

# Criminal responsibility of political parties for economic crime: Democracy on test

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*“Where two orders of men, such as the nobles and people, have a distinct authority in a government, not very accurately balanced and modelled, they naturally follow a distinct interest; nor can we reasonably expect a different conduct, considering that degree of selfishness implanted in human nature. It requires great skill in a legislator to prevent such parties; and many philosophers are of opinion, that this secret, like the grand elixir, or perpetual motion, may amuse men in theory, but can never possibly be reduced to practice.”*

David Hume (1742)

## Introduction

On 11 March 2014, a Croatian court made a historic step in subjecting political parties to the rule of criminal law. In a major corruption case, the County Court of Zagreb convicted the largest political party in Croatia – the Croatian Democratic Union (CDU) – and sentenced the Party to pay the maximum fine prescribed by law in addition to a confiscation order to pay back 24 million kuna (€3,2 million) of proceeds of crime. This was the outcome of a 2-year trial, already depicted in some Croatian media as the Croatian “trial of the century”. The same goes for the separate trial of the former party leader, Ivo Sanader, who finally got 8,5 years imprisonment for bribery and abuse of position (Roksandić Vidlička, 2014).

It is important to understand the circumstances under which the criminal prosecutions in this case have been initiated. The period in which the crimes of the CDU have been committed was between 2003 and 2009. Croatia was still in the transitional period from a former Yugoslav republic (1945–1991) to becoming a member of the European Union (2013) (more in Novoselec *et al.*, forthcoming 2015).

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At the same time, in 2007-2008, the global financial crisis began, which brought the feeling of social and economic insecurity. In 2009, the Prime Minister of Croatia Ivo Sanader, the president of CDU, resigned his post, leaving scarce explanation for his actions and temporarily disappeared from public life. This raised serious doubts about the real reasons of his resignation, and the people left in a situation of a declining economy wanted an explanation of Sanader's and his party actions.

Naturally, in periods of recession, there is an intensified public demand for responsibility of politicians and their parties. Dubious political decisions, especially the costly transactions from state's budget, are being watched and investigated in case of suspicions that crimes have been committed. Politicians connected to economic crimes are targeted first and this demand and need goes beyond the responsibility of individuals. We are facing a new era of political accountability as more and more countries are adopting criminal liability of political parties (Maršavelski, 2014).

One of the central questions is how to attribute criminal accountability to political parties. This is still difficult to imagine in most legal systems of the world. One way to do so is to treat political parties as legal entities and determine their liability the same way as for corporations. This model was introduced in Croatia in 2003, when the Law on the Responsibility of Legal Entities for Criminal Offences was enacted, but until the CDU case it has never been applied to political parties. In this chapter we shall evaluate the most important features of addressing criminal responsibility of political parties for economic crimes.

Bringing political parties within the reach of criminal justice is not an easy task. It is necessary to be aware of possible obstacles in investigating, prosecuting, convicting and punishing political parties for criminal offences: immunity, abolition, amnesty, pardon, law amendments, political preferences of prosecutors and judges etc. The purpose of aforementioned obstacles is mainly related to preventing the so-called 'vicious' prosecutions, which intend to discredit certain political parties (Maršavelski, 2014).

A further question is which sanctions courts should be imposed on political parties for (economic) crimes. Apart from fines, which are widely used against legal entities, the most controversial issue is whether there should be a possibility to dissolve a political party in cases of the most severe economic crimes.

Therefore, this chapter will address the following related issues:

1. First it will address the notion and effects of economic crimes in contemporary political systems;

2. Second, we shall discuss the causes of economic crimes committed by political parties;
3. Third, criminal proceedings involving political parties face various obstacles regarding the initiation and undertaking of such proceedings, which must be taken into account when searching for an adequate model of responsibility for criminal offences;
4. Fourth, one of the crucial points is to evaluate available criminal sanctions for political parties, as well as their (desired and undesired) consequences;
5. Finally, we shall evaluate the effects of criminal prosecutions of political parties on democracy.

