unfair competition, trade marks, protected patterns and inventions and against the copyrights

Despite of this it is possible to include these crimes into the economic criminality concretely:

- a) First of all, there are all crimes from II. Head of Penal Code (economic crimes)
- b) Frauds
- c) Abuse of public agent authority
- d) Corrupt practices
- e) Usury
- f) Participation

1.4 Person of the offender of the economic criminality

The perpetrator for the economic criminality differs from the perpetrators perpetrating the violent, vigilance or property criminality substantially. It is not the asocial or common jailbird that has to be socialized and that needs to obtain basic elements necessary for the integration in the social life.

The perpetrators are most often of middle age, having good education (secondary school and different gradual university). It concerns the enterprisers mainly and it concerns often the persons that are in very good walk of life. There are, for example, the statutory representatives of corporate bodies like co-partners, agents, corporate directors and managers. Also the members of lower and middle levels like businessmen or independently undertaking persons commit the torts of economic criminality, nevertheless the perpetrators from the higher social levels are represented more strongly than in other criminality areas.

In addition to the tradesmen and enterprisers, misconduct of high social status perpetrators, abusing their public positions or their jobs. There are involved the persons, that enjoy certain respect and confidence based on the social point of view, that refers to the executed function or the position of the office in the state administration.

The breach of the public station to the commission of economic criminality we can notice also in the political area. It means new levels of managers that derive benefit from their own political party that make their own imperium.

Important part of perpetrators for economic criminality consists of own employees. These persons are usually in connection with the performance of their jobs delegated by

certain competences and authorities. Their criminal activity is generally connected with their education, skills, job status or with the meaning of executed function that they are charged with. The advantage of these perpetrators is mainly good orientation in the issue which their crime concerns or that is used for the commission of criminal activity. It concerns, for example, banking systems, investments, capital markets, customs administration, etc. Their authorization, position or function enable them the approach the information to which other persons have no approach (it can be, for example, the knowledge in terms for planned controls or inventory checks at the company, at the bank or other finance house), These perpetrators mostly know the system of work of relevant supervisors and the relevant risk points, on which the control is mostly focused in, or they are able to estimate with certain knowledge and experiences for example the movement of price relation on the financial stock exchange, and this can be used at unlawful manipulation with the securities, development of interest rates or the machination connected with the exchange rate development. These and of course further facts enable the perpetrator not only to commit the criminal activity more easily, but what is more dangerous, to conceal or to mask such criminal activity sufficiently.

2. Most often committed economic criminality in the Czech Republic

Following part contains most often committed economic crimes according to their seriousness and number of perpetrations.

2.1 Tax criminality

Taxes are important part of the national economy. Financial resources obtained by this way are a basic and irretrievable source of the state budget income and they also have necessary function of regulative instrument during the fulfillment of aims in the economic and social area.

It is possible to act preventively only under the current change of legal regulations, that would result in the simplification of tax and accounting terms and thereby in the increasing of execution of controls by the designated authorities.

It concerns especially the violation of the Penal Code provisions:

§145a – forgery and alteration of labels for the marking of goods or subjects showing the satisfaction of fee duty

§147 – nonpayment of taxes, premium insurance for the social and health insurance, allowance for the state policy of employment

§148 – reduction of tax, fee or similar due payments

§148a – violation of regulations relating to the labels for marking of goods

§148b – neglect of notification duty in the tax procedure

They are the most severe and most frequent economic crimes. They cause high damages. What the tax evasions concern, then it is necessary to mention the sphere of indirect taxes firstly, that influences the transfers to the state budget significantly.

Stated crimes have the forms of:

- 1) tax or fee duty is not paid or fulfilled

- 2) tax or fee is not paid or fulfilled at its specified range
- 3) there are required unauthorized tax deductions

Further we discern:

- tax frauds in connection with the accountancy books
- reductions of tax basis
- production from unlawfully obtained raw materials and sales without the invoice
- employment of personnel without the employment contract
- tax frauds during the circulation of the goods with foreign countries
- non-declaration of goods for the customs procedure - different kind and quantity, exchange of the commodity
- sham exports of goods abroad – physical nonexistent goods, eventually existing goods and goods leaving at the home market – for example LTO, import of spirits and sugar, etc.)

Based on my own experience I can conclude that the most often followed tax frauds are in connection with the accountancy books during the enterprise, tax reduction, fee or similar due payment and nonpayment of taxes, insurance premium on the social and the health insurance, state labour policy contribution.

2.2 Credit fraud

Special facts of the crime “credit fraud” was included into the Penal Code by a novel of the Penal Code made by the law number 253/1997 Collection of laws. According to the explanatory report it was followed by the completion of the provision of crime “credit fraud”, the criminal sanction extension to further forms of fakery, that is generally criminal as a crime in accordance with the § 250 Penal Code, of course, very complicated to be proven. Furthermore, it is not always possible to sanction credit frauds in all cases according to facts of the crime “fraud” according to § 250 Penal Code when such credit frauds are based on the providing of false data in terms of the negotiation of a credit contract. In doing so, the banks are damaged considerably and such dealings serve to the obtaining of unjustified property advantage of those, who commit such act.

Generally it is possible to state, that from the year 1.1.1998 the number of ascertained crimes of "credit fraud" dramatically increases. The character of the criminality commission however has not gone through basic changes, it follows only the improvement of forms of its commission as the reaction to the measures that should avoid this criminal activity. The perpetrator of the credit fraud may be the participant of a credit contract, creditor, debtor or physical entity acting for the creditor. False information in terms of § 250b however is not such wrong information that the applicant provides. According to the explanatory standpoint of the highest prosecution number 7/2000, the false information is only such information that does not conform to the real status and that the perpetrator provides during the constituting of a credit contract or in his request for the granting of subsidies or grant wittingly untrue.

The practice qualifies as a credit fraud also by obtaining so-called financial resources for the purchase of consumers goods (so-called consumer lending). The typical credit frauds are however the fraudulent conclusions of credit contracts with the finance (bank) houses, on the basis of the perpetrators obtaining high financial resources. This form of the criminal activity is considerably extended; it shows a high degree of social public seriousness with high damages. While consumer lendings are overall successfully detected and prosecuted, the credit frauds concerning the bank sector already have a relatively high rate of latency especially in these cases, when the longstanding and important business partner of the finance house obtained the credit by the fakery from the finance house that has provided the credit. In this case, the finance houses are not interested, that the police would investigate this criminal activity, or the public would be informed about this criminal activity, and therefore the finance houses participate themselves in the hiding of this criminal activity and try to solve the situation by means of their own procedures. Such acting is often based on the reason that the staff of finance houses themselves had caused this situation due to its unqualification, not knowing or irresponsibility and in some cases even by the willful acting for any promised reward.

Again also here the contracts are concluded based on the bogus documents (adjustment of identity cards, forgery of trade certificates and forgery of abstracts of the Companies registers), providing documentation of false or grossly distorted data relating to the economic situation of the applicant in his application for credit granting, overvaluation of pawns, performance of the insufficient liability, etc. It happens often, that the substantial data relevant for the conclusion of the credit transaction are unsaid and that the financial resources obtained on the basis of the credit contract are used for other purpose than was

agreed without the creditor approval. In cases, when it concerns the drawdown of grants and subventions on the basis of the bogus documents and the false data and their utilization to the other than stated purpose, especially the insufficient checking and control of data provided by the applicants and also the missing control of utilization of these granted finance means enable their commissions. Seldom do the officials working in the institutions giving the grants and the subventions contribute bad on provided finance or other reward to the fraudulent obtainment of these financial resources. Similar situation follows in the case, when the personnel of finance houses enable to obtain finance resources for the promised „commission“ on the basis of concluded credit contract, in spite of the fact that these personnel know or also help themselves to document false or rough distorted data or these personnel conceal data at the submitting of the credit application, eventually they agree silent with the utilization of obtained finance resources to other than agreed purpose. In connection with the above mentioned criminal activity there is committed also another criminal activity of type the forgery and amendment of the public document according to § 176 of the Penal Code (identity papers, abstracts of the real estate registers, etc.) and the extortion according to § 235 Penal Code (the utilization of so-called "white horses" like live instruments for the commission of criminal activity), etc.

A frequent accompanying feature of these crimes is, that the perpetrators spend obtained finance resources for their need very quickly, or they transfer these finance resources by finance machination to the irredeemable account or they dispose of their property. When the court awards judgment for the benefit of the creditor, then it is not possible to ensure the execution of judgment due to the wreck of the perpetrator. The finance resources obtained by this way, the perpetrators use at the criminal proceedings for their advocacy, the perpetrators hire best advocates and specialists from different fields, they use up-to-date (most modern) techniques and they often make the evidences for their advocacy, that actually never did exist.

On the basis of my own experiences I can make a conclusion, that it is most often committed economic crime in the region of Uherské Hradiště at the present time.

