

PLOVDIV UNIVERSITY “PAISHI HILENDARSKI”
FACULTY OF LAW
DEPARTMENT OF “CRIMINAL LAW”

Daniela Minkova Stoyanova

CRIME AGAINST TAX SYSTEM

ABSTRACT

OF DISSERTATION THESIS

for awarding an educational and scientific PhD degree

**in field of Higher Education 3. Economic, social and law science,
professional field of study – 3.6. Law, Doctoral programme “Criminal Law”**

Supervisor:

Professor PhD Ionko Kunchev

Plovdiv, 2020

The dissertation thesis is discussed and directed for public defense by Department “Criminal Law” of the Faculty of Law of Plovdiv University “Paisii Hilendarski” on the 11th of September 2020.

The PhD candidate is enrolled as a PhD on an independent preparation at Department “Criminal Law” of the Faculty of Law of Plovdiv University with Order № R33 - 2317/14.05.2019. With Order № 1167/05.03.2020 the PhD candidate is struck off with a right to defense, reckoned from the 21st of February 2018, on account of fulfillment of the tasks ahead of the individual educational plan, a completion of the PhD thesis and a conformity with the minimum national requirements.

The PhD thesis includes 321 pages and 322 indices. It consists of an introduction, four chapters, a conclusion, and a list of used sources.

The defense of the PhD thesis will take place on 202... from at, Sofia, on an open session of a Scientific Jury, appointed with Order № of the Rector of Plovdiv University “Paisii Hilendarski” with committee of:

Members:

assoc. prof. PhD Daniela Sevdalinova Doncheva

assoc. prof. PhD Ekaterina Salkova

prof. PhD Rumen Petrov Vladimirov

prof. PhD Rumen Markov

prof. PhD Lazar Georgiev Gruev

Reserve members:

assoc. prof. PhD Krasimir Mutafov

assoc. prof. PhD Yulia Mladenova Mateeva

The dissertation thesis and the defense materials are placed on disposal at Plovdiv University “Paisii Hilendarski”, Plovdiv, “Tzar Asen” str. 24.

I. GENERAL CHARACTERISTICS OF THE PhD THESIS

1. Actuality of the research

The development of the contemporary public relations after the changes in 1989 in Republic of Bulgaria and our country's commitments in relation with the acceptance and the following membership in the European Union, set as a prerequisite the reception of criminal-law norms, which must fulfill the new public-economic circumstances, as well as the necessity to interrupt the arisen ambition and adjustments of a part of the Bulgarian citizens in those conditions not to pay the due taxes to the budget. At the same time the constitution from 1991 stabilizes the tax due, providing explicitly that the same are regulated by a law. In order to exist the state, respectively in order its institutions to function on behalf of the citizens and the society, a state budget have to be formed. Its supply in turn, depends on the tax payment by each one of us. The budget's spending has the purpose to re-allocate properly and impartially the economic goods in the country. The individual citizens' standard of life, as well as our disposal with public, social, economic, health, educational, cultural and other state services, depend on that. The non-payment of the due taxes, on its turn, obstructs the processes of provision of the respective goods to the citizens. That has imposed the induction of sanctioning norms for those who conceal, respectively do not pay to the budget the taxes defined by a law. The character of the public relations which are concerned with the payment of taxes, has predetermined the necessity the respective unconscientious acts to be criminalized as crimes.

During the first years of the change in Bulgaria, contemporary laws concerning the tax payment, meeting the requirements of the arisen market economy, are created. These laws have submitted a plenty of changes as a respond to the necessity a fair tax payment to be achieved.

At the same time there were endeavored efforts the legislation to be standardized with the legislation of the European countries. During that period

there has not been accepted yet, a criminal legislation to protect the tax system of illegal violations.

Meanwhile the European agreement for association between the European communities and their country members from one side and the Republic of Bulgaria, from the other, was signed, ratified by a law accepted by the 36th National assembly on the 15th of April 1993 – State Gazette, number 33 from the 20th of April 1993, effective as from the 1st of February 1995.

On its ground Bulgaria accepts a commitment for a rapprochement in a great number of areas of the economics, the free movement of goods, services, workers and funds, payments, capital transactions, competition, financial and cultural collaboration. It also accepts the obligation to bring closer its legislation to the one of the Community, including company accounting and taxes, as well as indirect taxation with a view to trade with goods and services between economic subjects from different countries in Europe and non-admission of disloyal competition. That is when the necessity of creation of an adequate criminal defense of the tax system in Bulgaria arises. Thereby, a criminal order of criminal tax evasion and other socially dangerous acts, stultifying the normal and legal functioning of the tax system, published in Chapter VII from the Special part of the Penal code, entitled “Crime against the financial, taxation and security systems” /National Gazette number 62 from the 05th of August 1997/, appears.

2. Object and subject of the research

It is accepted in the legislative theory, that the term tax crimes, means a wider in its content concept in comparison to the concept crimes against the tax system. An object of the present research are the crimes against the tax system which occupy particularly important place in our time. The problems in the country connected with tax evasion are especially actual nowadays, because nevertheless the annual changes in the tax laws and the presence of criminal order, having the purpose to stop or at least to restricts that process, these acts are not limited. On the contrary, there is observed a growth of the observed and

of the newly formed preliminary proceedings. This indicates that there is a lack of respect in the performers of the designated crimes by the law and the institutions in our country. The fact that the size of the evaded taxes is repeatedly increased is even more worrying. The case law is heavy with acts, in which there is established a repeated surpass of the size of the evaded taxes over the accepted legal criteria of 12 000 BGN for “especially large sizes”, certified in art. 93, p. 14 from the Penal code. Besides, the majority of the cases are led on accusations on the qualified board of the crime by art. 255 from the Penal code, because the criteria of “large sizes” of 3 000 BGN is repeatedly surpassed by the entities evading taxes. This determines the actuality of the examined problem. Obviously neither the constant legal changes in the area of the tax legislation, nor the great number of the prosecutions with the subject of tax payment evasion, lead to a reduction of these types of crimes, i.e. they have not a deterrent effect with regard to the entities of these crimes. In this sense it is necessary the legislator to provide for such measures which have to lead to a considerable reduction of the number of these crimes and at the same time to a reduction of the size of the evaded taxes which will lead also to a restriction of the loss for the state in the form of non-paid taxes in the public budget.