## **The notion and effects of economic crimes and political corruption**

Various political financial scandals we can daily read in the media convey the impression that economic crimes are the most common types of law breaking committed by political parties. But what is exactly meant when we discuss economic, financial or (taken together under the label of) 'white-collar' crimes? Like a virus, economic crime adapts itself to the trends that affect all organisations, and political parties are allegedly involved in this type of crime at the highest level. However, despite this adaptability, there must be some 'common stem' for a useable definition. The elements of the usual definitions of economic crimes in the literature are characteristic, not only for corporations, but also for political parties. For example, Alvesalo and Tombs (2001) provide two definitions of economic crime: a criminalised act or omission which is committed in the framework of, or using a corporation or other organisation with the aim of attaining unlawful direct or indirect (material) benefit; and a criminalised, systematic act or omission that is similar to entrepreneurship and has the aim of considerable benefit (pp. 239-240). In a more abstract way, according to Appelgren and Sjögren (2001), these crimes can also be interpreted as crimes against the economic order, distorting or even destroying the regular mechanisms of the economy and the market (p. 11; Bhusal, 2009: p.13).

The initial definition of white collar crime was given by Edwin Sutherland (1949): "a crime committed by a person of respectability and high social status in the course of his occupation" (p. 9). However, Sutherland was not the first social scientist to write about crimes by those in the upper class. In his 1934 *Criminology* text, Sutherland used the term "white-collar criminaloid"

in reference to the “*criminaloid concept*” initially used by E. A. Ross (1907). Unlike ordinary criminals, ‘criminaloids’ enjoy the respect of society and they often tend to establish good connections with the government. They accomplish that either by establishing connections from the outside or they become members of the regime themselves by joining the ruling political party. Ross (1907: p.48) particularly addresses the notion of ‘criminaloids’ as follows:

“By this we designate such as prosper by flagitious practices which have not yet come under the effective ban of public opinion. Often, indeed, they are guilty in the eyes of the law; but since they are not culpable in the eyes of the public and in their own eyes, their spiritual attitude is not that of the criminal. The lawmaker may make their misdeeds crimes, but, so long as morality stands stock-still in the old tracks, they escape both punishment and ignominy.”

Political parties are social organisations, which mean that their economic crimes can be depicted as a form of organisational deviance and organisational crime. Organisational deviance is defined as “*actions contrary to norms maintained by others outside the organisation . . . [but] supported by the internal operating norms of the organisation*” (Ermann and Lundman, 1978: p.7). Organisational crime can be referred to as

“illegal acts of omission or commission of an individual or a group of individuals in a formal organisation in accordance with the operative goals of the organisation, which have serious physical or economic impact on employees, consumers, or the general public” (Schrager and Short, 1978: p.408).

Finally, members of leading political parties, who are the ones that are in position to engage in economic crimes, are members of social elites. Thus, we can say that economic crimes of political parties also belongs to the category ‘elite deviance’ i.e. “*acts committed by persons from the highest strata of society*” (Simon, 2006: p.12).

Economic crimes of political parties pose a serious danger to the society and democracy. Some effects of economic crimes are well explained by Bhusal (2009: p.12):

“[A] financial criminal not only attempts to accumulate money from illegal sources but its activity is also threatening the economic order and creates a hurdle for national development. Economic crimes are also contributing to the degradation of social norms. This crime causes

further chaos and disorder in society by creating wider gaps between the hard money earners and easy money earners”

The most important type of economic crime is corruption. Political corruption needs to be penalised for the sake of “*protecting democratic structures and basic values of democratic societies such as equality, non-discrimination and transparency*” (Albrecht, 2009: p.3). According to Gottschalk (2014), corruption generally encompasses bribery, kickbacks, organisational corruption and public corruption, as the abuse of power of entrusted power by political leaders. He defines it as the giving, requesting, receiving or accepting of an improper advantage related to position, office or assignment. It is just as much an economic problem as it is political and social one, because “*it is a cancer that burdens the poor in developing countries*” (Gottschalk, 2014: p.29, cited in Roksandić Vidlička, forthcoming 2015).