2.3 Forgery and amendment of money

The forgery of money is as old as the money itself. It is very difficult to act

preventively because high latent activity and the repression element dominates, so the detection of already committed criminal activity. Here it is only possible to use higher sanctions on the ground of determent from the commission of this criminal activity.

The protection of the currency is provided by the Penal Code in these facts of the crimes :

§140 – forgery and amendment of money

§141 – denunciation of the forged money and amendment of money

§142 – production and possession of the tools for the forgery

The forgeries came from Poland, Ukraine and Russia most often in former times. The forgeries are “produced” thanks to the computer and press quality under home conditions at the present time. There are recorded especially the forgeries of larger nominal values, namely 5.000,- Czech crowns, 2.000,- Czech crowns and 1.000,- Czech crowns. These forgeries represent a dangerous element at the domestic as well as world scenes due to the technical equipment of much better quality and due to its easy and cheap availability at the present time. The evidence of all top machines is no longer possible but it is necessary to look for other technical solutions in order to make their forgery more difficult.

2.4 Infringements of copyright

The copyright and the rights associated with the copyright are contrary to the industrial rights, principle informal in the Czech Republic. It means that no special registration or no entry into the artwork register is necessary for the provision of copyright protection. The copyright refers to the finished work, its individual development stages and parts; including the title and names of characters should they comply with the conditions of authorship. Further, the law conditions the statutory presumption of the authorship – holder of right is such subject, whose name or whose title is stated on the work by common way or is registered in the protection register by relevant collective administrator, if the contrary is not proved or if it is not in conflict with other so provided data. The Copyright Act determines at the same time that under the unlawful encroachment in the copyright to be understood also the removal or change of any electronic information concerning the work identification. The protection is provided also to the works, performances of

performers, sound recordings and sound – picture recordings, radio and television transmissions and further subjects of protection of foreigners according to the international agreements or based on the mutuality on the basis of the provision § 107 of the Copyright Act. The Czech Republic has negotiated agreements with an overwhelming majority of countries warranting the protection of subjects of foreigner's protection on the basis of the national principle, thus the same protection is provided as their own citizens have got.

The copyright is the exclusive right owing to its feature, the author is the absolute ruler of his work, if the law does not constitute otherwise (so-called legal licence, free usages). These curtailment of the exclusive copyright requested by law are to be interpreted always by the restrictive way, so in favor of the author, not of the user. The rights associated with the copyright are drawn accordingly, also here the previous approval of the rights-holder with the usage is required, if the law does not determinate otherwise. Curtailment of the rights includes especially the usage for the own individual need of the users (differently stated for computer programs, databases and architectural constructions) and some special usages for example in the libraries, for the need of handicapped persons, usage for civil ceremonies and mysteries, official and reporting license etc.

General notes on the piracy

Under piracy we understand the unauthorized use of the author crafts or other subjects of protection according to the copyright in such a way that belongs only to the rights-holders for these works eventually to other subjects of protection. The piracy means the parasitic activity on the intellectual property of somebody else and such activity done particularly in order to realize a profit. The name piracy arose originally according to the designation of black radio stations placed on the boats that have harbored in the international waters. These stations transmitted the music – also author crafts - without the authorization. The extension of this name to the total area of infringement of rights on the intellectual property is full convenient. Also the sea pirate preyed other boats and he took the property that was not his. Only the element of the romance took away fully. Today's pirate is interested in the profit only. If the pirate also will may, then he will use your work too, in order to convert it into money. Present pirates also often commit other criminal activity and their participations in criminal conspiracies and in the organized crime is no exception. Estimates say that the gains of the piracy highly exceed the total of gains of drugs and prostitutions.

- Product piracy – ie. the production and the expansion (distribution) of unauthorized copies of audiovisual works (for example on VHS, CD, DVD)
- Unauthorized public projection – i.e. unauthorized pursuit of the work from the record, most often from the commercial medium, also VHS and DVD.
- The television piracy, theft of the signal – different unauthorized usage of the television broadcasting, especially unauthorized transmission of audiovisual works, unauthorized transmission of foreign television broadcasting in the cable networks or common television aerial and unauthorized transmission of the transmission to the public for example in the hotels, restaurants, clubs, internet etc. Also the unauthorized earnings of the protected transmission use to be referred to this type of the piracy, for example paid television, but not each case is the copyright tort – in any case it is a matter of administrative tort during its commission are incurred damages and unjustified enrichment.
- The Internet piracy – piracy by means of the Internet, especially the possibility to download the files and to make the files accessible for the sharing (download), offer of pirate media by means of the Internet, streaming a web casting, also the projection and transmission through the Internet per order and without order and last but not least also the offer of the unfair tools, publication of their schemata and publication of the access codes to the coded transmissions
- Unfair aids – ie. aids enabling to limit or to put out of operation the protection of work against its unauthorized usage, for example video decoders avoiding the coding of the record, computer programs for the breakthrough of the DVD code etc. The copyright forbids their development, production, offer for sale, lease or loan, import, distribution and utilizing for the achievement of the property benefit.

I think that the combination of all possible protection methods have to be used in order to restrict the drastic increase of the digital piracy and especially to reduce its negative impacts. The question is, in what measure the producers can ensure the effective data security on the data media at the present time in order to limit and to complicate data and signal copying. This protection is together with the utilization of suitable marketing models and adjustment of acceptable price determining for the piracy development. The effort has to be given also to the passive protection, so for example the usage of holographic labels, using of the holographic technology on drive directly, the using of

different identifying codes etc., in order to make the piracy goods movement over the frontier also within one state difficult, and in order that the consumer may have the possibility to distinguish between piracy and legal drives.

In our country there exist the Czech antipiracy union, that advocates the protection of the rights on the audiovisual works and this union supports the legitimize interests of its members in the area of copyrights from its foundation. This union contributed to the reduction of the share of the piracy products in the market substantially, namely by means of market controls and the cooperation with the law enforcement authorities during the period of its activity.

2.5 Unauthorized possession of the payment card

The crime of the unauthorized possession of the payment card according to § 249b of the Penal Code commits that, who would raise himself without authorization the non-negotiable payment card of other, identifiable by name or by number or the subject able to fulfill its function. It is the premeditated criminal act; to its commission the law permits also the possible intention leading to the acquisition of the payment card or of the subject able to perform its function. The law does not require that the intention should lead to the use of payment card or of the subject able to replace its function. Any obtaining of the payment card without the legal title considers being the unauthorized obtaining of the payment card or the subject able to fulfill its function. The perpetrators commit the crime of the unauthorized possession of the payment card generally together with other crimes, of property nature usually, and in that case is the intimated reality expressed by the single-acting concurrence with the dominative crime, for example crime theft according to § 247 of the Penal Code. For the legal assessment, whether the facts of the crime “unauthorized possession of the payment card” in accordance with § 249b of the Penal Code achieved is or not, there is not deciding, that the relevant authorized holder in due course lost the payment card, and that for example the bank finished its validity in the meantime, because also at this early expiration of its validity, the finder of such payment card has the possibility to perform so-called underlimit unauthorized transactions generally. It is not required for these purposes that the perpetrator would use the payment card for the payment or for the withdrawal of money, nor to try to do it at least. The crime is accomplished already with the obtaining of this noncash payment instrument. Should the

perpetrator misuse the unauthorized obtained payment card for the credit transfers or for the withdrawal of cash, or the perpetrator will try to do it, then he can be punished depending on the terms of the case, also for the crime of the fraud according to § 250 of the Penal Code, eventually for the attempt at this crime.

3. Causes of the occurrence

We can divide the causes of the occurrence of the economic criminality into the classical and specific, short-term and long-term causes. The economic criminality is the reflection of the society status and whole economic sphere, what is in the meantime possible to divide into two extended periods.

The first period has got the starting year 1990 or already the year 1989, where are noticeable steps meaning the transition from the state property to the private property. This transition can be featured by lack of experiences and of the necessary legislature, then by the chaos and finally also the coupon privatization, the discussions about its success or its nonsuccess are holding up to now.

It is possible to consider the year 1993 for the start of second period. At that time, the commission of the economic criminality was provided by the person of the qualified perpetrator. There appear new forms of the crimes, more complicated and socially more serious.

It would be possible to add also third period to these two periods, when there is cohesion of entrepreneurial groups and their common process with the protecting elements serving for the concealing of the activity. These entrepreneurial groups use the specialized consultancy firms where they utilize the valid legislation and its loopholes or multivalent interpretation of the legal rules for own benefit with the help of top experts from the branch of law very quickly, expertly and effectively. It is possible to say, that the organized crime in the given area is coming.

It is only understandable, that basic social changes and new course of the society concerning the formation of the democratic society were followed by a number of the criminogenic factors, and many of them were reflected also in the economic branch.

