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Ponzi schemes – insights from Czech case law*

Introduction to Ponzi schemes

A Ponzi scheme constitutes an investment fraud whose essence, in simple terms, lies in attracting new investors typically with the promise of high returns with little or no risk (allegedly due to the organizer's unique skills and investment strategy[1]). In reality, the entrusted funds are not invested further; instead, the perpetrators pay out funds (supposed profits) obtained from new investors and keep a portion of the money for their personal use. Such schemes, which generate little or no legitimate earnings, require a constant inflow of new capital to remain operational. Once the flow of new investors ceases, the scheme inevitably collapses[2].

Focusing on the roots of the term itself, it got its name from Charles Ponzi[3]. In a brief introduction to the history, it can be outlined that this Italian businessman devised a system to profit from trading international reply coupons, the price of which was significantly lower in Europe than in the United States[4]. In late 1919, he launched what would become the prototype

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1 R.S. Jory, M. Perry, *Ponzi schemes: a critical analysis*, p. 1, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1894206 (accessed: 30.05.2025).

2 *Ponzi schemes*, https://www.investor.gov/introduction-investing/investing-basics/glossary/ponzi-schemes (accessed: 30.05.2025).

3 Although the „inventor" was William Miller in 1899 – see: A. Cohler, *The evolution and impacts of the Ponzi scheme and governmental oversight: an honor's senior thesis project on the intricacies of Ponzi schemes and its regulating authority*, p. 3, https://www.ramapo.edu/honors/wp-content/uploads/sites/55/2019/08/Cohler-ASB-2017.pdf (accessed: 30.05.2025).

4 Theoretically, one could purchase an international reply coupon in Italy, send it to the United States, and redeem it for postage worth four times as much – see: M.K. Lewis, *Understanding Ponzi schemes. Can better financial regulation prevent investors from being defrauded?*, Cheltenham 2018, p. 32.

of the scheme in Boston by claiming that trading in international reply coupons would generate extraordinary profits to his investors[5]. Although the actual purchase of European coupons never happened, he was able to convince investors that they could receive up to a 50% return every 90 days. Gradually, his pool of investors expanded, and he simply paid the early investors using the funds received from later ones[6]. It is estimated that at the time, he raised approximately $15 million from 40,000 investors[7].

One of the most well-known and extensive examples of such a scheme in the United States was the case of Bernard Madoff[8]. His long-running scheme is believed to have taken in about $36 billion, of which $18 billion had been paid out to investors before the collapse (including the promised profits, total losses were estimated at $64.8 billion). The scheme began in the early 1990s, following the classic model: interest promised on investments was paid from funds contributed by later investors, and the fraud was only uncovered in 2008[9]. His success was largely based on investors' belief in his ability to select stocks using a secret strategy (known as the "split-strike conversion strategy"), which allegedly involved investing client money into a portfolio of high-quality common stocks hedged by option contracts[10]. Notably, a wide range of prominent institutions and individuals were involved in the scheme (including investment management firms, foreign banks, wealthy individual investors, pension funds, charitable organizations, universities and insurance companies)[11].

If we take a closer look at the recurring features of the Ponzi scheme, they include the following. The perpetrators are usually charismatic and persuasive businessmen[12]. Initially, they focus their attention on targets that are socially or professionally close to them, which, if successful, then leads them to expand beyond this sphere[13]. Investors subsequently believe that the business model relies on a secret idea or model from which the absurdly high promised returns emanate[14]. Within this established scheme, it

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5 P. Boyle, Z. Peng, *Ponzi schemes: a review*, p. 1, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5019934 (accessed: 30.05.2025).

6 M.K. Lewis, *Understanding Ponzi schemes*…, p. 33.

7 Ibidem, p. 36.

8 R.S. Jory, M. Perry, op. cit., p. 2; A. Cohler, op. cit., p. 4. Other cases are listed, for example, on the website of the U.S. Securities and Exchange Commission: U.S. Securities and Exchange Commission, *What is a Ponzi scheme?*, https://www.sec.gov/spotlight/enf-actions-ponzi.shtml (accessed: 30.05.2025).