Due to its organisational and elite nature, grand corruption occurs at the highest level of government and involves major government projects and programs (Moody-Stuart, 1997). In addition, the offences of such gravity even have the potential to be recognized as crimes under international law, what would correspond to new global world order: see the UN Convention on Corruption of 2003 and the Council of Europe Criminal Law Convention on Corruption of 1999. (Roksandić-Vidlička, 2014; forthcoming 2015). How serious the problem of corruption is for a society is well explained by Rose-Ackerman (1999, p.38):

“Corruption that involves top-level officials can produce serious distortions in the way government and society operate. The state pays too much for large-scale procurements and receives too little from privatizations and the award for concessions. Corrupt officials distort public sector choices to generate large rents for themselves and to produce inefficient and inequitable public policies. Government produces too many of the wrong kind of projects and overspends even on projects that are fundamentally sound”.

Moreover, as Rose-Ackerman argues, corruption can not only produce inefficiency and unfairness, but it can undermine the political legitimacy of the state: “*The most severe costs are not bribes themselves but the underlying distortions they reveal – distortions that may have been created by officials to generate profits*” (Rose-Ackerman, 1997: p.42, cited in Roksandić-Vidlička, forthcoming 2015)

In the past 15 years numerous international conventions have been adopted that provide important but unfortunately “incomplete” remedies to combat corruption (Starr, 2007: 1292). The most important one is the

above mentioned *UN Convention against Corruption* (2003), because of its far-reaching approach and because the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to this global problem. The Convention addresses the issue of the funding of political parties in paragraph 7(3):

“Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidates for elected public office and, where applicable the funding of political parties”.

The drafters of the Convention left the state parties to decide what would be the nature of the legislative measures to enhance the transparency of funding of political parties in accordance with the principles of its domestic legal system. The nature of these measures can range from criminal to administrative law provisions, while one of the fundamental principles that needs to be taken into account are the principles of proportionality and/or the *ultima ratio*.

Another example of an international instrument, or better to say, one of the regional anti-corruption instruments is the *African Union Convention on Preventing and Combating Corruption* (2003). This document, of particular importance for Africa where corruption has its most severe consequences, contains an important provision in Art. 10:

“Each State Party shall adopt legislative and other measures to: (a) proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and (b) incorporate the principle of transparency into funding of political parties”.

Unfortunately, the drafters of other regional conventions on corruption failed to recognize the importance of specific regulations on financing political parties for combating corruption (e.g. 1996 Inter-American Convention Against Corruption, 1999 Council of Europe Criminal Law Convention on Corruption etc.).

## **The causes of economic crimes of political parties': will to power, innovation and transition**

According to *Locke* (1689 [2003]: p.172), once a political party is employed to participate in the legislative or executive branch of the state power, it has a duty to act for "*the good of the people, and not manifestly against it*". However, political parties often fail to obey this duty. The main reason for this is one of the main driving forces in humans that *Nietzsche* (1884 [2006]: 88) calls "the will to power" (*der Wille zur Macht*). In other words, political parties' main goal is often not the welfare of the people, but to obtain and keep the power. One of criminal manifestations of the will to power is the possibility to abuse the given financial authority (abuse of office, bribery *etc.*) in order to expand or maintain political power or to achieve financial power (Maršavelski, 2014).

Political parties are capable for what Merton (1938) calls "innovation". They tend to be innovative when driven by their will to achieve or maintain political or financial power, which are considered to be the main "*culturally induced success-goals*" in capitalist societies (see more as applied to societies in transition in Novoselec *et al.*, forthcoming 2015). Merton (1938: p.678) uses U.S. society as an example:

"The extreme emphasis upon the accumulation of wealth as a symbol of success in our own society militates against the completely effective control of institutionally regulated modes of acquiring a fortune. Fraud, corruption, vice, crime, in short, the entire catalogue of proscribed behaviour, becomes increasingly common when the emphasis on the culturally induced success-goal becomes divorced from a coordinated institutional emphasis".