3.1 Opening of the frontier

The opening of the frontier became without doubt the positive element influencing the economy, however it brought increased number of customs, tax and further economic laws infringement and it enabled the intrusion of organized crime structures to our territory including its activities. Owing to the opening of the borders it came to the increase of persons and goods movement over the frontier, extended property move, accelerated market and capital creation, liberalization of the foreign trade and foreign capital entry into

the system of our economy that was not sufficiently ready for this overpressure.

3.2 Globalization of the economy

In connection with the huge boom of the worldwide business and of the finance capital, with the entry of the personal mobility and development of the communication technologies and strengthened migration of persons etc., there appear among others new forms of the economic criminality, that come out also in our territory.

3.3 Movement of the property

This element is one of the most important criminogenic factors. It is connected not only with the lack of experiences, credulity or improvidence, but also with the elaborated practices of some lobbies. The privatization of the property, whether by the form of restitution or within the sales or the transfer of the state property to the other legal entities or to the physical entities and at the same time connected with the development of the private enterprising, was also followed by a number of negative phenomena. According to the performed investigations, the small and middle business subjects were not enough ready for the enterprising. These subjects lacked especially the experiences with the private undertaking, finance capital and sufficient knowledge of the relevant legal regulations, conditioning the business sphere. As a result of it happened the crimes of the damage to the consumer, reduction of taxes, the crimes of unauthorized trading, but also the credit frauds, invoicing and other frauds.

On the other side, the inexperienced enterprisers could be easy victimized by the crimes of other, more experienced enterprisers. The lack of the experiences is not only in the private enterprise sphere, but the lack of the experiences uses to be one of the main causes of bank and other frauds aimed against the finance houses, on their trouble-free operation is the state interested in. It happens the illegal trade in stocks, where were enabled the fraudulent withdrawals from the accounts of the stockholders in the Centre of securities.⁴

^[4] BRABCOVÁ, I. *Hospodářská kriminalita z pohledu kriminologie*. Praha : Policejní akademie České republiky, 2002. 38 s. ISBN 80-7251-071-1.

3.4 Changes in the state apparatus

Each infringement at this level is followed by a number of the risk factors. Some state authorities are newly established like for example the Trades Licensing Offices, some existing authorities change their conception as for example the control authorities. In the recent past, the transformation into new organization of the local authorities connected with the establishment of the regions and their offices. New personnel apparatus starts to work at all levels, but this apparatus always has not enough expertise and mainly this apparatus has not necessary experiences of practise for the fulfillment of new conception, and that conception is not too successful in many cases. Many bodies have nonconforming conception also at the present time.

3.5 Restriction of the control activities

At the present time it is assumed that the owner retains the control of his property more or less alone. But there remains the problem relating to the unsatisfactory cooperation of criminal proceedings bodies with the statutory bodies of individual private firms, but also of state bodies, and this cooperation is further complicated by their relative high personnel turnover at the positions of specialized supervisors.

A new system of the control bodies headed by the Supreme Control Office of the Czech Republic, established on the basis of the law ČNR number 552/1991 Collection of Laws, but this new system was already at its beginning marked by the own control employee for unsatisfactory in relation to the new economic conditions. The personnel themselves found the insufficiencies mainly in the legal regulation, especially in its dubiousness and void fraction.⁵ Among the bodies pursuing the control activity, it is necessary to include also the bodies, as for example the bank supervision, performed according to the law number 6/1993 of the Collection of Laws, by the Czech national bank, to that all banks and branches of foreign offshore banks acting at the territory of the Czech Republic have subject to. Furthermore, the Czech national bank will supervise also insurance companies and capital market from April 2006, and the Czech national bank will control the economy of these and will have the possibility to withdraw the licences or to

^[5] NOVOTNÝ, O. *Kriminologie*. Praha : ASPI Publishing, 2004. 382 s. ISBN 80-7357-026-2.

fine.

3.6 Legislature

The Legislation has the basic importance in relation to the economic area and its inadequacies influence the commission of the economic criminal activity considerably. Especially at the beginning, when the obsolete norms ceased to have effect often and the legislative works proceeded slowly, our legal order regulating our economy became chaotic and non-lucid, and this status persists in some branches up to the present day. The implementation of the laws and of the standards of the European Union bring further temporary non-lucidity in our legal order, while it follows the duplicity of some standards and the necessary practice of the courts is missing.

The legal order suffers owing to its loopholes also currently and on the other side, it happens the overlapping of some legal rules. A number of laws were missing totally at the beginning. The branches of law conditioning individual economy sectors were not connected together enough and they were not adjusted with other branches of law, including the criminal law. Under such situation it is very difficult to enforce the law.

3.7 Inosculation of the functions

Furthermore, owing to the insufficient legal regulations, it was enabled to some personnel of the state administration, politicians, as well as army officers and their members of families to participate in the investment funds or their authorities, both founders and also at a later time, in bank counsels, other bodies important for the economy and their connections. These persons could then utilize the firm information, business or other economic strategic information, unpublished for the public at the given moment, thus unavailable otherwise, that they have obtained on the ground of their jobs, profession, position or function that they performed. In principle it is the „Insider trading“, which can be punished like the crime of the abuse of information in the business connection according to the provision § 128 of the Penal Code, as well as following provision concerning the possible sanctions in connection with the machination in the public competition or at the auctions. This provision subjects to the flak of legislators with the proposals to remove it from new criminal system in connection with the reworking of the

Penal Code conception most recently.

3.8 Corruption

The corruption can be defined as the misuse of the public authority for the private benefit. The evaluation of insufficiencies in the field of the legislation belonging to the competency of Police Czech Republic is considered for necessary to consider a possibility of the categorize the corruption dealings (no the corruption) under the separate provision in the Penal Code (as it is for example in the France or in the Slovakia). The unauthorized advantages, that are considered for the bribe or advantages, that the bribing person should obtain, forms of misuse of the position of person that receives the bribe etc that may not be necessary of the financial nature (nepotism, clientism) would be specified by the legal way. In practice during the implementation of the criminal activity, the situation often happens that it is not possible to document own corruption criminal activity without rest (§160, §161, §162 of the Penal Code), but the criminal prosecution is conducted for the criminal activity caused by the bribery, i.e. for example the abuse of power of the public agent, where is the evidence situation more favourably.

The amendment of act on the public order has not fixed clear rules of the public competition, that would prevent the possibility to form a corruption environment, where the question of corruption breakdown is the priority target arising amount others from the international agreements and conventions binding for the Czech Republic:

- The law does not contain the provision about maximum possible measure of the publication of all relevant papers for the assignment, voting of members of evaluating commissions of contracts. It will be necessary to revalue the Institute of the business secret protection in this sense, that is often abused for the effective prevention of the public inspection
- Determination of the term „public order“ is insufficient – it is the onerous contract, and the subject of this contract are the deliveries, performance of works or provision of services, the original law designated any onerous contract as the public order
- Determination of the condition of the share of min. 50% public funds opens the space for the doubts, because with the exception of the purpose support it can be by private persons only with difficulty identified, from which funds the order will be

paid

- The law keeps the possibility of the choice of type of the submitting control on the submitter, the submitter can eliminate eventual applicants by this way so, that the submitter does not call upon the applicant to submit a bid after the presentation of the application for the participation. The law does not provide namely, except the condition of the performance of the eligibilities, no criteria for the decision of the submitter about it, which applicants the submitter calls upon to the submitting of a bid
- Examination by the supervision body relates to all acts of the submitter, that can break the transparency of the procedure, the supervision body is not subject to the bid evaluation by the evaluation committee – exclusion of the review is the serious fault

It would be the benefit for the examination of the corruption activity also to establish the register of the applicants, suspected of the unfair dealing with other public competitions, implementation of the duty to publicize the height of the commissions and bonuses for the fruitfulness, paid in the relation to the order and further duty to give detailed information at the request about services given for these provisions. Further register could be the register of the administrative torts, whose existence could help to verify the resistance of the person against the corruption and further nonstandard dealing.

There was already in October 2002 presented a proposal for the change of the provision § 163 of the Penal Code about the active repentance relating to the proposal of new provisions for the corruption suppression in the area of the legislative changes, when it is necessary to leave the presumption „without delay“ from the wording. There was no remedy made to the present time.

With the generally declared determination to abate the corruption and the corruption dealing, the public refusing of the institute of the property return is absolutely inconceivable, whereas thanks to this institute would it be possible to find out not only the corruption dealing, but also for example the tax avoidances.

The unsolved problem is the issue of the transfer of property from the person of the offender to the members of family, eventually to other persons. It concerns always the purpose transfers (in most of cases, gratuitous and transferring persons use these estates also further physically), whereas according to the present legal regulations it is not possible to ensure these estates without the proof of the participation.