9 M.K. Lewis, *Understanding Ponzi schemes*…, pp. 40–41.

10 Ibidem, p. 10.

11 Ibidem, p. 42.

12 R.S. Jory, M. Perry, op. cit., p. 6.

13 P. Boyle, Z. Peng, op. cit., p. 9.

14 M.K. Lewis, *New dogs, old tricks: why Ponzi schemes succeed?*, „Accounting Forum" 2012, No. 4, p. 294, https://www.researchgate.net/publication/271584696_New_dogs_old_tricks_Why_do_Ponzi_schemes_succeed (accessed: 30.05.2025).

is characteristic that a constant inflow of funds is required in order to pay out to earlier investors, which naturally tends to eventually collapse[15]. This fact accelerates the need to expand the number of investors in order to pay out the promised amounts; the more money the fraudster takes for his personal purposes, the more the need for new investors increases[16]. In practice, a portion of the collected funds may actually be invested – not to generate real returns, but to create the illusion of legitimacy and strengthen investors' confidence in the whole system. However, these investments usually represent only a fraction of the obtained funds, and the purpose of such investments is to obscure the true functioning of the entire business model[17].

It is also possible to summarize the aspects that, even in today's sophisticated society, help explain why victims of these schemes continue to be attracted to and deceived by fraudsters. These aspects primarily include people's trust in the reputation of the fraudster (e.g. he has a strong name, demonstrates stable activity or investment returns over a longer period of time), so that they do not question the potential scam at all. This gullibility also includes the fact that emotion-driven intuition often leads to irrational decisions, even among intelligent people, especially among close acquaintances (after all, no one from our close circle or the same social bubble would ever deceive us)[18]. The motivation of the perpetrators themselves is undoubtedly financial gain. Although they must be aware that their fraud will one day be discovered, they either rely on this moment being far off, or are confidently convinced of their abilities and ignore all risks[19].

In these cases, the significant restructuring of crime towards a greater use of electronic communication tools and other available instruments of cyberspace also plays a role. This may be an area of significant latent crime, depending on the reluctance or unwillingness of victims to report such activities by offenders to law enforcement authorities, especially in situations of uncompleted act or if the consequences for the victims become apparent only after a delay[20].

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15 R.S. Jory, M. Perry, op. cit., pp. 2, 4.

16 G. Molnárová, *Možnosti postihu Ponzi schémat a klasických pyramidových her*, https://www.epravo.cz/top/clanky/moznosti-postihu-ponzi-schemat-a-klasickych-pyramidovych-her-17866.html (accessed: 30.05.2025).

17 P. Švásta, *Pyramidové programy a Ponziho schémata v českém právu*, https://www.epravo.cz/top/clanky/pyramidove-programy-a-ponziho-schemata-v-ceskem-pravu-86517.html (accessed: 30.05.2025).

18 P. Jacobs, L. Schain, *The never ending attraction of the Ponzi scheme*, „Journal of Comprehensive Research" 2011, No. 9, pp. 40–42. This aspect of being influenced by people whom investors trust (and who have even invested themselves) is also emphasized in the research summarized in A.M. Wilkins, W.W. Acuff, D.R. Hermanson, *Understanding a Ponzi scheme: victims' perspectives*, „Journal of Forensic & Investigative Accounting" 2012, No. 1, p. 17, http://web.nacva.com/JFIA/Issues/JFIA-2012-1_1.pdf (accessed: 30.05.2025).

19 R.S. Jory, M. Perry, op. cit., p. 5.

20 *Zpráva o činnosti státního zastupitelství za rok 2023*, https://verejnazaloba.cz/wp-content/uploads/2024/06/Zpráva-o-činnosti-SZ-za-rok-2023.pdf (accessed: 30.05.2025).

In the Czech Republic, the term "airplane" is widely used for Ponzi schemes[21].

Pyramid game

Although fraudulent practices known as Ponzi schemes and pyramid schemes (game) are often used interchangeably or synonymously[22], it is possible to identify differences between them, which are also reflected in the (Czech legal context) chosen criminal law qualification. A "pyramid game" is understood as a business model in which its participants pay an entry fee for the opportunity to become its members[23]. Essentially, it is a business version of a "chain letter"[24]. It is particularly characterized by the fact that its rules do not guarantee equal opportunities to win for all participants. The essence of such a game lies in recruiting new participants, whose deposits (entry fees) finance the pyramid scheme, while these new (later) participants are not guaranteed equal chances of winning, especially in comparison with those already running the scheme.