Since the institutionalised legitimate means for achieving those goals are often limited (*e.g.* the national budget cannot be used for financing political campaigns apart from amounts regulated by law; the election rules require transparency and free elections *etc.*), political parties seek 'innovative' means to achieve their goals by engaging in corruption, tax evasion *etc.* (Maršavelski, 2014).

Although the perpetration of economic crimes by politicians may take place in any country, transitional settings have proven to be particularly fruitful for the rise of economic crimes of politicians and their political parties. The countries in transition share some common characteristics: increase in volume of crime, growing *anomie*, growing weakness of control mechanisms, emergence of new types of crimes, decrease in the efficiency

of law enforcement, limited economic sources, perception of an erosion of the state monopoly of legitimate violence, omnipresent fear of crime and preoccupation with safety concerns etc. (Albrecht, 1990: 448-450). Among these, one of the most important side-effects of transition is the 'state of deregulation' or anomie, *i.e.* a "condition in which society provides little moral guidance to individuals" (Macionis and Gerber, 2010: p.97) because of the breakdown of social bonds between the individual and the society. Durkheim's anomie theory demonstrates the repercussion of such a situation to crime: "Every abnormal relaxation of the system of repression results in stimulating criminality" (Durkheim, 2005[1897]: p.330).

Therefore, addressing the transitional justice mechanisms must be taken into account when dealing with economic crimes of political parties. Transitional justice itself refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. This is part of a broader systematic shift from totalitarianism to democracy. What is also important to bear in mind is that transitional justice at the end

"is not an ideology-free concept [. . .] but a logical outgrowth from post war, and particularly Western, political and legal theory. Its genesis took place against the backdrop of an idea that grew from the Cold War and which had by the mid-nineties gained huge momentum, namely that international law should be deployed to spread liberal democracy worldwide" (Kemp, 2012: p.253 cited in Rokсандić Vidlička, 2014).

By addressing the economic crimes of political parties, it is important not to undermine the road to democracy, which may take place if criminal proceedings are used for confrontations with the opposition, which was particularly visible in the *Tymoshenko case*.<sup>2</sup> Because of the transitional political context of the trial and conviction of former Prime Minister of Ukraine, *Yulia Tymoshenko*, this case raised serious doubts with the public about Tymoshenko's criminal responsibility.

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<sup>2</sup> In 2011, former Prime Minister of Ukraine, *Yulia Tymoshenko*, was charged for abuse of power by exceeding her authority and abusing her office in ordering the head of a state-owned enterprise Naftogaz to sign an agreement with the Russian company Gazprom providing for the importation of natural gas at a price of \$450 per 1.000 cubic meters, which had caused the State to suffer considerable financial losses. She was sentenced in 2011 to seven years in prison for 'misuse of powers' concerning the gas deal and got a three-year prohibition on exercising public functions. The judgment became final in November 2012 (See also Rokсандić Vidlička, 2014).



Hence, the transitional justice can be described as a legal-policy debate that seeks to resolve certain dilemmas, arising at moments of national crisis, about how to deal with serious crime (Kemp, 2012: p.254; See also Teitel, 2003: p.69). Neglecting the prosecution of transitional economic crimes only enhances an impunity gap and social conflict by focusing almost exclusively on civil and political human rights violations while leaving out accountability for economic crimes. Therefore, the strengthening of the protection of the economic and social rights in transitional states, including adequately regulating economic crimes, could be considered a *condicio sine qua non*, especially in states that shifted from the socialist economic system to free market economy or are in one of phases of transitional period (Roksandić Vidlička, 2014).

In the following sections we shall see that in the Croatian CDU Case, the post-war transitional vulnerability of the Croatian political and social environment was abused by the ruling political party under the leadership of the former Prime Minister of Croatia Ivo Sanader.