In terms of the preparation of the proposal of the amendment of act number 238/1992 digest, (about the battle of the interests), that is absolutely ineffective in term of the force of the relevant officer for the accurate cover or at least the providing of the information at the present time. The marking up proceedings concerning the amendment of act proposal carried out in the November of the 2003 year proved, that there was not considered one of the substantial proposed changes, there was not elaborated the condition of the exclusion of any gainful activity concrete, during which it could be used, eventually misused the information obtained in the connection with the discharge of office, and that also after the termination of the term of office for the period of 5 years. This demand on the explicit formulation of the prohibition to participate in the business activity of any kind was not elaborated by the relevant department (bureau) of the Ministry of Internal Affairs not even in further cycle of the marking up proceedings. The regulazation about the battle of interests is absolutely insufficient, that is additional in violation of the opinion of the Highest State prosecution and the proposal of the National strategy against the fraudulent dealing injurious the financial interests of the European Union, when the basic principles should be:

- the determination of new scope of the duties of the public officials
- exact determination of the duties and the strict restrictions (incompatibility of the functions and duties of the elected public officials)
- register of the interests (comprehensive conception about the self-interests of the public officials – uniform, updated and clear database)
- effective proceedings concerning the battle of nterests (there must decide always another body, in order to avoid the „solidarity“ between colleagues).

In connection with the insufficient legislative about the battle of interests it is necessary to refer to the necessary adaption in the area of the uncontrolled lobbying under which there is often covered the corruption handling in connection with the introduction of the effective anticorruption mechanisms. This statement is evidenced by the the argument, that that, which is engaged in the lobbying, does not want to avow public to this and he shields its activity under other activity. The latency of the holder of the interest and assignment, the latency of the lobbyist and the endeavour after the confidentiality of the political involed person, proves for the hypothesis, that it is the corruption process actually. Based on the experiences and findings of the Section for the detection of the corruption

and the financial criminality it is possible to await the increased activity by the lobbyist groups in connection with the election campaign – these groups ensure for example the positive resolution of the application for the grant, obtaining of profitable order etc. for any earner under the condition to give a relevant vote (this process is unlawful and punishable in the Germany).

Unsolved problem is the punishment of the corruption of the juristic persons, when the opinions concerning their tort liability balance between the administrative law and the criminal sanction. The administrative sanction enables among others the financial sanction, which is small sanction with regard to the achieved extremely high profits and illegal earnings. In addition to, the collective decision-making is typical for the juridical persons. This way is also for the decision making of the autonomy typical, when the consciousness of the impalpability resulting just from the collective approach, assists to the doubts about the transparent process in the decision making.

3.9 Historical development of the economic relations and legislature

Should we take into account that the period of the force of the Penal Code number 140/1960 of the Collection of Laws, then we can divide into three relative separate parts and namely in the period of the years 1961-1989, 1989-1992 and further in the period 1993 present time.

- a) There existed the socialistic economy in the term from 1961 to 1989. The economic criminal activity was not so developed and variable like the present time, because there were limited any forms of the business enterprising substantially. There was incorporated also the crime of the property pilferage under the socialistic ownership between economic crimes, because the attack upon the socialistic property was understood like the attack upon the state economy as well as the crimes of frauds, defalcation in the area of the property in the socialistic ownership.
- b) Since the year 1989-1992, where there are apparent steps meaning the transition of the national property into the private sector, that was featured with the lack of experiences and legislature, chaos, voucher privatization. It had occurred the sudden development of the enterprise in all the areas of the society. There were established

crafts, Limited Liability Companies, joint-stock companies, funds, private banks and savings cooperatives. In connection with this, that the state already does not play so important role in the area of the economy (when the state by means of the state organizations cared for the tax payment and the payment of all other dues, regulated business till then). In connection with it, the imperfection and the non-transparency of the whole system abused was.

- c) Since 1993 up to 1998, where there is already registered the start of the economic criminality, whereas it concerns already qualified perpetrators in most cases.

The legislature, even if often with the delay, responded to newly incurred situations in both periods and has criticized the dangerous proceedings for the society. Especially the second period was the period of the chaos and of the unlucidity at the beginning, when the obsolete norms abated and the legislative works proceeded slowly. There missed many laws or these laws insufficiently concurred at each other.

Our economy changed into the capitalist economy, proprietary relations changed, it happened the privatization, restitutions and development of the private enterprising. Of course, the transformation of the economy had the positive aspects mainly. At the same time though, considering how it was done and which conditions it happened, it had necessarily also the accompanying negative phenomena in the form of the unusual boom of the economic, but also other criminality, and this in whole new and unusual forms and often in the huge volume. This occurred (among others) also therefore, that the society was not ready for the basic changes in the economy, that did not existed the fixed legal framework of the carried out changes and mainly, that the area that opened here thanks to these changes, attracted different infirm individuals, who anticipated their mail chance for the huge enrichment here, often upon any terms.

We were the witnesses of this in connection with the privatization, restitutions and sometimes also with private enterprising, to which unfortunately „bundled up“ also some forms of the criminal activity, like the tax frauds, corruptness, contraband of goods or for example also the violation of information in the business contact. Unfortunately with it were connected also some violent torts, including the hijacking, murders and others. There were not of course only (mainly) the manifestations of the moral infirmity. Doubtless, for example a number of modern enterprisers, earlier for instance only of the ordinal personnel, which started to deal with the business activities, did not have for this kind of

activity than earlier unknown, minimum experiences, necessary capital and others. It often led to the nonsuccess. And the finding of the resource during the passing of troubles and unfavourable situation could have the battle with the law for a consequence and unfortunately, sometimes also with the any of Penal Code. The members of former regime could better orientate here, and this thanks to their branched connections from the past, experiences, education and others. They proved to adapt to the newly incurred situation very good and to carry business often very sprightly. For the entry of mentioned social group into the economy it is stated (with reference to the comparative study) that it was important to change the political and social capital accumulated during last regime into the economic capital that enabled the entry into the economic elite in the period of the „revolution“.

The help for the start of the enterprise absent own capital should have been the bank credits. Unfortunately it was the help upon any terms in this area sometimes and it concerns also the Financial institutes, that also searched first experiences under new conditions, they proceeded totally blithely sometimes, or also purposely wrong. The consequence is a number of credits without any perspective of their repayment, breach of the law on the side of the applicant for the credit and the finance institution (as we are the witnesses of many years dragging criminal cases, where it concerns multimillion loss of the finance institutions relating to the given credit). Also the irresponsible, even criminal treatment with the savings of the small savers is connected with it. These small savers let to cozen themselves for the promised unreal interest level, resulting in the impoverishment of depositors and the bankruptcies of the finance institutions directly. With the unsuccessful enterprise is connected the Institute of Bankruptcy and composition established after the November 1989. Except the positive and the beneficial aspects we have to talk also the negative phenomena about, because it concerns also much money and values in this area that entice some mischievous disaster persons. What here occurred crimes concerns, it does not relate only to simple failure of the duties under the bankruptcy or the disturbance of its process, but first of all the endeavour to richen during the bankruptcy by unwilling way and in the big scope. Like the perpetrators may come into question all the decisive persons participating in the bankruptcy. Some of these cases already gone through our media. It shows that (otherwise beneficial and useful) Institution of the Bankruptcy and composition may, in combination with the subjective characteristics of some subjects, lead also to major economic criminal activity. I am afraid that what appeared so far, is only known top of the glacier and that the reality will not be by no

means stimulative. The confirmation of what I mention, is given by the fact, that the supreme authorities decided to verify the earlier occurred bankruptcies, whether they happened due, correct and in accordance with the law.

4. Preventative measures

As already several times mentioned, it is not possible to specify the preventative measures uniquely, that would be generally valid in the fight against the commission of the economic criminal activity. Like the specifics have the causes of the occurrence of the economic criminality, it is also necessary to apply the similar specifics also at the economic criminality prevention in their individual areas.

The possibilities of the prevention use in the area of the economic criminality are wide. They can remain in the more general level, with the wider force of the preventive activities, but they can also be focused very specifically on the prevention of individual concrete forms of economic crimes.

The whole legal order has the basic position for the prevention of the economic criminality, and this legal order determines the barriers, in them the economic relations may take place. The legal order establishes the form, individual laws and duties for individual subjects of the relations and thereby designates the ideal and expected behaviour of the concerned subjects at the business relationship. In this way there is important also the mutual cohesion of individual legal regulations in individual branches of law, as for example commercial, administrative, finance laws and last but not least their connection to the penal law. In the criminal area it looks like the necessary demand of the rule of law of good quality especially the elaboration of the facts of the cases, which would accept new forms of the economic criminality and the measure of their social seriousness and their precise elaboration whether in the bank sector during the conclusion of credit contracts etc., also on other sections of the economic relations, that would prohibit the plural interpretation, complicating the proofs of the criminal activity and in consequence of this also the escape of the perpetrators of the economic criminality before the criminal liability.