The pyramid game thus represents a hierarchically structured system, in which new participants join below those who entered the structure earlier. Entry fees from new members are distributed in favour of their "superiors", with the promise that they themselves will be rewarded if they recruit additional participants. Income flows exclusively from the funds of the system's members, not from external sources, and no added value is created. The pyramid merely redistributes already existing values among its members, with the profit of some corresponding to the loss of others. Its functioning depends on a constant and exponential growth in the number of participants, which is unsustainable in the long term in a real-world environment[25]. Even with a pyramid scheme, the system becomes exhausted at the point when the number of members grows so large that it becomes practically impossible to ensure the further recruitment of new participants[26].

It should be added, however, that pure forms of pyramid schemes are rarely encountered nowadays; typically hiding behind seemingly legal structures,

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[21] P. Švásta, op. cit. See also Judgment of the Supreme Court dated April 27, 2023, case No. 27 ICdo 30/2022.

[22] E.g. Judgment of the Supreme Court dated September 30, 2004, case No. 11 Tdo 1108/2004, similarly Judgement of the Supreme Court dated July 26, 2023, case No. 3 Tdo 419/2023.

[23] P. Švásta, op. cit.

[24] M.K. Lewis, *Understanding Ponzi schemes…*, p. 19. Chain letter is basically „a letter sent to several persons with a request that each send copies of the letter to an equal number of persons" – see: *Chain letter*, https://www.merriam-webster.com/dictionary/chain%20letter (accessed: 4.06.2025).

[25] G. Molnárová, op. cit.

[26] P. Švásta: *Pyramidové programy…*

most often in the form of fictitious multi-level marketing, which conceals the essence of the illegal redistribution of entry fees among the members of the system. The aim is to create the impression of legitimate expectations and to disguise the fact that participants' profits depend exclusively on the recruitment of new members, not on any real business activity[27]. These may involve overpriced, low-quality, hard-to-sell products or services or of very little value[28]. Given that the system may involve the sale of an actual product or the provision of a real service (with a simultaneous recruitment process), it is necessary to thoroughly examine whether the price of these services or products is adequate to their real value; that is, whether they are capable of financing the operation of the business model on their own, or whether it is heavily dependent on (high) membership fees from newly recruited members[29].

Comparison

In terms of common features, it can therefore be stated that in both cases we are essentially dealing with a form of financial fraud, which leads to regulatory responses aimed at protecting investors and the integrity of markets, since such frauds undermine confidence in their functioning. Both also involve pyramid-like organizational structures that survive as long as the inflow of new clients continues (the distinguishing criterion, especially in the Czech legal context, is in particular the word "game")[30]. In both cases, these are closed systems (the profits of members or investors are generated exclusively from the contributions of new entrants), but they are inevitably unsustainable in the long term (a Ponzi scheme collapses if the promised returns cannot be paid, while a pyramid scheme fails as soon as it is no longer possible to recruit new members)[31].

The fundamental difference lies primarily in the degree of participants' involvement in spreading the system. While in pyramid schemes the right to a reward arises only after actively bringing in new members, Ponzi schemes operate on the basis of passive investing, where the participant is not required to take any action to attract additional investors – a high return is promised to them without any effort on their part[32]. Furthermore, it can be

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27 G. Molnárová, op. cit.

28 M.K. Lewis, *Understanding Ponzi schemes…*, p. 19.

29 Judgement of the Supreme Court dated February 8, 2012, case No. 3 Tdo 1588/2011.

30 T. Tajti, *Pyramid and Ponzi schemes and the repercussions of the differing regulatory approaches Hungarian developments in the light of contemporary global trends*, „Hungarian Journal of Legal Studies" 2021, No. 1, pp. 27–28, https://akjournals.com/view/journals/2052/62/1/article-p24.xml (accessed: 30.05.2025).

31 P. Švásta, *Pyramidové programy…*

32 Ibidem.

noted that in a pyramid game, investors put their money in exchange for the right to 'do something' (in most cases recruit new members to the system), while in a Ponzi scheme, investors entrust their money to the operator for the purpose of investing it[33].

Possibilities of criminal law qualification

The key question, therefore, is how Ponzi schemes and pyramid games can be qualified under criminal law within the Czech legal system[34].

With regard to Ponzi schemes, the primary legal qualification is as the criminal offense of fraud under Section 209 of the Czech Criminal Code[35]. In its basic form, this offense presumes that the perpetrator enriches himself or another by inducing error in someone, by using someone's error, or by concealing material facts and thus causing damage not insignificant[36] to another's property. The protected interest of this criminal offense is someone else's property[37]. Given the extent of fraudulent schemes, it can also be noted that stricter penalties for the perpetrator are enabled by qualified forms of the offense, which, *inter alia*, require the infliction of greater specified damage[38].