## **The Croatian CDU corruption case**

The CDU is a centre-right and largest political party in Croatia (with more than 200.000 members), and it is the longest ruling party since Croatia's independence. The founder and the first president of the Party was Franjo Tuđman, the first democratically elected president of Croatia, who ruled Croatia in the 1990s during the Yugoslav wars. After Tuđman's death, the Party lost the elections in 2000, and an opposition coalition took over the government headed by the Social Democratic Party (SDP). In the meantime, Ivo Sanader, a former Minister for Science and Technology (1992-1993) and a two-term Deputy Minister for Foreign Affairs (1993-1995, 1996-2000),<sup>3</sup> became the president of CDU. Sanader, a person with charismatic appearance and variety of professional interests, brought his Party back to power by

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<sup>3</sup> Later it has been proven that he was one of the Croatian war profiteers in this period. In 1995, during the negotiations of the terms of the loan to be granted by the Austrian bank Hypo-Alpe-Adria International AG to the Government of the Republic of Croatia, he made a deal on the basis of which the bank paid him, in return for that bank's entry into the Croatian market, a commission of 7 million Austrian Schillings. In 2012, he was convicted for abuse of office and authority pursuant to the new *Law on Exemption from Statute of Limitations for War Profiteering and Crimes Committed in the Process of Ownership Transformation and Privatization*. Novoselec et al. (forthcoming 2015)

winning the parliamentary elections in in December 2003. This is where the story of the *CDU corruption case* begins.

The judicial epilogue of one of the greatest corruption affairs in the history of Croatian politics took place in March 2014, when the County Court of Zagreb convicted the CDU and its former president Ivo Sanader. However, this case opened a broader discussion about whether it represents a great shame for the Croatian political system or that it will turn Croatia into a role-model for other countries for bringing to justice not only highest political officials, but also their political party because of the responsibility for economic crimes. There is no doubt that the Croatian CDU case is a precedent not only in Croatian, but also in the worldwide practice of addressing political corruption.

In December 2011, Ivo Sanader, his associates, CDU and certain private corporations, among which Fimi Media played a main role, were indicted for conspiracy and abuse of authority. According to the indictment and the judgment of the County Court in Zagreb, Sanader abused his authority in the period between 2003 and 2009 as Croatian Prime Minister and as president of the ruling political party, to obtain material benefit for himself, CDU and other persons. The scheme started with Sanader who personally, or by giving orders to the CDU's treasurer, asked the heads of certain state departments, directors and managers of certain state-owned corporations (including the national power company, highway company, postal bank, oil company etc.) to make business transactions with a private corporation called Fimi Media. The illegally obtained proceeds by the Fimi Media were divided in three parts: (1) one part was kept by the Fimi Media's director, (2) another part was given to CDU's treasurer who then gave it to Sanader, and (3) the last part was used by Fimi Media's director to finance certain services for the CDU.

Besides the illicit proceedings obtained from Fimi Media, the CDU benefited additionally from unreported donations, which had been collected by Sanader and associates for his party, again abusing their and party's power and authority. Some of these donations were illegal because they exceeded the amount prescribed by law,<sup>4</sup> while a part of them was paid through the Fimi Media's account. Sanader had ordered that amounts of these donations must not be reported in the financial records, which resulted in CDU's black fund. CDU used this black fund to finance different party needs,

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<sup>4</sup> According to the Croatian law, donations to a political party may not exceed the amount of 90.000 kuna (approximately € 12.000) per year while it is forbidden to accept funds from anonymous donators.

also pursuant to orders given by Sanader. According to witness statements, all illegally obtained assets had been mainly used for election campaigns, payments to singers, payments to the media (newspapers, TV), luxury (BMW cars, travels, catering, etc.). The total amount that CDU obtained from these criminal activities was 24,3 million kuna (approximately €3,1 million).