In addition to the issues relating to the enhancement of our legal regulations it is necessary to emphasise also the need of the consequent use of the current valid legal regulations and the suitability of the awarded punishments for the economic crimes. There is alarming in this respect especially, that also with the high detection rate, that is showed in the police statistics relating to the economic criminality amounting 98%, it occurs major reduction by them within the criminal proceedings, so that many cases do not finish the criminal proceedings by the judgment of conviction. The Penal Code however itself does not protect our economy against the criminal activity. Some of specialists warn against the excessive overestimating of the role of the criminal repression and the emphasis given on

the prevention especially.

Concerning the arguments, that speak for the introduction of the criminal liability of juridical persons, it is possible to mention the formation of new forms of the major criminal activity, that we can consider for the typical forms of the committed within the scope of the activities of the juristic persons. It concerns for example the fraudulent elicitation of the subsidies, grants, environment damage etc., that is connected with the activity of juristic persons directly. Existing sanction of these major torts, claimed by the form of the individual criminal responsibility, is not effective enough. It is not possible to bring individual criminal liability often to the end and to punish the concrete perpetrator (for example it is not possible to prove the criminal liability in the unnoticed structure of the legal subject, in some cases is the person, that is prosecuted for the criminal activity in connection with the activities of the enterprise, considered for the scape-goat and it happens that such person is subsequently indemnified by the management of given legal subject by the redemption of high amounts in form of reward etc.) and does not fulfil so not even the preventive function. Not only the state, but also individual subjects of the enterprise relations have to pay appropriate attention to the formal as well as content requirements of the closed contracts. For example the necessity of the detailed and clear specification of the laws of the leasing company as the lessor in the leasing contract, which is one of the possibilities to prevent the fraudulent and other criminal proceedings to the prejudice of the leasing companies.⁶

So that we are ready enough for the admission of suitable preventive measures, it is necessary to follow and to evaluate the status and the development of the economic criminality continuously. To this, such conceptual access, that would remove the major dissimilarities in the determination of the term "economic criminality" in the current police and justice statistics, these are serious barrier in the usage.

The pivotal part of the criminal activity is aimed at the achievement of the profit, whose following withdrawal is in accordance with the principle that nobody is to be enriched owing to the commission of the criminal activity. The current situation in the area of the outflow of the criminal profits is not quite satisfactory. The law enforcement authorities focus still especially on the sentencing imprisonment and they put the withdrawing of the illegal acquired profits aside. The cause for this status is partly the certain fragmentation of the current legal regulations that does not accent the outflow of the revenues enough and also nonoptimal cooperation of the law enforcement authorities in

^[6] BRABCOVÁ, I. *Hospodářská kriminalita z pohledu kriminologie*. Praha : Vydavatelství PA ČR, 2001. 63s. ISBN 80-7251-071-1.

this area.

4.1 Control activity

It is necessary to award to this circumstance the important role in the prevention. The ineffective control acts in the area of the economic criminality as the important criminogen factor. It is therefore necessary to pay attention not only to the corresponding legal determination of its laws and duties, accordant with the structure, but also the satisfactory material and technical support. The professional level of the supervisors has to be increased countinously. The coordination of the control bodies for example with the police, customs administration bodies, tax office etc. proves good in the practice during individual control actions. In addition to the state control it fulfills also the control and hereby also the preventive role of the nonstate institution in the form of the entrepreneurial unions.

4.2 Enlightenment

It concerns the personality characteristics of every individual and his capabilities and motives during the performance of the relevant profession. This request will have its meaning both for the bank clerk, business firm manager or manager of other firm, and also for the civil officer and especially in such branches, as the performance of the justice or police work.

Here is it exceedingly advisable that the state bodies as well as ministry bodies manage the planned systematic improvement of the expertise concerning the personnel at all levels and there will be no reliance upon the study hour only, that is recommended. Also the possible trainee-ships could assist the improvement of the quality of the individual personality professional skills of the individual personnel. In this field it is not possible to miss out the risk facts, that best ready and trained personnel of the state bodies are often, with regard to their experiences, hired by the private firms under much better salaries and also material conditions.

4.3 Ethics

The ethics plays an important role in the economy and their relations. The ethics

codices are entered in a number of European countries by different professional groups at the local and national levels. Also different international organizations may accept the ethics codices and namely in the form of rules of conduct of the multinational companies. They are voluntary codices, whose keeping is not mostly possible to get legally, except for the exceptions.

For example in the Switzerland the banks closed such ethic agreement, the ethic codex for the advertisement exists in Italy, there exist the ethic codices at the real estate brokers and bookkeepers in the Netherlands and last but not least accepted the ethic codices also different international organizations such as the Organization for the economic collaboration and development of the United Nations OSN, namely in the form of code of conduct of the multinational companies.

4.4 Technical measures

The technical measures are accepted in terms of the prevention as the appropriate measures that have to make the commission of the economic criminality difficult. Further effective means for the protection of currency, protection of computer programs against the copying for example Kaktus or against illegal installation, registration through internet, for the protection of data stored in the computers by the biometrical sensors etc. have to be found.

The evidence of the possibility and width of the scope during the investigation especially of the finance criminality bears also the proceeding of the Italian units, that focus not only on the person of the offender, but also on his partner, children, persons, that lived with the suspected person during last five years and Italian units monitor the lifestyle, finance possibilities and economic activity of these persons.

Also the elaboration of the facts of the cases, that would copied new forms of economic criminality and the rate of their social hazardousness and their precise elaboration, that would not enable plural interpretation complicating the proofs and owing to this also the perpetrator escape of these acts before the legal liability.⁷

^[7] KADEŘÁBKOVÁ, D. *Hospodářská kriminalita ve finanční oblasti*. Praha : Institut pro kriminologii a sociální prevenci, 1996. 32 s. ISBN 80-86008-20-7.

4.5 Responsibility of juridical persons

The physical entities substituting the juridical persons are called to the criminal responsibility in our legal system. The physical entity itself can be involved with the administrative consequences only.

What arguments for the introduction of criminal responsibility of the juridical person concerns, it is possible to state especially the occurrence of new forms of the serious criminal activity that we can consider as the typical forms perpetrated in terms of juridical persons. It is a matter of the fraudulent elicitation of the grants and subsidies, damage of the living environment etc., that are related to the activity of the juridical persons directly. Existing recourse of these torts claimed by the form of individual criminal responsibility is quite ineffective also with the regard to so-called collective decision made by the counsel, board of directors or general meeting.

In addition to the question concerning the enhancement of our legal regulations it is also necessary to mention the need of the consistent use of the current legal regulations and the suitability of awarded punishments for the economic crimes.

5. Perception of laws under the context of civil subjects

5.1 Legal conscience of the citizens

In connection with this follows the reduction of the criminal sensitivity at the wider population layer that gets in touch with the economic phenomena in our society. I think the bank frauds, computer criminal activity, bribery, embezzlement etc. particularly. On the one hand, these cases may induce some risk subjects or persons to the presumption, that such criminal activity pays to them, because the risk of the detection and the punishment for the breach of the legal rules is negligible. It already became „national sport“ in our society, that the society considers such unlawful conduct as ordinary and it is not the contemptible part of the economic relations in the society.⁸

5.2 Possibilities for the enhancement of the legal conscience

The preventive policy presents the offensive strategy of the criminality control that relies mainly on the nonrepressive means. It is concerned with the elimination of the social-pathological phenomena and the reducing of the motives and opportunities for the commission of the crimes. The range of subjects for the preventive policy includes beside the law enforcement authorities – system of the justice, police, prosecution, courts and the prison service (which do not play the main role), and further institutions – for example nonrepressive bodies of the public administration, interests groups of citizens, churches, entrepreneurial subjects and individual citizens.

I think that it is necessary to obtain the primary bases of the legal conscience already at the level of elementary schools because based on my own practice I know the fact, that for example already 9-year old children having the personal computer and the connection to the Internet network prove in the large extent to infringe both the copyrights and the forgery and the alteration of money.

The public gets knowledge about the punishability of certain dealing after its commission and in not a few cases only on the ground of the breakdown of some interested body, whether it concerns the law enforcement authorities or the participation of

^[8] ŠÁMAL, P. *Podnikání a ekonomická kriminalita v České republice*. Praha : C.H.Beck, 2001, 523 s. ISBN 8071794937.