In terms of the objective aspect, it can first be stated that the alternative element of misleading is apparently fulfilled, as a legend of profitable investment and appreciation of the invested funds is used, although this is objectively not the case (the investment is not made, or only to a minimal extent, and the perpetrator knows that he is unable to generate the promised return). In other words, the victims are misled regarding the prospects of returns on their deposits with the aim of extracting funds from them. All depositors act under a misapprehension based on false information about the functioning of the investment company, including even the first in line whose deposits and promised returns are paid out, since even their payout depends on uncertain future circumstances (the perpetrator does so in order to increase the credibility of the entire operation and to attract a sufficient number of further depositors)[39]. The perpetrator can act alone or through other persons.

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33 G. Molnárová, op. cit.

34 The conclusions are also applicable to other legal systems due to the similar structure of the elements of fraud.

35 Law No. 40/2009 Coll, Criminal Code (hereinafter referred to as Criminal Code).

36 Which, in accordance with Section 138(1)(a) of the Criminal Code, is at least CZK 10,000.

37 K. Kandová, D. Čep, [in:] F. Ščerba, et al., *Trestní zákoník. Komentář § 205–421*, Praha 2020, pp. 1686–1687 (Section 209).

38 Section 209 (3), (4)(d), (5)(a) of the Criminal Code.

39 Judgement of the Supreme Court dated September 30, 2004, case No. 11 Tdo 1108/2004.

The subsequent property disposition causes damage to the injured investors in the amount of their investment, while simultaneously enriching the organizer of the scheme. The fact that the enrichment may be less than the damage caused, considering the costs associated with running such fraudulent schemes, does not preclude this conclusion[40]. The damage to the property of individual depositors occurs as soon as their deposits are transferred (and received)[41]. It is therefore equal to the total amount of all funds provided, since generally the entire amount of money extorted by the perpetrator's conduct must be considered as damage[42]. The return of money should be considered only as compensation for the damage caused or part thereof, which may be relevant when deciding on punishment and compensation for damages[43]. Regarding potential damage, or the perpetrator's awareness of its extent at the beginning of his fraudulent conduct (e.g., in the case of qualifying the offense at the stage of an attempt under Section 21(2) of the Criminal Code), it should be added that not knowing exactly what damage will be caused does not mean that the criminal activity is not committed with the awareness that the damage may be substantial to some extent. It is not unusual for a perpetrator, while committing a crime, to be unaware of the exact damage that will result; even in such a case, the criminal conduct is undoubtedly aimed at causing damage, the precise amount of which will only be determined later[44].

Fraudulent intent, i.e., the fulfilment of the subjective element of the offense under consideration, can be seen in the fact that the perpetrator promises enormous profits in a relatively short period of time, even though he has no intention of investing the funds obtained from investors into any legitimate

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[40] In the case of the crime of fraud, the enrichment does not have to coincide with the damage, i.e., when determining the amount of damage, the perpetrator's possible expenses are irrelevant, see, for example Judgement of the Supreme Court dated September 10, 2009, case No. 8 Tdo 994/2008.

[41] On the contrary, see Judgement of the Supreme Court dated November 30, 2006, case No. 4 Tz 50/2006, which states that when calculating the amount of damage, the expenses of the accused must be taken into account, i.e., the amounts that were properly paid out to clients in accordance with the terms of the concluded contracts should be deducted, since in connection with obtaining funds from the injured parties, the accused had to pay out to some clients their invested funds including the guaranteed appreciation. Furthermore, a certain „average interest" should be added, representing such appreciation of the funds that each individual injured party could have obtained from their invested funds for the period during which the funds were deposited with the investment company in question.

[42] Judgement of the Supreme Court dated May 26, 2009, case No. 8 Tdo 440/2009, published under No. 20/2010 Coll. of Criminal Decisions.

[43] Judgement of the Supreme Court dated December 10, 2003, case No. 6 Tdo 1314/2003, published under No. 32/2004 Coll. of Criminal Decisions, and *mutatis mutandis*, Judgement of the Supreme Court dated May 31, 2005, case No. 6 Tdo 83/2005, and Judgement of the Supreme Court dated January 17, 2024, case No. 5 Tdo 3/2024.

