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FREEZING OF ASSETS AS PART OF THE FIGHT AGAINST ECONOMIC CRIME, INCLUDING FINANCIAL CRIME

Abstract

The concept of economic crime has been used in the legislation of many countries for over 90 years. In Poland, as a result of systemic changes at the turn of the 1980s and 1990s, this type of crime evolved. Criminals from this period, taking advantage of such factors as the lack of appropriate legislation, services unprepared for a new type of threats, the possibility of free movement between former socialist countries, and countries in Western Europe, created many groups dealing with illegal activities aimed at the economic sphere, be it private or state entities. Taking into account the specificity of acts falling within the scope of economic crime as well as the scale of the damage caused, the prosecution of perpetrators is not as effective as in criminal offenses. One of the most effective tools used in the fight against “white-collar” criminals is freezing of assets. Such actions are very important, because only in 2020 in Poland, as a result of economic investigations by special services, losses of the State Treasury estimated at over PLN 20 billion were revealed.

Keywords

economic crime, assets, Police, freezing of assets, security.

Introduction

The term economic crime has been used in many countries since the 1930s, thus it has many definitions depending, among others, on the legal system in a given country, acts defined as prohibited, etc.

There is no uniform definition of economic crime in Poland. Most generally, it is fair to say that this type of crime is characterized by activities against the correct principles of the economy¹. The following attempts to define this type of crime can be found in the literature on the subject. For example, according to Robert Zawłocki, an economic crime is a prohibited act with certain statutory features, specified in a criminal law, the main generic subject of protection of which are specific grounds for proper economic turnover². On the other hand, Oktawia Górniok believed that economic crime refers to punishable acts that harms or threaten supra-individual goods in the sphere of economic life, consisting in violating the trust associated with the position of the perpetrator or institution of economic life, threatening to lose public confidence in the economic system or its basic institutions³. Whereas Leszek Wilk believes that since in accordance with the act on freedom of activity, economic activity is considered to be profit-making production, construction, trade, service activities as well as searching, identifying and extraction

of minerals from deposits, as well as professional activities carried out in an organized and continuous manner⁴, then any unlawful, prohibited, culpable and socially harmful actions of participants of economic turnover understood in this way, where at least one of their participants is a professional entity, should be understood as an economic crime⁵.

Contemporary economic crime is characterized by many forms, considered as negative phenomena in the countries of the European Community, including:

- in banking, the use of payment cards;
- capital market;
- related to the gambling market;
- related to insurance;
- tax and customs;
- against intellectual property;
- related to ownership transformations;
- related to public procurement;
- against the environment;
- to the detriment of special purpose funds;
- money laundering;
- selected other economic crimes, e.g., illegal pharmaceuticals trafficking.

While discussing economic crime, one can distinguish its features, by the following characteristics:

- no violence in the actions of the perpetrators;
- the perpetrators' actions result in serious material and non-material losses;
- most often victims, aggrieved parties are anonymous people, institutions, organizations;

¹ According to the Criminal Code, a crime is a prohibited, culpable, unlawful and socially harmful act, art. 1 § of the Act of June 6, 1997, Penal Code, i.e. Journal Of Laws of 2019, item 1950, as amended.

² R. Zawłocki, *Podstawy odpowiedzialności karnej za przestępstwa gospodarcze*, Warszawa 2004, p 55.

³ O. Górniok, *Przestępczość gospodarcza i jej zwalczanie*, Warszawa 1994 p. 16.

⁴ Art. 2 of the Act of July 2, 2004, on the freedom of economic activity, i.e. Journal Of Laws of 2017, item 2168, as amended. Legal act repealed on April 30, 2018.

⁵ L. Wilk, *Przestępczość gospodarcza – pojęcie, przyczyny, sprawcy*, *Edukacja Prawnicza* 2012 no. 10 p. 14-15.

- a significant number of perpetrators are recruited from educated people;
- the perpetrators' actions seem to be legal;
- to a large extent, the perpetrators act on the basis of public trust.