The subject of crimes against the tax system is not favorite for the researches of criminality in Bulgaria. This is probably due to the fact that in order it to be examined and analyzed, it is necessary to be examined also norms of tax legislation, which is a priority of jurists and economists specialized in the sphere of the tax legislation. A complex approach is indispensable for the examination of this group of crimes. Actually, the number of the overall theoretical papers dedicated to crimes against the tax system, is not large. Some of them examine the problematics before the legislation changes in the composition of art 255 and art. 256 and the annulment of art 257 from the Penal code which on its main issue is included in the first two compositions. The research is referred to these research papers, as well as to the more actual ones, because the authors of the first researches have made a review of criminal

compositions from the acceptance of the regulations in 1997 and the problematics concerned to the imperfect legal order, and the newer research papers have made also an overview of the compositions after the changes in 2006.

The subject of the research includes the crimes' compositions against the tax system, as they are accepted in 1997, as well as the actual redactions of the same in connection with the conducted legislation changes with the purpose to improve the prevention of these crimes. In the dissertation there is a comment about whether and to what extent with the changes in the legislation order, the legislator has taken into consideration the addressed criticism in the legal theory, and how this has influenced on their application. Research papers and publications, related to the problematics of tax-legal point of view, are examined. Research papers which analyze one or another aspect of the crimes against the tax system, as well as such related to questions about crimes of general character concerned to the theme of the dissertation, are studied and cited. A parallel is made between the crimes and the administrative offenses against the tax system. A comparison is made between the crimes against the tax system and other crime compositions on the reason of common elements between them, even if they refer to other objects of violation. The problem about the validity which is put on the agenda because of the difficulties concerned with the investigation and collection of a large amount of evidences, the cutting of legal proceedings on the grounds provided for in the Penal criminal code and the legal actions continuing for years, are also investigated. In quite a lot cases in the process of the penalty proceeding the crimes are lapsed by limitation which make meaningless the long-standing labor of the occupied in this process investigating organs, prosecutor's office and court. The substance of the crimes against the tax system is analyzed and a parallel is made with the relevant tax-legal norms. The theme about the Bulgarian legislation harmonization with the one of the European union is analyzed and an accent is put on the obligations of acceptance a legislation in the sphere of indirect

taxation. As it is known, the vast abuse with due taxes are made by means of indirect taxes, preliminary with value added tax which is the largest item in each public budget.

The essential crimes against the tax system include violation of the relevant budget /state or municipal/, and the rest protect the tax system as a whole, for the reason to ensure the authority and the normal function of its structures and organs. All the crimes against the tax system are analyzed but the accent of the research is on the ones which cause damage of the state budget because these are the wide-spread cases of violations in the practice. They in fact concern the financial basis of the country because they provoke a direct damage over the budget which is used for the provision of the expenses in all the spheres of the public financing.

3. Purpose and tasks of the research

The considered problematics is not enough examined of penal-legal point of view. That is why difficulties arise as in the process of examination of the crimes of the tempted in this area jurists as well as in the practice. Even though in 2006 essential changes of some of the widely applied crime compositions were done, in the practice at present there are established some incompletions and imperfections. For example, incompletions in reference to the forms of the performing actions are observed, i.e. some anti-legal procedures of tax-legal point of view are not proceeded into crimes although substantially they lead to tax evasion. The criminal legislation is not updated and consistent with the levels of the criminality and mainly the size of the evaded due taxes which have increased repeatedly in comparison to the last decades. In this concern the purpose of the present dissertation is to conduct a detailed analysis of the examined subject, including a research on the essence of the crimes against the tax system and an analysis on the separate types of crime compositions, an outline of the problems in the practice and a notice of those legal permissions which need changes because of the dynamics of the discussed crimes.

The following tasks are conducted in order to fulfill the outlined purpose:

- The essence of each of the crime compositions against the tax system is examined;

- An analysis of the court practice on criminal cases with subject of crimes against the tax system is conducted, as there are examined cases of first instance and appeal courts and judgements of the Supreme Court of Cassation. Contradictory permits of concrete causes, directly or indirectly related to the observed matter, are ascertained in the practice. The Supreme Court of Cassation has passed interpretative rulings to standardize the practice. This is why they are also reviewed in the dissertation together with the significance of the compulsory practice for the contradictory permitted issues until recently;

- Certain imperfections in the legislation are concluded and the relevant legislation changes are put forward;

4. Research-applied contributions

The following research-applied contributions are distinguished in the dissertation:

The dissertation contains an analysis of theoretical point of view and research papers in this field are examined. At the same time the actual court practice relevant to its subject is analyzed. In this sense the research could be useful for professionals who work in the sphere of prevention of crimes against the tax system.

On the basis of the whole analysis of the problematics some legislation changes are suggested:

- The first group of them is concerned with the size of the penalties of some crime compositions which have a major application and a higher extent of public danger with a view of the constituting result causing the most serious damages on the budget. The purpose of these suggestions is to consider the legislation order with the public anger of the crimes in the present socioeconomic conditions and to provide penalties relevant to the new conditions.

- The second group of suggestions refers to the forms of the performed crimes. The criminal norms should also include the contemporary ways of the performing anti-legal crimes, leading to constituent result, respectively to damages over the public budget, because the arraignment of some performance under the relevant criminal composition requires all the objective and subjective elements of the composition to be available. In this sense one of the proposals refers to the implementation of new forms of the performed action.