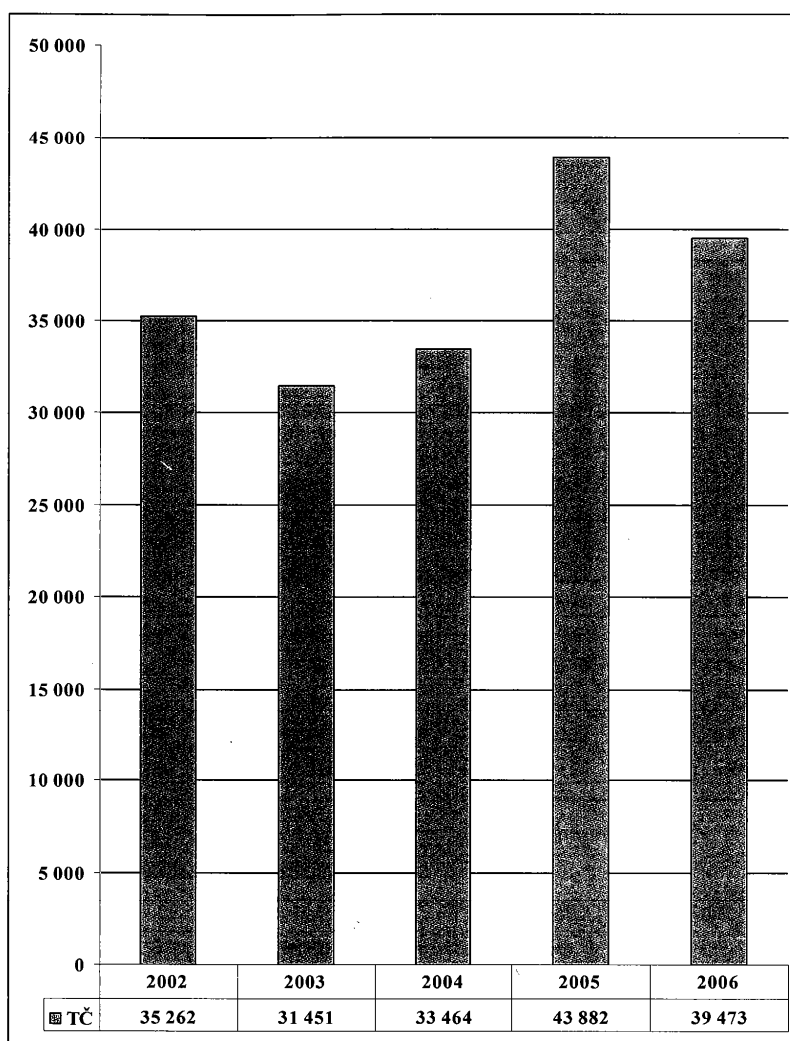
political active persons or modern celebrities.

In terms of changes and the increasing of awareness of traffic rules there is provided the extensive campaign in the television, magazines and other media, but I have not noted similar activity at the criminality level and especially economic criminality yet.

6. Statistics of the Economic criminal activity in the Czech Republic

Graph number 1

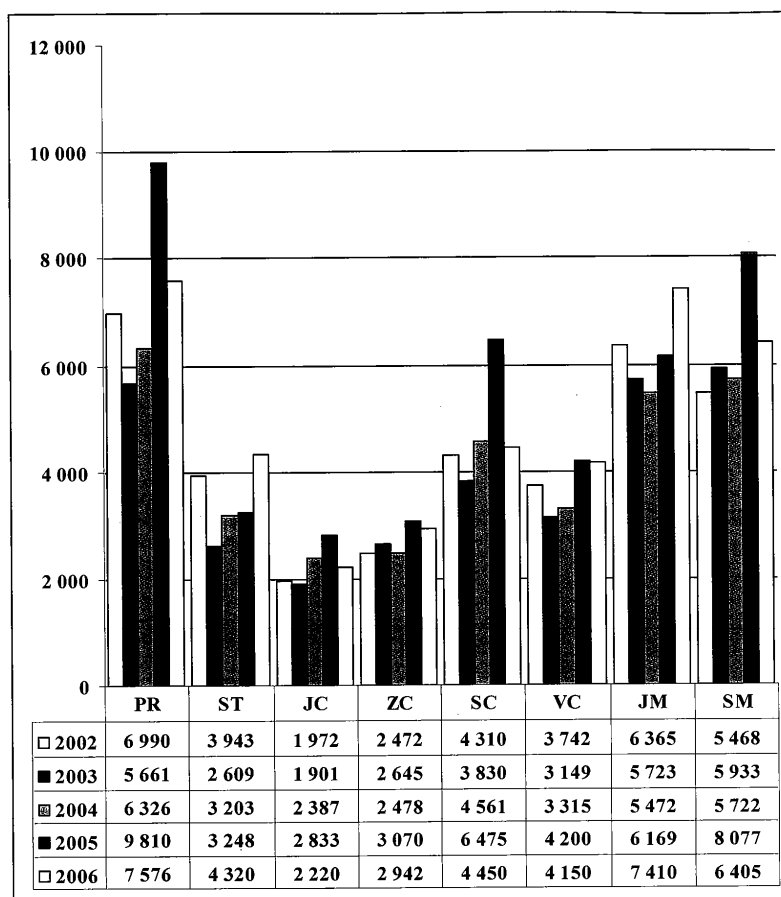
Economic criminality ascertained in the territory of the Czech Republic,
comparing of years 2002 - 2006



Source: <http://www.policie.cz/statistiky/kriminalita.html>

Graph number 2

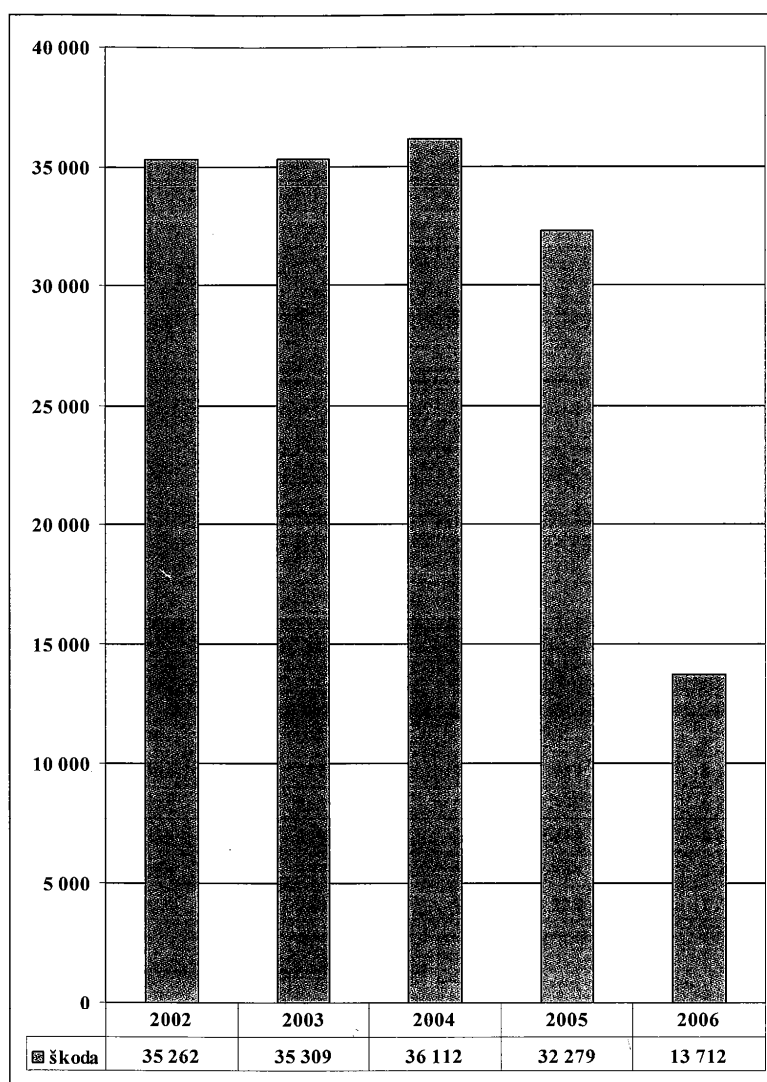
**Economic criminality ascertained in the territory of individual regions in the
Czech Republic, comparison of years 2002 – 2006**