Methodology

In the research conducted for the development of this article, a systemic approach was applied to the scientific problems considered. They were realised on the basis of information gathered by the author and commonly available results of scientific research concerning the topic of the article. Theoretical methods of scientific research were used during the research. The research covered the last thirty years, in which there have been changes in the legislation for combating economic crime and intensification of scientific research in the field of public security⁶.

Police as one of the entities combating economic crime

In Poland, as part of operational and reconnaissance activities or preparatory proceedings, one of the authorized services to disclose assets of perpetrators of crimes is the Police⁷. Pursuant to the Act of April 6, 1990 on the Police, the basic tasks of this service include, i.a.:

- protection of human life, health and property against unlawful attacks violating these values;⁸
- initiating and organizing activities aimed at the prevention of crimes and offenses as well as criminogenic phenomena and cooperation in this respect with state and local authorities and social organizations;
- detecting crimes and offenses and prosecuting their perpetrators;
- cooperation with the police of other countries and their international organizations, as well as with the bodies and institutions of the European Union on the basis of international agreements and arrangements as well as separate regulations;
- processing of criminal information, including personal data⁹.

For an effective exercise of these tasks, the police is authorised to perform, i.a., operational and reconnaissance activities necessary to identify, prevent and detect crimes, fiscal crimes as well as search for people hiding from law enforcement authorities¹⁰.

The police officers serving in criminal departments deal with economic crime. Their main tasks at the voivodeship headquarters level are:

- identifying, preventing and combating economic crime as well as prosecuting perpetrators of thereof;

⁶ More: B. Wiśniewski, *Praktyczne aspekty badań bezpieczeństwa*, Difin, Warszawa 2020.

⁷ In addition to the Police, the following also have such powers: Internal Security Agency, the Central Anticorruption Bureau, the Military Police, and the National Revenue Administration.

⁸ See: R. Socha, *Zwarte oddziały Policji w działaniach na rzecz bezpieczeństwa obszarów miejskich*, [w:] *Bezpieczeństwo publiczne w przestrzeni miejskiej*, red. nauk. W. Fehler, wyd. Arte, Warszawa 2010, pp. 140–149.

⁹ Art. 1 sec. 2 of the Act of April 6, 1990, on the Police, i.e. *Journal Of Laws of 2021*, item 1882 as amended

¹⁰ More: Policja w systemie bezpieczeństwa, A. Czupryński, J. Falecki, R. Kochańczyk, Dąbrowa Górnicza 2021 and B. Wiśniewski, Z. Piątek (eds.), *Współczesny wymiar funkcjonowania Policji*, Warszawa 2009.

- monitoring, forecasting and analysing level of threats in economic crime in the voivodship and on this basis indicating the main activities of subordinate Police organizational units to fight economic crime;
 - identifying obstacles in the work of organizational units to fight economic crime in subordinate Police units, as well as developing and implementing solutions to iron out these obstacles and assessing the effectiveness of implemented solutions;
 - implementation and coordination of identification, determination and freezing of assets activities during operational, reconnaissance and investigative proceedings;
 - inspiring, coordinating and supporting operational-reconnaissance and investigative activities of subordinate Police units in combating economic crime and supervising their operational work and preparatory proceedings;
 - cooperation and joint activities with offices subordinate to the Minister of Justice, the Minister of Finance, the Supreme Audit Office and the control and supervision agencies of the Opole Voivode in joint control-detection and preventive operations;
 - providing the Commander and the relevant organizational units of the General Police Headquarters with information on the need to amend legal regulations aimed at improving the efficiency of prosecuting economic crimes perpetrators and preventing the emergence of pathologies and new threats in the economy of the State¹¹.
- Departments of economic crime at the municipal level deal particularly with the following tasks:
- implementation of operational and reconnaissance activities in the field of economic and corruption crime in their AOR and direct handling of operational cases, including collectively committed crimes or difficult to detect;
 - handling preparatory and verifying proceedings of economic and corruption crimes, including those committed in an organized manner, difficult in terms of evidence, and with a strong social overtone;
 - supervision and coordination of operational tasks and implementation of preparatory proceedings of subordinate Police organizational units in the field of economic and corruption crime, i.a. by periodically analysing the number of initiated forms of operational activities and preparatory proceedings, as well as the number of identified crimes and suspects;
 - supervision and coordination of assets freezing tasks by subordinate organizational Police units the investigation department of the headquarters;
 - implementation of operational-reconnaissance and investigative activities in the field of so-called cyber-crime¹².
- The tables below present the work effects by the officers from these units.