- The third group of proposals has the purpose to take into consideration the elements of the criminal compositions including the points of view of the object and the subject of violation together with contemporary legislation norms, with which by necessity they are related.

- There is also a suggestion for a completion of the Additional rules of the Penal code with terms concerned with the crimes against the tax system, but they do not comprise all of the possible cases of damage survey for the public budget which makes their application impossible, in spite of the fact that there is an illegal performance available.

These suggestions could help the process of legislation's improvement in the sphere of crimes against the tax system which could later contribute to prevention of the designated crimes.

Content and structure of the paper

The dissertation paper is prepared in conformity with the normative requirements and consists of title page, content, introduction, four chapters, conclusion, a declaration of originality and a list of the used sources.

The dissertation paper contains 321 pages, from which the main content includes 314 pages and 6 pages are assigned for a list of the used sources – literature and normative rules / from the European union law/. The used literature consists of 87 sources, from which 71 of Bulgarian authors, 14 of foreign authors and 2 web sites. 7 normative acts from the European union law are used and 314 notes under line are made.

The research is represented structurally through an introduction, four chapters and a conclusion. The questions concerning the initial regulation of crimes against the tax system are outlined, a comparative analysis between the actual and the canceled crime compositions is conducted and the way in which Republic of Bulgaria harmonizes its internal legislation with the European Union law is examined. An analysis of the criminal characteristics of the crimes against the tax system, including an object and objective side, subject of crimes, is introduced and the relation between the crimes and the administrative violations are outlined. The types of crimes against the tax system are overviewed in details, including their main, qualified and privileged compositions, and examples from the court practice concerning some contradictory issues, are given. The problem of these crimes' limitation is investigated. A comparative analysis between these and other crime compositions is made. The issues about the present condition of the law legislation and the court practice are outlined and the compulsory court practice of contradictory arbitrating problems' interpretation is cited. Suggestions of legislation changes are presented.

II. SHORT SUMMARY OF THE DISSERTATION PAPER

Introduction

The reasons, determining the thesis importance, are briefly described in the introduction. The subject scope of the research and its purpose and tasks is clarified. The basic used methods of research and research-applied contributions of the dissertation paper are designated.

Chapter One

ORIGIN AND DEVELOPMENT OF THE CRIMINAL REGULATION OF CRIMES AGAINST THE TAX SYSTEM

Chapter one consists of 66 pages and it is structured in 3 sections, in which frames the problematics concerning the initial regulation of criminal defense of the tax system, is examined.

A parallel is made between the currently acting and the cancelled redactions of criminal norms and the factors imposed changes in these comparatively new criminal compositions are examined. The reasons determined the internal legislation's harmonization with the law of the European Union and the areas of synchronization with direct or indirect impact over the tax system defense from criminal violations are analyzed.

§ 1. Initial period of regulation of crimes against the tax system

With the acceptance of the crime compositions against the tax system /National Gazette number 62 from the 5th of August 1997/ in the Special part of the Penal code, for the first time from the creation of the third Bulgarian country, the tax payment evasion in large sizes, is criminalized– initially the barrier was fifty times the established in the country monthly wage and from 2000 onwards the border is 3000 BGN. Only the determined administrative criminal responsibility in the relevant material tax regulations is below these sizes. One essential deficiency in the Penal code is filled up with the incrimination of the crimes against the tax system. Only just when the market economy has appeared, the necessity to incriminate these performances is arisen, as far as they are a respond of the newly appeared public market relations, inevitably connected with the desire of some tax obligated people to save themselves the trouble of payment of due taxes. According to the law theory, the crimes against the tax system, can be differentiated in two main groups depending on whether due tax payment evasion is regulated or not as an indication by the respective composition /as a result of the performance/. A characteristic feature for the first group is that tax payment evasion is an indication regulated by the crime composition and the second group concerns the tax system, but it is not committed directly with the tax payment evasion. Notwithstanding the criticism in the law theory, the normative regulation of these crimes is positively accepted, especially for the reason of their preventive function.

§ 2.Comparative analysis between cancelled and acting compositions

The issue which statute law appears to be more optimum is by the meaning of art. 2, par. 2 from the Penal code in the comparison of the crimes by art. 257, par. 1 from the Penal code, revived in National gazette number 62/1997, cancelled number 75/206, forced on the 13th of October 2006 and art.255, par. 3 from the Penal code, is revised in the section. In comparison with art. 257, par. 1 from the Penal code, revived in National gazette number 62/1997, a considerable difference is ascertained, because the hypothesis for hidden evaded due tax payments in “significantly large sizes” is relevant only for performances by art. 255 and art. 256 of the Penal code /in the same redaction/. It however is not relevant to the other hypothesis of art. 257 of the Penal code – when the performances by art. 255 and art. 256 of the Penal code are performed with the participation of a state employee of the tax administration or a certified accountant. I.e. the participation of such an employee itself makes the crime more punishable according to the criminals determined in art. 257, par. 1 of the Penal code /cancelled/, without the necessity the evaded due tax payment to be in extremely large sizes. The current redaction of art. 257, par. 3 of the Penal code requires the evaded due tax to be in extremely large sizes in order to arraign the performance with the participation of the relevant subject by art. 255, par. 2 of the Penal code by this most heavily qualified regulation. In case of judgement in relevance with the premises of art. 2, par. 2 of the Penal code, the court practice is unequivocal that a thorough judgment of each separate case has to be conducted with a view of all of the elements of the composition and the determined sanctions taken in their completeness and even then to be specified which law is more favorable for the performer. The revised crime compositions have to be qualified by the law relevant at the moment of the performance and the court have to judge whether there are present grounds for the application of more favorable law at the time of the verdict decretion.

