

Criminal-law treatment of fraudulent conduct

Abstract

The Act No. 40/2009 Coll., the Criminal Code, effective as of the date of this thesis, penalizes one's behavior fulfilling the criminal signs of a fraud (Section 209 of the Act) and its special variations, such as insurance fraud (Section 210 of the Act), loan fraud (Section 211 of the Act) and subsidy fraud (Section 212 of the Act). This means that four separate criminal offences are penalizing fraudulent delinquency under the Czech legislation.

Laws penalizing fraudulent delinquency have developed rapidly over the post-revolutionary era and reflected new social and political environment. It was mainly the lack of ability to punish all fraudulent actions by applying the so called general fraud provisions (nowadays Section 209 of the Act) which served as the initial power motivating legislators to pass an amendment containing provisions regarding the three abovementioned criminal offences that are penalizing fraudulent behavior relating to insurance, loans and subsidies.

This action taken by the legislators is generally perceived as suitable since, as mainly demonstrated in the nineties of the twentieth century, fraudulent criminality has broad-reaching effects impacting the country's economics and the society's trust in the rule of law.

Legal theory differentiates between external and internal fraudulent behavior. External frauds are characterized by its typical one-off nature and the criminals are usually persons that have no labor law relationship with the damaged person.

On the contrary, the internal frauds are typically committed by employees or persons from the management of the damaged person. Internal frauds are also usually committed over a longer period of time.

In practice, one might come across hybrid types of fraudulent actions, meaning that they include cases in which the criminal (e.g. a bank's client) in cooperation with a person being part of the damaged entity (e.g. an employee of the bank) systematically

and fraudulently conduct transfers of funds. Such behavior combines aspects of both internal and external frauds.

The probability of committing a fraudulent behavior is determined by the attractiveness of the object which is the criminal trying to achieve. This is one of more reasons why it's impossible to exactly describe a typical fraudster, since every single one of them is attracted by a different objects (differing/varying by it's quantity, quality and value). Cognitive perception plays an important role since it describes the way how an offender thinks about himself and about the others.

The economic crisis led to an increase of fraudulent crimes in the Czech Republic. Therefore, it's very important to use special tools that are helping to prevent, stop or reveal such criminal behavior as soon as possible.

To fight against the fraudulent delinquency successfully, it is vital to broaden the society's general knowledge of effective laws, to set up a system of preventive mechanisms in labor law and business relationships (such as shared liability, regular internal audits, due diligence checks on partners etc.) and, last but not least, to enact a law regulating whistleblowing, which according to international studies serves as an effective tool in the battle against frauds.

Finally, the author of this thesis compares the Czech and Chinese legal framework penalizing fraudulent delinquency. While doing so, the author concludes that in both jurisdictions the transformation of the economics and society led to an undisputable increase of fraudulent criminality for which neither the society nor the legal environment was ready. As to wording of the criminal offences, the author concludes that loan and subsidy frauds are formulated similarly in both jurisdictions.

When sanctions are concerned, both analyzed jurisdictions differ more rapidly (as to their type and severity). This is because China, in the effort to scale down the frequency of economic criminality and to cause preventively on the society, often imposes lethal punishment if certain criminal offences are concerned.

Key words: criminal offence, fraud, criminology