[44] Judgement of the Supreme Court dated July 26, 2023, case No. 3 Tdo 419/2023.

profitable enterprise[45]. Thus, the perpetrator intends to enrich himself at the expense of the victims, whom he causes damage to. Two notes can be made in this regard. Firstly, it is necessary to emphasize the requirement that the description of the act must express facts defining the basic statutory elements of the prosecuted criminal offense, including the subjective aspect[46]. Secondly, it is worth mentioning the complicated process of proving fraudulent intent, which is often based only on indirect evidence. From a procedural perspective, proving this specific intent, which includes the initial intention to commit fraud, can be a difficult task for law enforcement authorities. The conclusion that the perpetrator is guilty must always be proven by the results of the evidence and must logically follow from them[47]. In this respect, the complex financial situation of the accused, including his ability to meet the obligations assumed (e.g., lack of stable income, previous debts, ongoing enforcement proceedings, etc.), is repeatedly taken into account[48].

The legal qualification of Ponzi scheme as the criminal offense of fraud has also been confirmed by Czech case law[49].

It also raises the question of the victim's ability to avoid his mistake when he is able to verify the financial condition of the perpetrator or the company providing the investment opportunity. However, the conduct of the injured party in private law relationships cannot be held against them if the information that led them to be misled originated from the perpetrator and the injured party had no objective possibility to verify its truthfulness[50]. Therefore, in my view, the lack of caution on the part of the injured party cannot, in itself, lead to the conclusion that the injured party was not misled, as this would downplay the intent of the perpetrator, who usually relies on the victim's trust that they will not make sufficient effort to prevent the impending fraudulent conduct[51].

In the event that this initial fraudulent intent cannot be proven, consideration may also be given to the offense of embezzlement under Section 206 of the Criminal Code[52]. This offense is committed by a person who misappropriates

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45 G. Molnárová, op. cit.

46 Judgement of the Supreme Court dated November 30, 2006, case No. 4 Tz 50/2006.

47 Opinion of the Supreme Court of the SSR dated November 30, 1970, case No. Tpj 28/70-III, published under No. 19/1971 Coll. of Criminal Decisions.

48 For example, Judgement of the Supreme Court dated September 18, 2018, case No. 7 Tdo 1014/2018, Judgement of the Supreme Court dated April 20, 2016, case No. 7 Tdo 475/2016.

49 Judgement of the Supreme Court dated September 30, 2004, case No. 11 Tdo 1108/2004, or Judgement of the Supreme Court dated December 19, 2007, case No. 6 Tdo 1280/2007.

50 Judgement of the Supreme Court dated January 11, 2022, case No. 4 Tdo 1295/2021, or Judgement of the Supreme Court dated June 12, 2018, case No. 8 Tdo 630/2018.

51 E. Dostálová, F. Ščerba, *Opatrnost poškozeného coby zvláštní znak podvodu*, „Trestněprávní revue" 2024, No. 4, p. 204.

52 Also: P. Švásta, *Pyramidové programy…*

a thing or other asset value of another that has been entrusted to him and this causes damage insignificant on the property of another. Embezzlement could be therefore considered when it cannot be proven beyond reasonable doubt[53] that, at the time the funds were provided, the perpetrator already knew that the promised investment plan could not be fulfilled, but instead, as a result of a subsequent obstacle, decided not to invest the funds and to appropriate them (e.g., to use them for private purposes)[54].

In relation to pyramid games, however, different conclusions may be reached. First of all, it should be noted that pyramid programs are primarily within the domain of consumer protection law[55]. From the perspective of criminal law qualification, it cannot be inferred that they would constitute the crime of fraud, as the participants are usually thoroughly informed about the rules and system of such a game[56]. They are therefore aware of the risks that the system entails and are informed that they will not profit unless they bring a sufficient number of new participants into the network[57]. But generally they do not realize that, due to the chaining effect and the need to involve an ever-growing number of participants, they have no real chance of winning[58]. Thus, the participant is not being misled, nor is his mistake being exploited, nor are any material facts being concealed from him. A counter-argument might be that investors are not shown the geometric progression of the pyramid, i.e., they are not informed about the number of investors needed at each level of the structure. Nevertheless, it can be agreed that any average intellectually capable individual, when presented with an undisguised pyramid scheme, can recognize its unsustainable nature and foresee its likely collapse in short time[59].