§ 3. Harmonization of the internal legislation with the law of the European Union

The research examines the issue of the harmonization of the legislation of Republic of Bulgaria in the sphere of the criminal and tax law, because the main crime compositions against the tax system – by art. 255 and art. 256 of the Penal code are general in their character and they have to be fulfilled with norms of the tax law. Bulgarian obligation to harmonize the Bulgarian legislation with the law of the European community arises by virtue of EC. According to art. 69 of EC the process of harmonization has to include as the existing as well the future legislation of Bulgaria. It is determined in the relevant law areas by art. 70 of EC, amongst which is the tax law. The directives intended to harmonize the criminal law systems of the countries members and of the associated countries as well. One of the requirements of applying tax law according the European standards has imposed the execution of the relevant criminal law defense of the tax relations. In relation with the violation with crimes the dissertation paper analyzes the relevant norms of the Secondary law, and especially Directive 2006/112/EC of the Council from the 28th of November 2006 in connection with the common system of tax over the added value and a few regulations.

Chapter two

CRIMINAL LAW CHARACTERISTICS OF CRIMES AGAINST THE TAX SYSTEM

Chapter two contain 57 pages and is structured in 3 sections in the frames of which the problematics of the criminal law characteristics of crimes against the tax system is examined. The object and the objective side are outlined and a differentiation between the crimes and the administrative violations against the tax system is made.

§ 1. Object and objective side of the crimes against the tax system

The public relations concerned with the normal and legal functioning of the tax system are an object of the crimes. The public relations of legal payment of revenues from taxes in the public budget in the determined term and correctly

established size are a direct object of crimes by art. 255 of the Penal code. The public relations of legal expenditures of all types of budget resources in favor of the economic actions of people who achieve certain economic results in its completion, are an object of crime by art. 256 of the Penal code.

The subject of the tax crimes is a result of their object. The tax evasion by art. 255 of the Penal code has as a subject an obligation of tax payment determined in the respective material tax law which has to be in large or in extremely large sizes – over 3000 BGN or over 12000 BGN by the virtue of art. 93, p. 14 of the Penal code, which is not established or its payment is avoided. The subject of the crime by art. 256 of the Penal code is a financial sum from the public budget.

The crime compositions against the tax system are general and in order to be paid, the violations of the concrete tax laws by means of which a taxation is avoided, have to be established. In this respect the research provides terminological clarifications of terms from the tax law and the legislation approach used in the appliance of the different types of taxes on Republic of Bulgaria, is specified.

An analysis providing the ways of crime performance with examples of the different schemes of taxation avoidance is made in order to clarify the objective side of the crimes. Different ways of taxation avoidance are being observed in the years, which is a result of the inventiveness of the taxpayers. As a result of the different forms of control by the bodies of the earnings, the tax obligators include new forms of tax payment avoidance. After the Bulgarian's joining to the European Union, new ways of taxation avoidance concerned with deals between traders from different country members, have appeared, which are even more difficult for establishment and proving.

§ 2. Subject of crime

The present section examines the issue of the subject of crime against the tax system of the point of view of the crimes by art. 255, art. 255a and art. 256 of the Penal code, because there were different decisions in the practice about

which people could be subjects of these crimes. The circle of the ratepayers is wider than the circle of the people who can be subjects of tax crimes. Due to the contradictory court practice on this issue in an Interpretative ruling № 4/12.03.2016 on commercial case № 4/2015, GMCC of the The Supreme Court of Cassation clarified the argued contradictions and determine the possible subjects of the discussed crimes. The circle of the criminally responsible people who can be their subject, is defined by the specific character of the objective signs determined in the composition of the crime. The law allows the trader to use other people who can perform the actions, regulated by the tax legislation. /a commissioner, a trade representative, an accountant, and another person/. Such physical person can also be a subject of the crime when he performs the actual performance of the trader's obligations which are imposed by the relevant tax legislation. This issue depends on the combination of actual circumstances on the case.

It is observed that special subjects of crimes against the tax system are determined in art. 255, par. 2 and art.256, par. 2 of the Penal code, as the subject of crime special qualities appear to be also qualified signs of the cited crime compositions.

§ 3.Relation between crime and administrative violation against the tax system

Unlike the tax crimes which by their regulation in the Penal code in 1997, appear to be an absolutely new occurrence in our criminal law, tax violations and penalties, even though with restricted application, have existed even before 1989. In relation with the contradictory court practice, the Supreme Court of cassation has pronounced an Interpretive ruling № 3/22.12.2015 on commercial case № 3/2015 of GMCC, in which it has listed the hypothesis to which the principle ne bis in idem is applicable. Through the prism of the tax crimes against the tax system, the issue of the double indictability for one performance in the administrative criminal and in the criminal proceedings have to be analyzed, judging to what extent the administrative criminal regulations in the

separate material tax laws cover a composition of art. 255 of the Penal code. The performance is constituting in condition that the tax obligations, subject of crime, have exceeded the financial amount, introduced with art. 93, p. 14 of the Penal code as a value criterion for “large sizes” on one type or different types of taxes. Only the financial quantity of the unestablished and unpaid taxes with lapsed terms of payment is reported with its qualification. Another criterion, differentiating the crimes from the administrative violations, including these in the tax sphere, according the legal theory is the public anger. The correlation between the two types of responsibility is clarified by the regulations of art. 32, par. 1 and par. 2 and art. 33, par. 1 and par. 2 of the Law of Administrative Violations and Penalties, including and art. 70, l. “g” of LAVP. In the cases when with one performance the criminal and the administrative norms with one object of defense, is violated simultaneously, the heaviest responsibility absorbs the lighter one. The importance is that the difference in the defended subject does not prevent the action of the principle for inadmissibility of double indictability.

Chapter three

TYPES OF CRIMES AGAINST THE TAX SYSTEM AND THE ISSUE OF THEIR PRESCRIPTION

Chapter three consists of 153 pages and is structured in 7 sections. It is committed on the types of crimes against the tax system and the main, the qualified and the privilege compositions are analyzed in details. There are citations on cases from the court practice. The particularly essential issue about the prescription of the criminal prosecution with these crimes, having in mind the complexity and the specifics of their investigation, is examined. Imperfections in the law legislation of the different types of crime compositions are defined.