¹¹ § 13 Rules of Procedure of the Provincial Police Headquarters in Opole of March 27, 2019, no L.dz. WS-P.0221.13.75.2019.

¹² § 15 Rules of Procedure of the City Police HQs in Opole of April 16, 2020, no. l.dz. KsP-L. 023.1.2020.

Table 1. The threat of economic crime in Poland in the years 2020-2021

Years	Initiated cases ²²⁶	Confirmed offences ²²⁷	% Detectability	Number of suspects
2020	107 890	199 010	81.8	31 825
2021	131 486	225 447	74.5	33 276

Source: own study based on data from the General Police Headquarters

These police data show that in 2021, 131,486 preparatory criminal proceedings related to economic crime were initiated. This value is higher than in 2020 by 23,596 proceedings, which is an increase by almost 18%. In the same period, the number of confirmed crimes is 225,447 and is 12% higher than in the

previous year, i.e., 199,010 (2020). Taking into account the number of crimes detected in 2021, which was at the level of 225,447, the Police field units managed to achieve detection level of 74.5%. This value is 7.3% lower than in 2020. In 2021, 1,451 more economic crimes suspects were identified than in 2020.

Table 2. Total value of assets frozen in criminal and economic crimes in 2020 and 2021

Year	Value of frozen assets		
	Total	In criminal cases	In economic cases
2020	905 465 128	162 528 054	675 276 627
2021	1 396 118 794	188 221 376	1 105 703 488

Source: own study based on data

In 2021, the total value of the frozen assets amounted to PLN 1,396,118,794 and was higher by PLN 490,653,666 than in 2020 (154%). An increase in the value of the frozen assets was also recorded for criminal offenses by PLN 25,693,322 and economic crimes by PLN 430,426,861.

¹³ The initiated preparatory proceedings are those initiated by an organizational unit of the Police in relation to an event of suspicion that it is a criminal offence, or initiated by the prosecutor's office and handed over to the Police for further direct conduct.

¹⁴ A confirmed offense is a crime or misdemeanor prosecuted by public indictment, including a fiscal offense, covered by preparatory proceedings concluded, i.a., with the filing of an application for approval or the preparation of: indictment, including approval of the application for consideration of the case in accelerated proceedings, an application to the court for a conviction (without indictment), discontinuation of the proceedings at the request of the injured party, conditional discontinuation of the proceedings.

Table 3. Total losses by criminal and economic crime, in 2020 and 2021.

Years	Losses in PLN		
	Total	Criminal cases	Economic cases
2020	6 218 828 880	2 192 420 147	3 927 125 571
2021	6 487 418 784	2 320 947 123	4 101 833 357

Source: own study based on data from the General Police Headquarters

Losses caused by crime in Poland in 2021 were higher by PLN 268,589,904 than in 2020. Also increases as a result of criminal crime by over PLN 128 million and economic crime by PLN 174,707,786 were recorded. Clearly, losses caused by economic crime in 2021 accounted for 63% of the total recorded loss.

Recovery of assets derived from crime as part of the fight against economic crime

One of the most effective elements of the fight against, i.a. economic crime is the recovery of property and proceeds from crime. According to experts, the forfeiture of benefits obtained from the committed crime is the basic tool to combat crimes, which brings better results than the long imprisonment sentences¹⁵.

Depriving perpetrators of illegally obtained income affects, among others:

- lowering the profitability of practices prohibited by applicable law;
- preventing the financing of crime, and thus limiting its development;

- minimizing losses of the state budget, for example by preventing the obtaining of undue tax returns and fraudulent subsidies;
- recovery of lost property by, for example, ensuring the execution of a court decision
- in the field of payment of public law liabilities resulting from the depletion of excise duty;
- restoring the social sense of justice and balance disturbed by crime¹⁶.