The Croatian law adopted the model of criminal liability of legal entities, including political parties, based on the criminal conduct of individually responsible persons. In this case, the criminal liability of the CDU was based on the criminal offences committed by its president Ivo Sanader and his party associates. In addition to this, the CDU illegally obtained assets from these crimes, which fulfilled all the requirements to convict the CDU. The only punishment that the Court could impose on the CDU was a fine, because the Croatian law excludes the possibility to dissolve a political party in criminal proceedings. The purpose of this provision is to prevent abuses which could endanger one of the fundamental constitutional values: the multi-party democratic system.<sup>5</sup>

The fine that the County Court imposed on CDU was the maximum fine prescribed by law: 5 million kuna (approximately € 700.000), and additionally the Court ordered CDU to pay 24,3 million kuna (approximately €3,1 million).

During the proceedings, the CDU filed a claim of 50 million kuna (approximately € 7 million) against Sanader and his associates, arguing that CDU suffered both material and non-material damage because the defendants acted contrary to the Statute of the CDU, while their criminal acts were attributed to the CDU. However, the Court rejected this claim. Most of the Croatian media reported that the main damage that the CDU suffered during the proceedings was the defeat on parliamentary elections in 2011. However, the 2014 European Parliamentary Elections have shown that the convicting and sentencing judgment issued by the County Court of Zagreb did not have any long lasting impact on the voters and obviously does not endanger the political future of the CDU, whose coalition won the highest number of votes (41,42%) on these elections. The case is now on appeal and it still remains to be seen whether the Supreme Court of Croatia will uphold the conviction judgment.

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<sup>5</sup> Apart from this, the Croatian Constitution empowers the Constitutional Court to control the conformity of programs and activities of political parties with the provisions of the Constitution. In case the political party's programs or activities are found to be unconstitutional, the Court will impose a sanction of dissolution of the party.

## **Preserving the interests of democracy through obstacles in the application of criminal law against political parties**

In most countries, where a transgression committed by a (natural or legal) person is considered a crime, the state does not qualify the same deed as a crime if committed by a political party – either due to absence of provisions on criminal liability of political parties or because of unwillingness to prosecute political parties. There is some paradox in such state of affairs, because the political parties have the highest responsibilities when ruling the state. However, they bear very little criminal responsibility when they abuse the given powers – the main sanction is to be overthrown by another political party (either through elections or by means of force). Even for politicians, who bear the primary criminal responsibility, there are many obstacles for prosecution such as immunity, amnesty, abolition and pardon. The reasons of this “discrimination” are well explained by critical criminologists such as Richard Quinney. In his book *Class, State, and Crime*, Quinney (1977) argued that crime is a function of society’s structure, that the law is created by those in power to protect and serve their interests (as opposed to the interests of the broader public), and that the criminal justice system is an agent of oppression designed to perpetuate the status quo. Furthermore, he argues that corporate and state violation of the law is ‘natural’ and ‘necessary’ to secure the capitalist system. Political elites, as the creators of the legal framework that governs their activities, are in position to minimise the possibility of sanctions for the wrongdoings they commit throughout their mandates. This ‘vicious circle’ creates a state of ‘responsibility without accountability’ *i.e.* it provides power and functions to political elites, but the risks of sanctioning their own misbehaviour are minimal (Maršavelski, 2014).

The obstacles in prosecuting political parties are difficult to overcome due to the two opposing interests at stake: interests of justice versus interests of democracy. On the one hand, there is a need of punishing the wrongdoer. On the other hand, there is a need of ensuring the effective functioning of the democratically elected bodies, which are an expression of people’s political freedom. In several cases concerning political parties, the ECtHR has clearly pointed out the view of political parties as vital participants in the process of debate and dialogue that constitutes the heart of the concept of democracy (Maršavelski, 2014).