§ 1. Avoidance the establishment or due tax payment. Continue or continuing crime

Amongst the crimes against the tax system, the crime by art. 255 of the Penal code, takes up a main place. The same is most often met and it has the most serious negative effect on the payments of the public budget. The public relations, connected to the legal forming of the profit part of the budget by tax payment, are an object of violation. The non-established /by type and size/ by the bodies of the revenues, or the unpaid due taxes, are a subject of the crime. The public relations, regulating the proper establishment and payment of due taxes, are a direct object. Each criminally responsible person is a subject. In order to be established the composition of the crime, it is necessary to be fulfilled, the determined by the norm definite crime result – avoidance of the establishment or the payment of due taxes in large or extremely large sizes, which result occurs with the expiration of the determined by the relevant law term for payment of the due tax. Only in this case there would be a finished crime. If the performer performs one/some of the determined by the norm acts /action or inaction/, but pays properly his taxes in the exact size, in the determined by the relevant tax law, he will not perform a crime by art. 255 of the Penal code. With the criminal actions, directly or indirectly, there are caused property damages /loss/ of the country in the size of the evaded by the doer, his or somebody else's, due taxes in large/extremely large sizes, which have to be paid, as a revenue to the public budget, in the determined terms. The crime composition lists several forms of performing action, explicitly outlined from p.1 to p. 7 par. 1, of the determined norm. The citation shows that the legislator has adopted the principle of explicitness, outlining the actions and inactions, leading to the constituting result. This means that other actions or inactions – hypothesis, which could lead to the same result, are irrelevant for the crime by art. 255 of the Penal code. The characteristic feature about all the forms of the performing action is that a legally regulated obligation for the performance of some actions or the legal prohibition of such actions, are given not in the Penal

code, but in the separate tax regulations. The objective side of the performance by art. 255 of the Penal code, requires the evaded tax obligation, to be in large, respectively extremely large sizes according the definition in art 93 p. 14 of the Penal code. It is necessary to outline that the crime by art. 255, par. 1 of the Penal code, may be accomplished as with only one, as well as with more than one of the listed in the crime composition forms of the performing action, despite, in a different combination. The crime by art. 255, par. 1 of the Penal code, is intentional by subjective side.

In art. 255, par. 2 of the Penal code, the heavier crime composition is fixed, as the objective side includes four qualified signs with view of the subject.

In art. 255, par. 3 of the Penal code, the even heavier qualified crime composition is regulated, when the tax obligations are in extremely large sizes according to the definition of art. 93, p.14 of the Penal code.

In art. 255, par. 4 of the Penal code, a less indictable composition of the outlined crime is determined, applicable in the cases when the unannounced or unpaid tax obligation is paid to the budget together with the interests till the finalization of the course of justice in the court of first instance. The payment may be performed by another person, including the trader, or the company, in which favor the tax payment is avoided.

From the point of view of the institute of art. 26 of the Penal code, it should be outlined, that when the liable party violates several times some of the listed in art. 255 of the Penal code ways his legally established obligations to the fisc, he executes in certain periods of time the same crime composition in achieving the same criminal result. The estimation of the period of time, during which the separate performances are complete, as “non-continuous” by the sense of art. 26, par. 1 of the Penal code, is always concrete for each separate case.

Some of the actions may be objectively remoted from each other by one-year period of time, which is related to the one-year tax period, fixed in part of

the tax regulations /Law on the income tax, Corporate Income Tax Law/. This circumstance does not influence the estimation for “non-continuity” of the period of time in the frames of the continuing criminal action, because the separate actions could be executed only in such a period of time, without to disconnect the objective and the subjective homogeneity of the whole criminal activity and its general criminal result.

§ 2.Avoidance of the establishment or the payment of tax obligations by means of transformation or conduction of a deal

In art. 255a, par. 1 of the Penal code, a criminal responsibility is determined, when there is avoidance of the establishment or payment of tax obligations in large sizes, by means of transformation of trade company or another legal entity, or conduction of a deal with related people by the sense of the Tax insurance procedural code. Here the sanction /in the part of stay of imprisonment/ is analogical to the determined one by par. 1 of art.255 of the Penal code. I.e. the difference is in the forms of the performing action, by which the desired result is achieved. In par. 2 of art. 255a, par. 2 of the Penal code, there is a qualified crime composition when the tax obligations are in extremely large sizes. The sanction is analogical to the determined by par. 3 of art. 255 of the Penal code. In art.255a, par. 3 there is determined less punishing criminal composition, applicable in the cases, when till the finalization of the criminal prosecution in the court of first instance, the non-declared or unpaid tax obligation, is paid to the budget together with the interests. There is no matter who is the person who has paid the due tax.

The crime composition by art. 255a of the Penal code is not applicable in the practice of criminal cases to a large extent. It is accepted in the law theory that this circumstance is owed to the formulation of the performing action, which obtrudes the completion of the composition.