Source: <http://www.policie.cz/statistiky/kriminalita.html>

Graph number 3

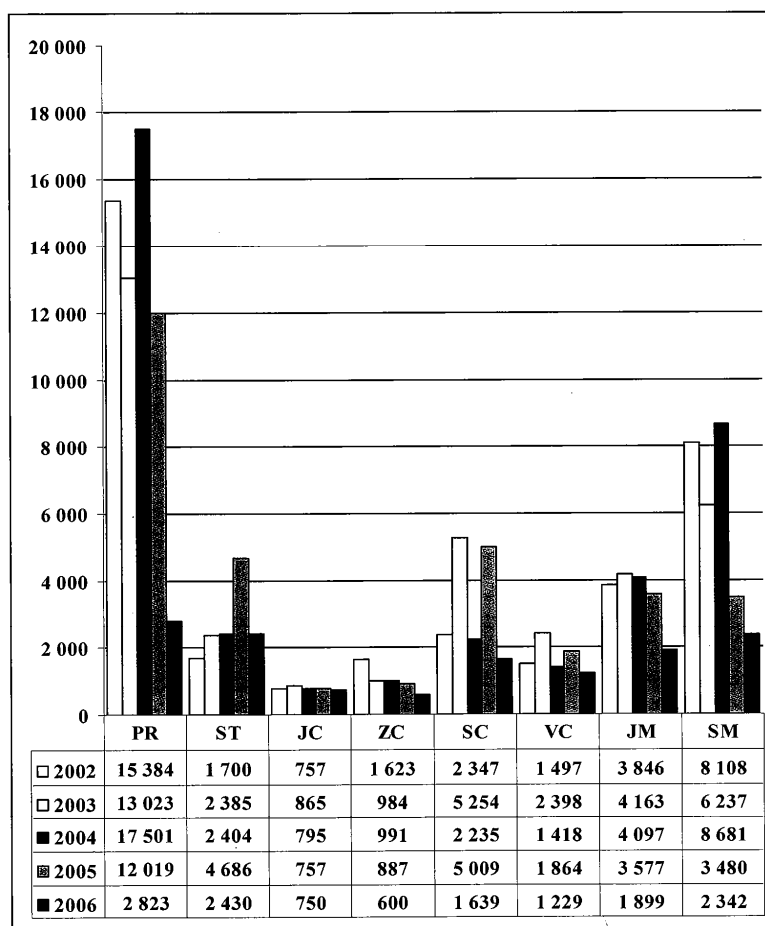
Total inflicted damage perpetrated by the economic criminality ascertained at the territory of the Czech Republic, comparison of years 2002 – 2006



Source: <http://www.policie.cz/statistiky/kriminalita.html>

Graph number 4

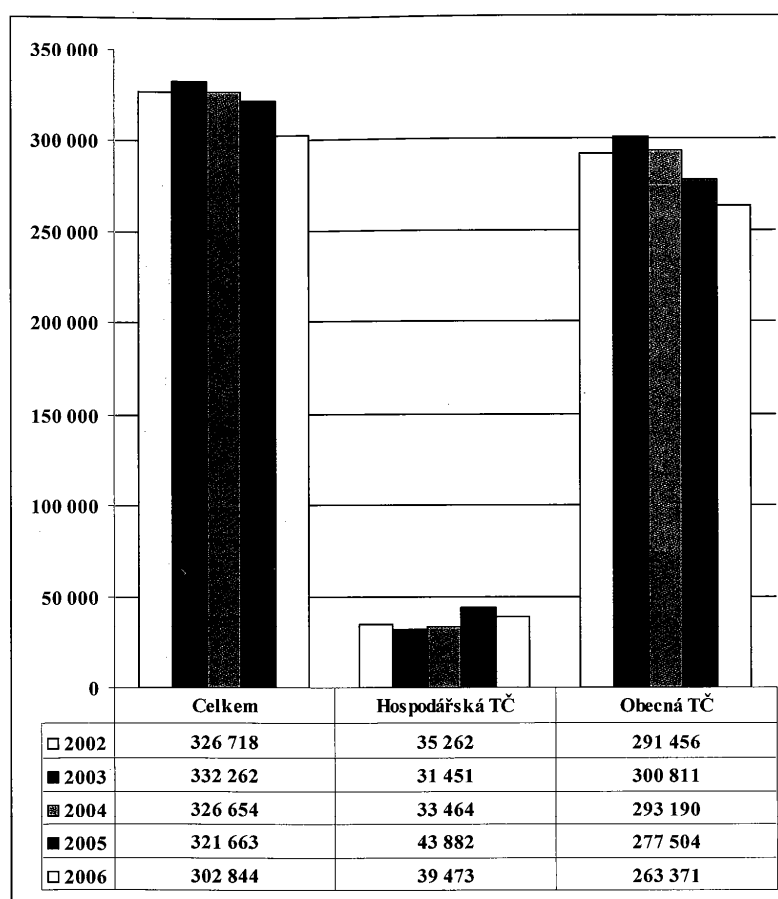
**Total harm done perpetrated by the economic criminality ascertained in the territory
of individual regions of the Czech Republic, comparison of years 2002 – 2006**



Source: <http://www.policie.cz/statistiky/kriminalita.html>

Graph number 5

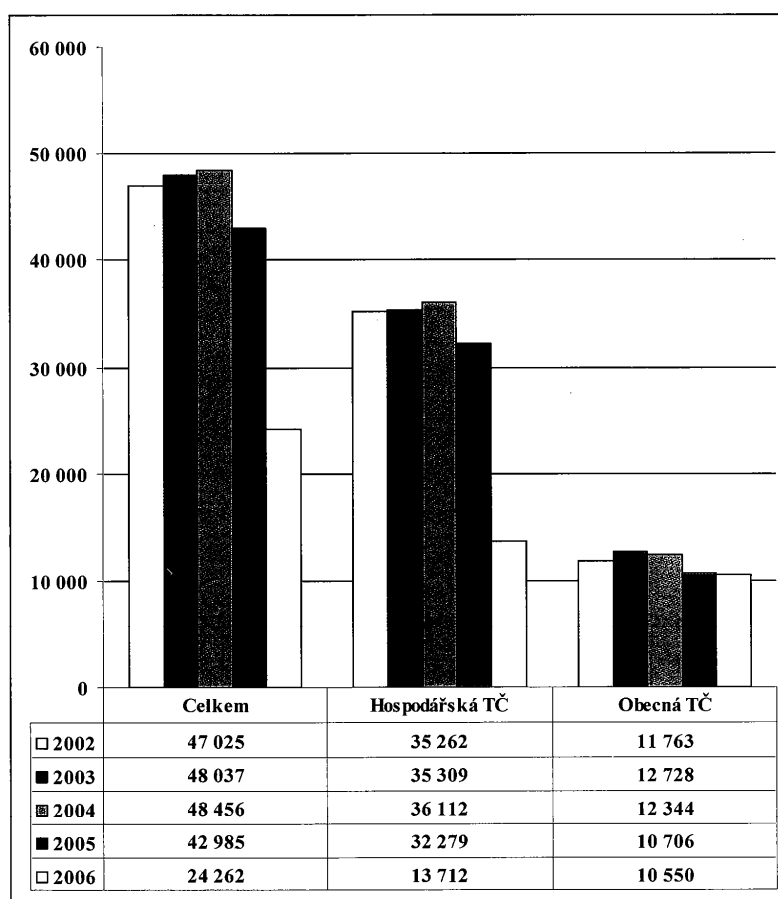
**Total criminality ascertained in the area of the Czech Republic, comparison of years
2002 – 2006**



Source: <http://www.policie.cz/statistiky/kriminalita.html>

Graph number 6

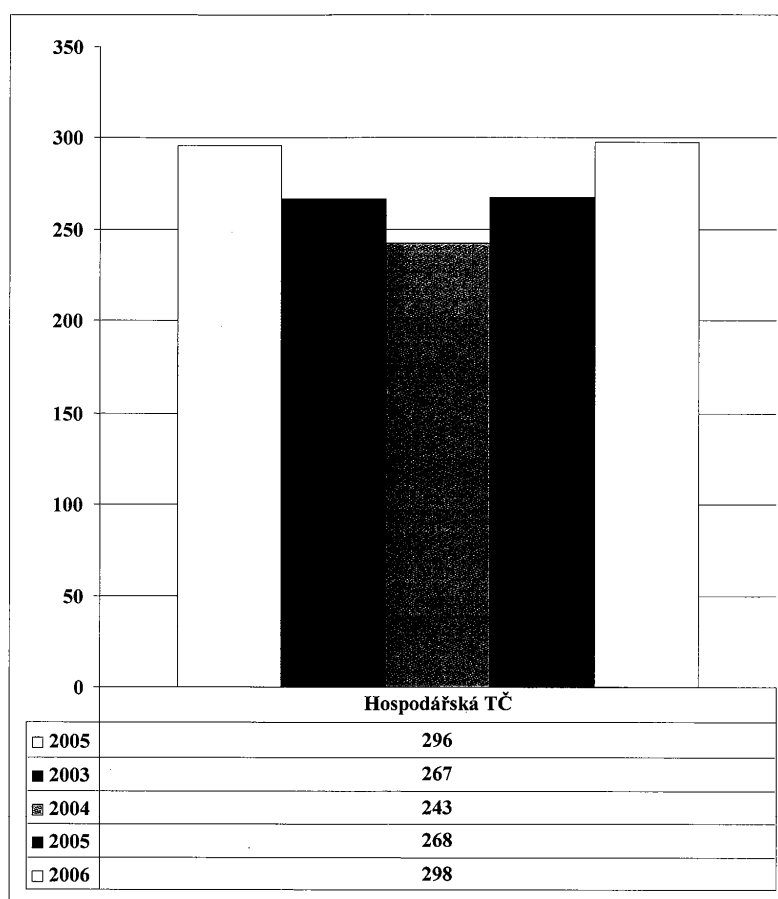
Total harm done due to committed criminality ascertained in the area of the Czech Republic, comprising of years 2002 – 2006