Investigations or prosecutions of politicians can *per se* have negative effects (especially in cases of so-called ‘vicious prosecutions’) that ought

to be avoided by ensuring the immunity of high-ranking public officials. Most states do recognise such immunity as well as the possibility to lift the immunity upon the authorization of the body whose office holder is under investigation. However, leaving aside the fact that in totalitarian systems the ruling parties enjoy absolute immunities, the states normally do not formally recognise the immunity of political parties or the possibility to lift such immunity. The laws regulating criminal responsibility of legal entities sometimes just exempt the political parties from liability, which is *de facto* an absolute immunity (Maršavelski, 2014).

Another problem in investigating, prosecuting and convicting political parties for crimes is that many countries recognise abolition, amnesty and pardon. These decisions are usually the competence of the head of state or the parliament. The controversy lies in the fact that the ruling party usually has a majority in the parliament and it is also possible that the head of state is also a member of the same party. In such circumstances conflicts of interest are obvious. *Radbruch* observed well that amnesties mark the bad conscience of criminal law (Radbruch, 1964: p.136, see as applied to transitional justice mechanism in Roksandić Vidlička 2014).

Self-amnesties are not driven by conscience, but by interest of avoiding criminal prosecution. The essence of amnesties is an act of mercy for another *i.e.* an altruistic correction of law, while self-amnesties by-pass the law in the interest of their authors (Pestalozza, 1984: p.561). The situation with self-pardoning, including pardoning own party members, is similar. The most notable example of such 'self-pardoning' occurred in 1974 when the U.S. president Gerald Ford pardoned his Republican colleague Richard Nixon for his role in the Watergate scandal.

Furthermore, a ruling political party may amend the laws in order to avoid criminal responsibility. For example, this was done by *Forza Italia*, which passed several amendments in the Italian Parliament in order to save its leader *Silvio Berlusconi* from prosecution. However, once he lost power, first convictions appeared.

Moreover, in most countries public prosecutors are considered to be a body of the executive branch or at least highly influenced by the executive (especially through the cooperation with police authorities). This means that, if public prosecutors work for the government, they are obviously in conflict of interest while investigating crimes of the ruling party, which makes independent and impartial investigations virtually impossible. The same conflict is even more evident with respect to the police, which is usually a body of the Ministry of Interior, whose minister is a member of the ruling political party (Maršavelski, 2014). The complications are even more present

when the country itself is in the transitional period (Rokсандić Vidlička, 2014).

Finally, when all these hurdles have been taken, the political preferences of judges may also influence the outcome of trials against politicians and political parties. In order to prevent that, some countries prohibit judges from being members of political parties (e.g. Turkey, Croatia, Macedonia etc.). How influential political preferences of judges are has been demonstrated in studies that revealed how predictable the rulings of the U.S. Supreme Court can be (see Epstein *et al.*, 1989).

### **Appropriate sanctions that could be imposed on political parties for economic crimes**

One of the most problematic issues of criminal responsibility of political parties is which criminal sanctions should be prescribed, and in particular which sanctions should be applicable when they commit economic crimes.

In countries that have criminal liability of legal entities, a fine is considered to be the main punishment and it is also the most frequently applied sanction. As we have seen in the *CDU case*, the court imposed the maximum fine as prescribed by law: 5 million kuna (€ 700.000).<sup>6</sup> A fine also seems to be the most appropriate for cases of economic crimes committed by political party, namely, because if money was the reason to break the law, loss of money will 'hurt' them the most and deter them from such activities in the future.

On the other hand, the sentence of dissolution is considered to be the most controversial, because it may undermine the functioning of the country's political life (especially in two-party systems). The same problem exists in countries that do not have a sanction of dissolution of a political party, but the fines that can be imposed may so high that they can immediately lead to bankruptcy of the political party. Furthermore, dissolution of political parties may lead to illegitimate limitations of certain political freedoms, especially election rights. This is especially the problem in transitional societies, where the criminal justice system is often subject to political influences (Maršavelski, 2014). However, if a country can ensure adequate procedural safeguards to uphold political plurality, in cases of the most severe economic crimes committed in the course of natural disasters (floods, earthquakes etc.), war

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<sup>6</sup> The law was later amended and increased the maximum fine to 15 million kuna (approximately € 2 million).