§ 3.Receiving from the public budget of an unfollowing financial amount or giving the opportunity another person to receive such

According to art. 256, par. 1 of the Penal code, someone, who receives an unfollowing financial amount in large sizes from the public budget by using a document with untrue content, or unreal or an altered document, or provides another person with the opportunity to receive such an amount, is a subject criminal responsibility. This unlawful behavior is criminalized in 2006 because of the increasing number of the cases, in which the taxpayers violate with their rights, declaring undue paid taxes and regarding their refurbishment from the budget. The public relations concerned with the proper and legal functioning of the public budget, with a view of the taxation revenue and the estimates in its expenditures, are a relative object of the crime. When the features “large sizes” and “extremely large sizes” are being determined, the financial equivalence of the subject of the crime have to surpass seventy, respectively one hundred and forty times the established in the country minimum wage to the date of the crime. If the case is related with a continuing crime, the situation should be judged on the general crime result according to art. 26, par. 2 of the Penal code, not on the size of the amount, received for each of his actions. The crime is resulting. The crime result sets on after the incriminated document is used, on the bases of which the unfollowing amount is received. The crime result also sets on when the amount is received by another person /physical or legal entity/, who does not bear on crime responsibility for its receiving. In art. 256, par. 2 of the Penal code, a qualified composition is introduced, when the action is performed with the participation of a person by art. 255, par. 2 of the Penal code, or by a person, who acts on behalf of a third party or in pursuance of a decision of an organized crime group, or if the received amount is in extremely large sizes. Hereby, the crime composition comprises qualified features of the subject and the crime result. In art. 256, par. 3 of the Penal code, a less punishing crime composition is determined, applicable if the received amount is paid to the budget together with the interests before the end of the prosecution in the first instanced court. There is no limitation of the person who may pay the due amount.

§ 4. Illegal obstruction of revenue authority's work

The legislator has incriminated the illegal obstruction or the compulsion on a revenue authority in art. 258, par. 1 of the Penal code. This crime does not affect directly the public budget's revenues, respectively its proper spending, but as far as the functions of the revenues authorities aims the legal establishment of tax obligations and their payment to the budget, the legislator has introduced the obstruction or the compulsion on a revenue authority in the Penal code. The performing action can be executed with action or inaction. It is necessary to be clarified, that the object of violation by art. 258 of the Penal code, does not affects the public prosecutor, as far as the public prosecutor is not included in the term revenue authority. The public prosecutors as authorities are an object of crime by the compositions of art. 29 and art. 270 of the Penal code. In par. 2 of art. 258 of the Penal code, a qualified composition is regulated, when the action is conducted by power or threatening /compulsion/ on a revenue authority.

§ 5. Formation of a non-profit legal entity or incorporation of a foundation with the purpose of tax exemption or tax concessions receipt

In art. 259 of the Penal code, the formation of a non-profit legal entity of a foundation, which do not perform or performs ostensibly its announced activity or purpose in order to receive different tax concessions, property profits or other unfollowing privileges, is incriminated. This crime violates the tax system indirectly. As far as from a subject point of view of the prosecuted crime, there exists the particular purpose of tax exemption or tax concessions receipt, the public relations, regulating the proper functioning of the tax system, are outlined in this context, namely. From the point of view of the public consequences, this crime is ineffective. But the combination of the features shows that the crime will be finalized, not at the moment of the formation /registration/ of the non-profit organization, or at the moment of the formation of the foundation, but when there are objective indices, that the respective non-profit organization does not perform the announced in its act of foundation

activity or purpose, or performs it formally. This issue should be judged separately depending on legal entity's character or on the specific conditions which are important for the actual performance of its activity. The composition of art. 259 of the Penal code is an object of criticism in the legal theory. Subsequently, a clarification about the type, rules of formation, registration, structure, activity and termination, is introduced with the acceptance of Law of non-profit legal entities.

§ 6. Issuing an untrue judgement or conclusion; verification of untrue annual financial statement

The legislator has incriminated illegal behavior of two groups of legal entities, which professional knowledge and authorities are indirectly related with the proper functioning of the tax system, therefore with the revenues and the proper spending of the public budget. The licensed evaluators and the registered auditors are physical bodies with special knowledge in their filed, from which true and correct conclusions and evaluations depend the proper evaluation of the respective property of a trader or other economic body, as well the timely evaluation of the respective public organs to establish the correct declaring, financial and property condition of the traders, which is important for the correct establishment of the due taxes.

According to art. 260, par. 1 of the Penal code, a licensed auditor who applies an incorrect evaluation or conclusion of the amount of the evaluating property and this provokes a damage in unimportant case, bears a criminal responsibility. It is accepted in the legal theory, that the crime by art. 260, par. 1 from the Penal code has common features with the deliberate abandonment by art. 219, par. 3 of the Penal code. The crime is resulting, damaging and will be finalized when the action provokes a damage in unimportant cases. This damage is related with born property damages but not with missed benefits. It is not directly provoked by the action, but when after the estimation is done, the deal is conducted, with which the estimated property is transferred against payment on a lower or a higher price.

In art. 260, par. 2 of the Penal code, the legislator has criminalized the preliminary activity of the expert-accountant /now a registered auditor/ as a preventive measure against eventual crimes by art. 255 of the Penal code and art. 257 of the Penal code /cancelled/, where the same is qualified as a special subject. From objective point of view, the performing action is executed only by means of actions – verifying. The crime is formal; therefore, it will be finalized at the moment of the report's verification by the respective way. From subjective point of view, the registered auditor has to act with direct intention, in which content are included notions of all objective features of the composition.

§ 7.Limitation of the criminal prosecution and its application with crimes against the tax system

In the court practice, with cases by art. 255 of the Penal code, which usually are conducted by the conditions of art. 26 of the Penal code, it is accepted that with the continuing crimes, the moment of cancellation is the relevant, out of which all limitation terms are calculated, and towards which the issues of qualification and the sanctioning regulations in the aspect of the requirement of more favorable law, are determined.

In the hypothesis of the less punishing composition by art. 255, par. 4 of the Penal code, there is provided mitigation of the sanction, if the unannounced or unpaid tax obligation is paid to the budget together with the interests till the moment of finalization of the court prosecution in the first instanced court. according to the compulsory practice of the Supreme Cassation Court, by analogical law regulations, the diminished limitation for criminal prosecution, has to be calculated by establishment of the date of payment of the unannounced or unpaid tax obligation, which will be initial date, from which starts the term of the diminished limitation. As for the crimes by par. 1, par. 2 and par. 3 of art. 255 of the Penal code, the limitation of the criminal prosecution is identical – 10 years for an ordinary limitation and 15 years for the absolute limitation, for the final date of the diminished limitation cannot be later then the final moment of the limitation for criminal prosecution, determined for the crime, for which the

body is indicted / i.e. without the payment of the obligation together with the interests/.