In Poland, on the basis of the amendment to the Penal Code of March 23, 2017¹⁷ changes were introduced aimed at improving the efficiency of the services in the field of depriving perpetrators of crimes of the benefits obtained from the crimes committed. Moreover, the introduced provisions adjusted our legislation to the provisions of the European Union¹⁸.

¹⁶ L. Domagalski, Zabezpieczenie majątkowe w zwalczaniu i przeciwdziałaniu przestępczości gospodarczej, *Przegląd Policyjny* 4(140), Szczytno 2020, pp. 84-85.

¹⁷ Provisions of the Act of 23 March 2017 amending the Act – Penal Code and certain other acts (*Journal of Laws* of 2017, item 768) entered into force on April 27, 2017.

¹⁸ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (*Journal of EU L* 127/39 of 29 April 2014).

¹⁵ More: J. Brylak, Znaczenie przepadku korzyści majątkowej w walce z przestępczością zorganizowaną, *Prokuratura i Prawo*, no. 7–8/2010.

In the amendment to the Criminal Code, the legislator delegated the powers to use operational controls to disclose property threatened with forfeiture, and in the case of the Police, they may include:

- obtaining and recording the content of interviews conducted with the use of means technical means, including telecommunications networks;
- obtaining and recording images or sound of people from spaces, means of transportation or places other than public places;
- obtaining and recording the content of correspondence, including electronic means of communication;
- obtaining and recording data of IT data carriers, telecommunications terminal devices, IT and ICT systems;
- gaining access and control of the contents of shipments¹⁹.

Thanks to the changes in legal regulations related to the acquisition of information constituting a secret protected under the Act, the Police has the right to directly request a given authority to provide data that is necessary for an effective prevention of crimes, identifying their perpetrators, obtaining and recording evidence, and may use information that is:

- fiscal secrecy, processed by government administration and local government bodies;
- professional secrecy referred to in art. 9e of the Act of November 5, 2009, on Cooperative Savings And Credit Unions;

- banking secrecy referred to in the Act of August 29, 1997, Banking Law;
- professional secrecy referred to in art. 9e of the Act of November 5, 2009 on Cooperative Savings and Credit Unions;
- individual data referred to in art. 79 sec. 1 of the Act of October 13, 1998, on the Social Insurance System;
- professional secrecy within the meaning of the Act of 26 October 2000 on Commodity Exchanges;
- professional secrecy within the meaning of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds;
- professional secrecy within the meaning of the Act of July 29, 2005, on Trading in Financial Instruments;
- secrecy within the meaning of the Act of 11 September 2015 on Insurance and Reinsurance Activities;
- secrecy within the meaning of the Act of August 28, 1997, on the Organization and Operation of Pension Funds;
- professional secrecy within the meaning of the Act of 29 July 2005 on Capital Market Supervision;
- professional secrecy within the meaning of the Act of 19 August 2011 on Payment Services²⁰.

The information obtained is subject to strict protection provided for in the provisions on the protection of classified information, and only police officers investigating a given case and their superiors who are authorized to supervise their operational activities have access to this data.

¹⁹ Art. 19 sec. 6 of the Act of April 6 on the Police ..., journal quoted.

²⁰ Article 20 sec. 3 of the Act of April 6 on the Police ..., journal quoted.

It is worth noting that courts and prosecutors may have access to files containing information and data only if it is done for the purpose of criminal prosecution.

As mentioned before, in connection with the regulations in force in the EU, information and data is also made available, if it is done for the purpose of criminal prosecution, to law enforcement authorities of the European Union Member States, European Union agencies dealing with the prevention and combating of crime and the International Criminal Police Organization – Interpol

Freezing of assets outside Poland

The rate of information exchange between services operating in the EU is of great importance in detecting and freezing assets obtained from criminal activities. Therefore, on the basis of the European Council Decision of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of detecting and identifying the proceeds of crime or other crime-related property²¹, each Member State was obligated to establish or designate a national asset recovery office. The purpose of such an office is to facilitate the detection and identification of the proceeds of the crime as well as other criminal property which may be covered by a freezing or seizure or confiscation order issued by a competent ju-

dicial authority in the course of criminal proceedings or, if possible, under national law of the Member State concerned, the civil proceedings.