Source: <http://www.policie.cz/statistiky/kriminalita.html>

Graph number 7

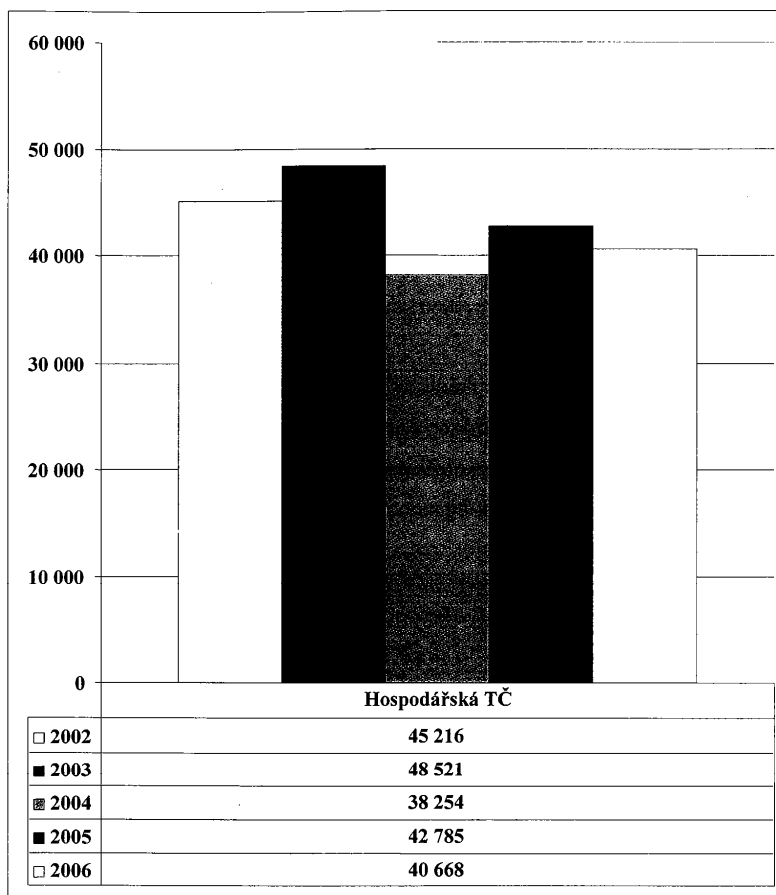
**Economic criminality ascertained in the area of district Uherské Hradiště,
comprising of years 2002 – 2006**



Source: <http://www.policie.cz/statistiky/kriminalita.html>

Graph number 8

**Total harm done due to the committed economic criminality ascertained in the area
of the district Uherské Hradiště, comparing of years 2002 – 2006**



Source: <http://www.policie.cz/statistiky/kriminalita.html>

Conclusion

Economic criminal activity results in a weakening of national economics as well as local economy, and therefore it is necessary to take such measures that would reduce this antisocial activity.

By means of all public education, such awareness of individuals is to be achieved, that the perpetrator of any criminal activities will be detected within a short time and a court will decide on his rightful punishment which would show itself in such a way, that any fears of following detection would discourage possible perpetrators from a criminal social act.

There is no police authority and the authority of the criminal service given by rule of law to infringe upon organizational economic activity in such a way that it would issue a decision or a rule to implement certain preventative measures that would solve detected deficiencies.

The most effective means for the abatement of economic criminality at its own beginning will remain the consequent in-house control, as well as other check mechanisms functioning even now. There has to be a specific conceptual solution with the setting of attainable goals in the given area, but such conception is missing at the present time and it is only in-process.

In my opinion, the main reasons for economic crises have existed several years and are shown especially by the scope and form of national indebtedness, unfavorable balance of trade, bankruptcies of banks, large companies and firms, social tension within a number of sectors etc., and the implementation of economic transformation in so called "revolutionary conception". During this transformation there is no need to apply moral principles or even a legal regulating system at the beginning. Due to the fact no legal environment has been established with sufficient guarantee against behavior of individual subjects in violation of base rules of economic connection, and because legislation only followed turbulent economic development during economic transformation and the right was used only like an implement for following regulation of economic relations and practices already formed, the area of law enforceability is very underestimated. There have not been created sufficient institutions, personnel and material sources in order to detect, investigate and evidence financial criminality. One of main reasons for current economic development in the Czech Republic has been seen in these circumstances. On that ground I am of the opinion that it is necessary to establish a

proper, quality legal framework including effectual criminal sanction of economic criminal activity, especially in the financial area where we see the most severe antisocial torts within the economic scope. At the same time the establishment of an effective system for financial criminality investigation and specific procedures during its proofs.

At the present time, when basic and substantial regulation mechanisms have already been established in our country, I see the decisive area of acting for the improvement of situations concerning the behavior of subjects in a free and reasonably controlled economic market. At the same time it is necessary to emphasize that the indicated regulations may not be over the framework of limitations resulting in the need to affix clear and transparent rules for the functioning of individual economic subjects in the free and open market of products and services. The base then is the civil law regulation (business law, civil, tax etc.), by means of affixing basic duties and rights to individual subjects creating a corresponding legal environment for their functioning and implementation of necessary economic activity within the scope of business, including civil law sanctions (compensation for damages, unjustified enrichment etc.). Civil law regulations should be followed by administration law regulations, with system resources for administrative torts generally in the form of penalty or other property resources, creating the base of peremptory measures for observance of duties defined by the government. Only in this way is it possible to establish a transparent environment for individual entrepreneurs, trading companies, co-operatives and other juristic persons in the economic market. My bachelor dissertation includes only simple introduction of the economic criminal activity issue, based on the limited scope of this dissertation.

RESUME

The economic criminal activity results in a weakening of national economics as well as economy, and therefore it is necessary to take such measures that would reduce this antisocial activity.

By means of all society education, such awareness of individuals to be achieved, that the perpetrator for any criminal activities will be detected within a short time and a court will decide on his punishment rightful, what would show itself in such a way, that any fears of following detection would discourage possible perpetrators from a criminal social acting.

There is no authorization of the police and eventually of the criminal service given by rule of law to infringe upon organization economic activity by such a way, that it would issue a decision or a rule to implement certain preventative measures that would solve detected deficiencies.

The most effective means for the abatement of economic criminality at its own beginning will remain the consequent in-house control, as well as other check mechanisms functioning even now. There has to be a specific conceptual solution with the setting of attainable goals in the given area, but such conception is missing at the present time and it is only in-process.

According to my opinion, one of the main reasons for economic crises existing several years already that are shown especially by the scope and by the form of national indebtedness, unfavourable balance of trade, bankruptcies of banks and of big companies and firms, societal tension within number of sectors etc., was the implementation of economic transformation in so called „revolutionary conception“. During this transformation there is no need to apply moral principles or often even legal regulating systems at the beginning. Due to this fact there has not been established legal environment with sufficient guarantee against behavior of individual subjects in violation of basest rules of economic connection, because the legislation only followed turbulent economic development during the economic transformation and the right was used only like an implement for following regulation of economic relations already formed as well as

practices. The area of law enforceability was very underestimated, there have not been created sufficient institutional, personnel and material sources in order to detect, investigate and evidence the financial criminality. One of main reasons for current economic development in the Czech Republic has to be seen in these circumstances. On that ground I am of the opinion that it is necessary to establish the legal framework of proper quality, including effectual criminal sanction of economic criminal activity, especially in the financial area, where we can see the most severe antisocial torts within the economic scope. At the same time also the establishment of effective system for financial criminality investigation and specific procedures during its proofs.

At the present time, when basic and substantial regulation mechanisms already have been established in our country too, I see the decisive area of acting for the improvement of situation concerning the behavior of subjects in a free and reasonably controlled economic market. At the same time it is necessary to emphasize, that the indicated regulation may not be over the framework of necessary limitations resulting from the need to fix clear and transparent rules for the functioning of individual economic subjects in the free and open market of products and services. Then the base is the civil law regulation (business law, civil, tax etc.), because just this by means of fixing of basic duties and rights to individual subjects creates corresponding legal environment for their functioning and implementation of necessary economic activity within the scope of business, including civil law sanctions (compensation for damages, unjustified enrichment etc.). The civil law regulation should be followed by administration law regulation, that with its system recourses for administrative torts generally in the form of penalty or other property resources create the base of peremptory measures for observance of duties defined by the government. Only by this way it is possible to establish a transparent environment for individual enterprisers, trading companies, co-operatives and other juristic persons in the economic market. My bachelor dissertation includes only simple introduction of the economic criminal activity issue, based on the limited scope of this dissertation.

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