However, the conduct of the offenders could be subsumed under a different offense with a fraudulent basis within the Criminal Code, namely the offense of practise of unfair games and wagers under Section 213 of the Criminal Code. This offense, in its basic form, presupposes that the perpetrator practices a monetary or similar game or wager, rules of which do not guarantee even possibilities of winning to all participants. The protected interest is primarily the interest in fair operation of monetary or similar games and bets, in particular by guaranteeing equal opportunities to win for all participants. Secondarily, protection is also provided for the property of persons

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53 Section 2 (5) Law No. 141/1961 Coll., Criminal Procedure Act (Criminal Procedure Code).

54 Accordingly, Judgement of the Supreme Court dated December 16, 2009, case No. 3 Tdo 571/2009.

55 P. Švásta, *Pyramidové programy*… See: Law No. 634/1992 Coll., Consumer Protection Act.

56 P. Šámal, [in:] P. Šámal, et al., *Trestní zákoník II. Zvláštní část. Komentář § 140–271*, Praha 2023, pp. 2750–2751 (Section 213).

57 G. Molnárová, op. cit.

58 P. Šámal, [in:] P. Šámal, et al., op. cit., p. 2751 (Section 213).

59 G. Molnárová, op. cit.

participating in the game or bet[60]. Czech case law has also concluded that a monetary game is equivalent to the concept of a pyramid scheme. The nature of a "win" can also be fulfilled by a so-called commission paid for recruiting additional participants to such a game[61]. For the sake of completeness, it may be added that the concurrence of the offense of fraud under Section 209 of the Criminal Code and the offense of operating dishonest games and bets under Section 213 of the Criminal Code is excluded due to the speciality of fraud[62].

Although the qualifying paragraphs of this offence also require the infliction of certain specifically graded higher damages, they also alternatively allow for a more severe penalty if a benefit of certain amount is obtained. It should be added that the net benefit can then only be determined after deducting all necessary expenses incurred by the perpetrator in connection with organizing the game[63].

The question then arises as to who is considered the perpetrator; whether it is only the operator of the game or whether it can also be a participant. The answer should be that the perpetrator is only the person who "operates" such a pyramid game, that is, the person who organizes, arranges, offers, carries out, or directly participates in its operation. This should not include the participants of the game, who are considered victims[64]. However, this opinion is somewhat debatable, as pyramid schemes often have a hierarchical structure in which those at the highest levels of the hierarchy cannot be unaware of how the entire system operates and are, in fact, in the position of accomplices[65] (they create suitable conditions for a game that requires cooperation of several people).

It should be noted that there is a rather thin line between a pyramid game and the aforementioned legal multi-level marketing. The latter is based on recruiting new sellers who sell an existing product and at the same time receive certain benefits for bringing in additional sellers. Companies based on multi-level marketing theoretically generate most of their profits by selling products to individuals outside the ranks of their own sellers. In this respect, it is essential to evaluate the products or services (e.g., by an expert opinion) to determine whether they have real value, as the conclusion that a criminal offense has been committed cannot be based solely on the inequality of advancement within the hierarchical system[66]. In the aforementioned cases, criminal liability might therefore not arise.

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[60] K. Kandová, D. Čep, [in:] F. Ščerba et al., op. cit., p. 1736 (Section 213).

[61] Judgement of the Supreme Court dated November 19, 2009, case No. 8 Tdo 1237/2009, published under No. 39/2010 Coll. of Criminal Decisions.

[62] P. Šámal, [in:] P. Šámal, et al., op. cit., p. 2754 (Section 213).

[63] Judgement of the Supreme Court dated February 8, 2012, case No. 3 Tdo 1588/2011.

[64] P. Šámal, [in:] P. Šámal, et al., op. cit., p. 2751 (Section 213).

[65] P. Švásta, *Pyramidové programy…*

[66] Judgement of the Supreme Court dated February 8, 2012, case No. 3 Tdo 1588/2011.

Analysis of selected decisions

For a more detailed analysis, I have chosen three criminal cases that dealt specifically with Czech fraudulent projects of a Ponzi scheme nature, the essence of which consisted in the promise of high returns on investors' deposited funds. With an emphasis on the subjective aspect, it can be noted that the perpetrators were aware from the very beginning that they could not achieve the promised returns.