Detailed rules and conditions for the exchange of information with law enforcement authorities of the European Union Member States, authorities of third countries, European Union agencies, international organizations for the purpose of identifying, detecting or combating fiscal crimes or crimes, including threats to public safety and order and preventing such crimes and threats, as well as the prosecution of perpetrators of fiscal crimes or offenses, are regulated by the Act of September 16, 2011 on the exchange of information with law enforcement authorities of the European Union Member States, third countries, European Union agencies and international organizations²².

Pursuant to the Act, entities authorized to exchange information with the authorities of the European Union Member States for the purpose of detecting and prosecuting perpetrators of crimes or fiscal crimes, preventing and combating crime, and processing information are:

- Internal Security Agency;
- Central Anticorruption Bureau;
- Office of Internal Oversight;
- The Police;
- National Tax Administration;
- Border Guard;
- Military Police;
- State Protection Service²³.

And the entities authorized to exchange information through the nation-

²¹ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (Journal of Laws UE L 332/103 of 18 December 2007).

²² Journal Of Laws of 2020, item 158.

²³ Ibidem, Art. 1.

al office for asset recovery are those listed above and the minister responsible for public finances and the public prosecutor²⁴.

In Poland, the tasks related to the function of the National Asset Recovery Bureau (BOM) are carried out by officers of the Asset Recovery Department (pol. Wydział do Spraw Odzyskiwania Mienia WOM) of the Criminal Bureau of the General Police Headquarters. The main tasks of this cell include:

- performing the tasks of the national Asset Recovery Bureau;
- supervising the implementation of tasks related to the detection and identification of assets derived from crime or other assets related to crime by organizational units of the Police;
- cooperation with national entities authorized to disclose, identify, freeze and recover assets;
- pursuing international cooperation on disclosing, identifying, freezing and recovering assets from crime or related to crime, in particular in the scope of the activities of the Camden Inter-Agency Asset Recovery Network (CARIN) and other similar international initiatives;
- keeping “Collection of Good Practices” and disseminating solutions conducive to the disclosure and identification of crime proceeds or other benefits related to a crime;
- drafting proposals for changes in legal provisions regulating disclosure, identification, freezing and recovery of assets derived from crime or related to a crime;

- organizing and participating in the professional development of police officers within the competence of a given department²⁵.

Conclusions

Economic crime largely depends on social, political and economic situation prevailing in a given country. Despite many efforts made by the central authorities on introducing new legal regulations aimed at “sealing the system”, training services responsible for prosecuting this type of crime, conducting educational activities, economic criminals are constantly evolving, taking advantage of gaps in the law, the current economic situation (e.g. unemployment, social divisions, etc.), ignorance of the law among potential victims.

Difficulties in combating economic crime result, among other things from the cross-border nature and hermetic nature of groups, and the fact that criminal activity is often associated with legally operating entities, the use of the so-called “money mules” (pol. słupów) for carrying out criminal activities, combining this type of crime with other types of crime. The effectiveness of combating economic crime to a large extent depends on the activities of services responding to such threats. Despite the fact that this type of crime is characterized by many forms of activity, one of the most effective methods used by the services, in the fight against people committing this type of crime, is re-

²⁴ Ibidem, Art. 2 sec.

²⁵ <https://policja.pl/pol/kgp/biuro-kryminalne/struktura/wydzialy/wydzial-do-spraw-odzysk/8579,Wydzial-do-spraw-Odzyskiwania-Mienia.html> [28.01.2022].

vealing and depriving the perpetrators of illegally obtained benefits.

Freezing of assets meets both these principles of general negative prevention, that is, it scares off potential perpetrators, showing that the act is not profitable. It also works for the positive character of prevention, as it shapes the society that each act of this type will be met with an adequate response from the judiciary. An important role this topic is played by information from banks and other financial institutions regarding the possession of banking products by suspicious persons, for example accounts, deposits, credit cards, etc. Obtaining such data is subject to full confidentiality, resulting from the act on the protection of classified information.

Clearly, it should be stipulated that freezing of assets is a coercive measure that encroaches on civil law and, as a rule, should be used in cases where there are legitimate concerns that without such security, the enforcement of a judgment will be impossible or significantly impeded.

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