Chapter four

SIMILARITY AND DIFFERENCE BETWEEN THE CRIMES AGAINST THE TAX SYSTEM AND OTHER CRIME COMPOSITIONS

Chapter four contains 26 pages and is structured in 3 sections. It provides a comparative analyses of crimes against the tax system and other crimes of general character, between which there are established a plenty of similarities. At the same time, it provides a differentiation between them in order to be estimated whether some illegal behavior has to be treated as crime against the tax system or it appears to be violation against other types of public relations, defended by the Criminal code. The knowledge of the similarities and the differences is necessary with the purpose of the correct treatment of illegal crime under the respective crime composition.

§ 1. The crimes against the tax system and the documentary crimes

In formulation the tax crime compositions, most often there are used documents – private or official, dispositive or authorized. The corruption of some document, respectively the use of such document is also criminalized by the crime compositions, determined in Chapter IX of the Penal code, entitled “Documentary crimes”. Despite the presence of connection between these two types of crimes, there are a lot of differences between them – the object of violation is different; the crimes against the tax system are resulting and damaging alike the documenting crimes; they are identified in different chapters from the Special part of the Penal code. The documenting crimes lose their independent criminal meaning, when they become a part of crime against the tax system, because the methods through which the typical tax crime occur, include in themselves the use of a certain corrupted document. The research provides a parallel between the crimes by art. 255, par. 1, p. 2 of the Penal code and by art. 313, par. 2 of the Penal code. A link is established between the composition of the crime by art. 255, par. 1, p. 4 of the Penal code and one by art. 319 of the

Penal code. A conclusion is made that in case of coincidence in the objective and subjective features of the compositions of the documentary crime by art. 316 art. 313, par. 2 of the Penal code and the one by art. 256 par. 1 of the Penal code, again the documentary crime would not have independent legal meaning.

§ 2.Crimes against the tax system and documentary deception

In comparison between the compositions of art. 256, ar. 1 and art. 212, par. q and par. 2 of the Penal code, it is established that there is identity in the means of their conduction – this is a document with untrue condition, unreal or altered document. There is similarity in the crime composition – in both crimes someone else's property is received, which is not of the subject of the crime or of the person that receives the property or the amount. Both crimes are resulting. They have different object of violation and a different subject. There is difference in the amount's origin, respectively the source from which the property origins, which will take reflection who appears to be a victim, respectively damaged legal entity. The financial amount from the public budget are a type of someone else's movable property. Therefore, if there is presence of the rest of the material-legal characteristics of the documentary deception, the composition by art. 2256 of the Penal code appears to be special in respect of that by art. 212, par. 1 of the Penal code.

There are some elements of the documentary deception also in the composition of art. 255, par. 1, p. 6 of the Penal code, but the differences between them are more essential.

§ 3.Crimes against the tax system and crimes against the regulation of the management

The illegal obstruction and compulsion on a revenue authority, determined in art. 258, par. 1 and par. 2 of the Penal code, possess similar features with the crime compositions by art. 269 and art. 270 of the Penal code, which systematic place is in Section I, Chapter VIII from the Special part of the Penal code, entitled "Crimes against the regulation of the management". The composition by art. 258 of the Penal code appears to be special in regard of the

obstruction of an authority body by art. 270 of the Penal code. In the legal theory, it is concluded that the three crimes are performed intentionally by each criminal responsive body. The revenue authority is included in the term authority organ in the sense implied in the compositions by art. 269 and art. 270 of the Penal code. The examined crimes have different object of violation. In connection with the criticism on the legal theory about the disproportion of the designated crimes in the compositions by art. 258 of the Penal code and that of art. 269 and art. 270 of the Penal code, a positive change in the legislation is concluded, referring to the compositions of art. 270, par. 1 and art. 269, par. 1 of the Penal code, as the sanctions are almost equalized with those of art. 258 of the Penal code.

Conclusion and suggestion de lege ferenda.

The thesis is finalized with a conclusion which summarizes the author's opinions and provides suggestions for the future improvement of the legislation in some of the crime compositions, examined in the dissertation paper. The main deductions and conclusions, made in the process of the presentation, are outlined. As a result, there are given suggestions de lege ferenda. The crimes against the tax system are regulated legislatively in 1997, because of the arisen necessity of criminalization of these acts of violation against the financial stability of the country in the new socio-economic conditions. In 2006, positive changes in the legislation regulation of the main crime compositions, are made, which have the largest practical significance and cause direct damage to the public budget. At the same time, the statistical data point out that these crimes increase from the point of view of their number and the sizes of the evaded obligations. The criminal prosecutions with subject hidden taxes or illegal receipt of unfollowing financial amounts in the form of Value added tax, continue for several years, which moves away in the time the moment of the performance of the crime from the moment of the entry of the judgement. This reflects over the size of the crimes because the continuing term of the criminal prosecution is reported by the legal theory and the court practice, as extenuating

circumstances. Parallel with this, the damages for the country, in most of the cases are non-refundable. Even though relatively new, the crimes against the tax system are a subject of a large part of the criminal prosecutions, observed by public prosecutors in the respective country prosecutions or formed in the respective country courts after the deposition of prosecutor's acts against the respective bodies. In this sense a court practice about them is collected, especially by art. 255 of the Penal code. Therefore, there is enough experience, which makes easier the estimation about the effectiveness of the accepted by the legislator crime compositions to keep the public relations related with the functioning of the tax system in Bulgaria. It is clear from one side, that a part of the punishments, determined in the crime compositions, do not correlate to the extent of the public danger of the actions. It is also established that the forms of the performing actions do not comprise all forms of illegal violations, leading to damage for the budget in the form of taxes. In some cases, the formulating of definite terms in the crime compositions is not constituent with changes in other regulations to which norms are connected, because of which the determination of certain behavior under the relevant composition could cause difficulties. That is why, it would be useful to be taken into consideration the suggestions for legislation changes, and they are the following:

1. It is necessary to be increased the upper border of the punishments in the crime compositions by art. 255, art. 255a and art. 256 of the Penal code, with which is caused a real damage on the budget. The legislation regulation is not actualized long years in terms of the punishments. At the same time, it is observed an increase in the evaded obligations, respectively the illegal received amounts from the public budget. Sometimes the issue is about hidden obligations or illegally received amounts of several millions BGN, which are not paid by the accused body. In this way there remain non-refunded damages for the country in enormous sizes, and at the same time the punishments are not actualized according to the new conditions, in which the examined crimes are

conducted with their increased public danger. The concrete suggestions are listed below:

The composition of art. 255, par. 1 of the Penal code, determining upper border of the punishment imprisoning for 6 years, to be altered, determining upper border of 8 years. The cumulative determined fine to 2000 BGN to be increased in size of 5000 BGN.

The qualified composition by art. 255, par. 2 of the Penal code, determining punishment imprisoning to from 2 to 6 years, to be altered, determining the upper border on 8 years. The cumulative determined fine to 5000 BGN to be increased in size of 10 000 BGN.

The most often applied composition by art. 255, par. 3 of the Penal code, determining punishment imprisoning from 3 to 8 years, has to be altered in relation with the upper border and increases it on 12 years.

In art. 255a, par. 1 of the Penal code the upper border of the punishment imprisoning to be increased from 6 on 8 years /analogically of art. 255, par. 1 of the Penal code/.

In art. 255a, par. 2 of the Penal code, determining punishment imprisoning from 3 to 8 years, to be altered in respect of the upper border and increases it on 12 years /analogically of art. 255, par. 3 of the Penal code/.

In the qualified composition by art. 256, par. 2 of the Penal code, determining punishment imprisoning from 3 to 10 years, to be altered, determining the upper border on 12 years.

These changes would provide the court with a larger opportunity to precise the punishment towards the extent of the public danger of the action and the performer, a main element of which is the size of the damage for the fisc.

2. The legislator did not criminalize as a form of performing action the non-registration of the value added tax, which leads as a consequence the hiding of tax obligation in large or extremely large sizes by the sense of art. 255 of the Law on Value Added. In relation with this observation *de lege ferenda* it is necessary to be made legislation changes in order to be comprised these forms

of illegal behavior, too. This may be conducted, by extending the composition of art. 255, par. 1 of the Penal code, which will interrupt or decrease the cases of hiding of Value Added Tax.

3. It is necessary an alteration to be made in art. 93, p.14 of the Penal code with a view of the composition of art. 256 of the Penal code in reference with the determined in it terms “unfollowing financial amount in large sizes” and “unfollowing financial amount in extremely large sizes”. As far as in this composition there is a lack of the terms taxes in large sizes and taxes in extremely large sizes, for the composition of the action by art. 256 of the Penal code, the definition, determined in art. 93, p.14 of the Penal code, is not applicable. For this reason, I think that the rules of art. 93, p.14 of the Penal code /in relation with the rules of art. 256, par. 1 and par.2; read 3 of the Penal code/, must be extended, by adding that the criteria for large and extremely large sizes refer also to the received unfollowing financial amount in large and extremely large sizes by the sense of art. 256, par. 1 and par. 2, read 3 of the Penal code.

4. De lege ferenda the legislator should include in the object of violation by art. 258 of the Penal code, the public executors, too, together with the revenue authorities, as far the two groups of public officials, are organs of the National agency for revenues.

5. As far as a subject of crime by art. 260, par. 1 of the Penal code are explicitly determined subjects, possessing the quality “licensed evaluator”, in defining the norms of the Penal code, analogy is impermissible, the created new subject having the authority to perform property evaluations – “independent evaluator”, is not a fit subject of the crime by art. 260, par. 1 of the Penal code. At the same time, he is not a subject of crime by art. 291 of the Penal code, unless he was not appointed as an expert witness during the preliminary or operative proceeding. In this relation the legislator should consider whether to include as a new subject of this crime, the independent evaluator, along with the licensed evaluator, or to replace him completely.

6. It is necessary to be done an observation about the presence of term “annual financial statement” in the composition of art. 260, par. 2 of the Penal code, which differs from the used other terms by the legislator, referable to the crime composition in the respective laws /Accountancy Law, Law of the Independent Financial Audit, The Commercial Law/, namely “annual financial statement” /as the Commercial Law contain the two terms simultaneously/, This differentiation in the terminology should be coped de lege ferenda, as the used term is altered in the Penal code by introducing the term “annual financial statement”.

III. APPROBATION AND LIST OF PUBLICATIONS

The dissertation thesis is completely reported in front of Department “Criminal Law” of the Faculty of Law of Plovdiv University “Paisii Hilendarski”

In relation with the theme of the dissertation thesis, the following scientific publications are made:

Article “Inspection Sertificate as a Source of Information for Crimes under Article 255, Article 255A and Article 256 of the Penal Code” – published in No. 2/2019 of journal “Studia Iuris” – e-issue of the Faculty of Law at Plovdiv University “Paisii Hilendarski”

Article “Similarity and Difference between Crimes Against the Tax System and Other Criminal Offences” - published in No. 1/2020 of journal “Studia Iuris” – e-issue of the Faculty of Law at Plovdiv University “Paisii Hilendarski”

Article “Correlation between the Criminal and the Administrative-criminal responsibility for offences against the Tax system” – accepted for publishing in No. 2/2020 of journal “Studia Iuris” – e-issue of the Faculty of Law at Plovdiv University “Paisii Hilendarski”