It should also be noted that, as a result of these criminally relevant actions by the perpetrators (even in the Czech Republic), the victims lose significant financial resources, often without even realizing they have been deceived. In criminal proceedings, these are complex cases with a large number of victims (original investors), requiring thorough factual and legal assessment of the original investment instruments and their subsequent fate[67].

First Prague Credit Union

The case of the First Prague Credit Union represents one of the biggest financial frauds in the Czech Republic at the turn of the millennium. The credit union was founded in 1996 and, in 2000, was placed under forced administration due to suspicions of extensive financial machinations. The investigation revealed that the credit union had been established from the outset with the aim of extracting money from the public, which was subsequently not returned. The depositors' funds in question were transferred to affiliated companies and used for the personal enrichment of the credit union's management. The management also abused powers of attorney and set up fictitious subsidiary companies through which it siphoned off financial resources (so-called asset stripping or "tunnelling").

In this criminal case, the matter concerned extensive and long-term activities of an organization led by Martin Říha, who gradually took control over the credit union's operations. Together with other individuals, he created a system that enabled them to gain the trust of the general public and subsequently misappropriate their deposits. Specifically, the defendants were found guilty of intentionally failing to carry out a single legal and economically justifiable business activity aimed at increasing the value of the cooperative members` deposits (except for prohibited and extremely risky so-called dealing operations). By means of an extensive advertising campaign featuring numerous well-known figures from the fields of culture and entertainment, they pretended to be engaged in lucrative business activities and

[67] *Zpráva o činnosti státního zastupitelství…*

strategy of the credit union. In this way, they promised unrealistically high returns on members' deposits and accounts, offering extraordinarily high interest rates from 16,8% up to 30% *per annum*, and falsely guaranteed the security of the deposits received. The deposits were then deliberately transferred to accounts of affiliated companies without any real consideration being provided for these transactions. These schemes were disguised as advertising services, consulting activities, or investment operations which, however, had no economic significance. The funds were used to cover prior liabilities of the credit union, for personal enrichment, and in part to finance other illegal activities. When the scheme began to collapse, further steps were taken to conceal the true state of affairs, including the creation of so-called treasury collateral (fictional security) and the manipulation of accounting records. In total, more than 2,900 people were defrauded and the damages exceeded CZK 276 million[68].

In its ruling under case No. 11 Tdo 1108/2004, the Supreme Court addressed the appeals of all the accused persons in the case (two accomplices and three participants – accessories), who were convicted of the crime of fraud under the then-applicable Section 250(1), (4) of the Law No. 140/1961 Coll., Criminal Code (valid until 31 December 2009)[69], or of aiding and abetting the same crime under Section 10(1)(c) of the same law. The main perpetrators were primarily sentenced by the appellate court to unconditional prison terms of 11 and 9 years, the participants to 5 years, and furthermore, in particular, to prohibition of activity – specifically a ban on performing the function of a member of a statutory body of a commercial company and cooperatives for certain, graduated periods.

With regard to the objections raised by the individual defendants, it can be observed that the unifying element of their arguments was primarily the disputing of the subjective aspect of the alleged crime. Yet, the Supreme Court concluded that all the defendants acted at least with conditional intent (*dolus eventualis*). It was particularly pointed out that the crime of fraud can be committed even in situations where the perpetrator is aware of the risk that his conduct is deceptive and nevertheless continues in such conduct. It was also concluded that the participants knowingly contributed to the implementation of the fraudulent scheme, for example by concealing the true purpose of the transfers, disguising them in the accounting records, or creating false economic structures. With knowledge of all the decisive facts characterizing the fraudulent nature of the main perpetrators' conduct, they created conditions for the realization of the fraudulent intent and contributed

[68] Judgement of the Supreme Court dated September 30, 2004, case No. 11 Tdo 1108/2004.

[69] This corresponds to the current provision of Section 209 of the Criminal Code, as previously stated.

to removing obstacles that stood in its way[70]. All appeals were therefore rejected as manifestly unfounded, and the decision confirmed the criminal liability of the defendants for the extensive financial fraud, which had a significant impact not only on the individual victims, but also on trust in the functioning of financial institutions as a whole[71].