(war profiteering), or the ones that bring the country to the edge of poverty, it may be justified to allow in such cases even a dissolution of a political party responsible for these crimes.

Following a survey of the practice among countries, the Venice Commission (1999) adopted the *Guidelines on the Prohibition and Dissolution of Political Parties and Analogous Measures*, which recognized that:

“Prohibition or dissolution of political parties can be envisaged only if it is necessary in a democratic society and if there is concrete evidence that a party is engaged in activities threatening democracy and fundamental freedoms. This could include any party that advocates violence in all forms as part of its political programme or any party aiming to overthrow the existing constitutional order through armed struggle, terrorism or the organisation of any subversive activity” (Venice Commission, 1999).

There are also other criminal sanctions that states adopt in sentencing political parties as legal entities. The most important among them is confiscation, either as a measure designed to seize the means of perpetration, to seize the illegal benefits from the crime or as a separate punishment. As we have seen in the CDU case, the confiscation of assets and compensation was more than four times higher than the fine itself. Apart from confiscation and compensation, other criminal sanctions mainly include security measures that have the purpose to prevent the danger of repeating the crime (ban on performance of certain activities or transactions; ban on obtaining of licences, authorizations, concessions or subventions; publication of the judgment in the media, placement under supervision, disqualification from public tenders etc.). States that exempt political parties from the punishment of dissolution as a legal entity, also exempt the political party from sanctions having a similar effect such as the ban on performance of certain activities (e.g. France, Croatia, Macedonia etc.), because banning a political party to perform certain (political) activities would make it impossible to function (Maršavelski, 2014).

With respect to certain consequences of conviction that are sometimes referred to as ‘ancillary measures’, it is worth of observing that in most countries many official positions (e.g. president, governor, mayor etc.) require office holders not to have a criminal record. However, there are no such provisions for political parties. Such measures could be used to prevent corrupt political parties to come back to power, however, the effects of such measures are the same as temporary dissolution.

## Conclusion

Economic crimes are the most common type of crimes committed by political parties and among these the most important is political corruption. There is hardly any country in the world that has been immune to corruption scandals involving ruling political parties. Their collective will to power and lack of fear of possible consequences of their acts, makes it difficult to discipline them. Until now countries did not find a way to adequately address the criminal liability of political parties. The presented judgment in the Croatian *CDU case* is a precedent that can be used as a new model to address liability of political parties for economic crimes. Challenges that political corruption poses for society and democracy are large-scale, however, this new model also brings more challenges for democracy. This does not mean we should give up or substantially limit the criminal liability of political parties. Certain safeguards are already provided by obstacles in investigating, prosecuting, convicting and punishing political parties for criminal offences, such as e.g. immunity, abolition, amnesty, pardon, law amendments etc. However, it is necessary to determinate the correct balance in the spectrum of their application in order not to be led to a condition of irresponsible political structures.

After evaluating certain sanctions that can be imposed on political parties, it seems that a fine is the most acceptable punishment for political parties in cases of economic crimes. Sanction of dissolution is generally considered to be inappropriate for political parties and especially too harsh for economic crimes. Some national legal systems tend to generally exempt political parties from this sanction, as it is the case in Croatia. The reason for this is to avoid possible threats of criminal proceedings to democracy, in which a ruling political party could use criminal prosecutions to exert pressure on or even eliminate opposition parties. Confiscation and compensation are sanctions of crucial importance in order to satisfy the principle that *crime doesn't pay*. Criminal procedure is an appropriate forum to resolve the issues arising from the illegally obtained assets from crimes committed by political parties, because civil proceedings completely depend on the initiatives of the damaged persons.

In any case, this new puzzling topic for lawyers and criminologists requires further research. First, we should wait for the final outcome of the first case of holding a political party criminally responsible for corruption, which is now pending on appeal before the Croatian Supreme Court.



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