I am of the opinion that the fraudulent mechanism involving several persons acting in concert bears the hallmarks of a Ponzi scheme, even though the Supreme Court does not explicitly refer to it as such. In terms of its definition, as discussed at the beginning of this paper, particular attention should be paid to the part of the decision that comes closest to it. The entire fraudulent operation is in fact compared to so-called airplane or pyramid games, where the first depositors enabled the credit union to operate through their deposits; subsequent depositors, attracted by high interest rates and the returns received by previous depositors, made it possible for those earlier participants to be paid; later depositors, through their contributions, merely created the conditions for the continued operation of the credit union and for bringing in additional deposits. By the end of the entire operation ("the game"), when the deposits were not valued at all and a significant portion of them were handled unlawfully, almost nothing remained for the later depositors – so they received neither the promised returns nor their original principal, and many did not manage to request a payout before the credit union was placed under forced administration.

Sorrena Invest

The second case-based example of Czech judicial practice is the criminal case against Jiří Kubiš in connection with the activities of the company Sorrena Invest, s.r.o. The defendant, as the managing director and majority owner of the aforementioned company, between March 1994 and March 1997, extracted financial resources from more than 2,200 people across the Czech

[70] For the sake of completeness, it should be added that by a ruling of the Constitutional Court dated March 22, 2006, case No. IV. ÚS 137/05, the decision of the Supreme Court and the preceding decision were overturned in relation to one participant, as it was not clear on what specific evidence the conclusion of his intentional fault was based. His key objection that he reasonably believed that he was not committing any criminal offense was not addressed. Moreover, neither the state supervisory authorities nor the people who had been involved in the management of the credit union for a long time, despite having access to its accounts, discovered the fraudulent nature of the credit union's operations.

[71] In relation to the constitutional complaint filed by one of the defendants, this decision was also upheld by the Constitutional Court in its ruling dated December 20, 2005, case No. I. ÚS 183/05.

Republic through silent partnership agreements. In its advertising campaigns, the company promised exceptionally high returns on deposits, ranging from 17,33% to 33,3% *per annum* on the invested funds. He claimed that the investments were covered by assets worth billions and backed by profitable business in real estate and commerce. In reality, however, the company in question had no such assets and no realistic business plan. Already in 1994, it was clear that it would not be able to meet its obligations to most of the depositors. Nevertheless, the defendant continued to obtain new deposits and entered into further contracts. In total, he acquired over CZK 126 million, of which he paid back only about CZK 6 million, with the remainder being used partly for the operation of the company and partly in an unidentified manner[72].

The defendant's actions were qualified as the criminal offense of fraud under Section 250(1), (4) of the then-applicable Criminal Code (Law No. 140/1961 Coll., Criminal Code)[73], for which he was sentenced to ten years' imprisonment and a prohibition of activity consisting of a ban on performing the functions of a statutory body and procurator in commercial companies and cooperatives, as well as a ban on engaging in business involving banking activities for a period of ten years.

From the above description of the facts, it is clear that this was a classic case of a "airplane", as money from new clients was used to satisfy previous investors, without any actual business activity on the part of the investment company. The defendant acted from the outset with the knowledge that the obligations would not be fulfilled. In particular, it should be emphasized that the promised returns were completely unrealistic and the advertised information about assets and business was false. Fraudulent intent can be inferred, among other things, from the fact that even after the company's apparent bankruptcy, it continued to accept deposits, and the defendant personally guaranteed their repayment. The defendant's appellate objections were dismissed by the Supreme Court in its decision under case No. 7 Tdo 218/2008 as manifestly unfounded[74].

The Sorrena Invest case can be described as one of the most significant Ponzi schemes in the Czech Republic. Based on the established facts found by the courts after evaluating the evidence, typical characteristics of this type of fraud can be identified: misleading presentation, solicitation of funds, awareness of the inability to fulfil obligations, and personal enrichment.

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72 Judgement of the Supreme Court dated May 6, 2008, case No. 7 Tdo 218/2008.

73 This corresponds to the current provision of Section 209 of the Criminal Code.

74 For the sake of completeness, it should be noted that the Constitutional Court subsequently rejected the defendant's constitutional complaint in its ruling dated January 26, 2009, case No. IV. ÚS 1918/08.

Investment fraud by a married couple

The third selected decision is a relatively recent case, which was decided by the Supreme Court by resolution under case No. 7 Tdo 775/2024. Compared to previous cases, it is worth pointing out that such frauds can also occur on a much smaller scale. Factually, it concerned the criminal activity of two (now former) spouses who, between 2015 and 2019, acting jointly based on a prior agreement, under the false pretence of advantageous investment of funds declared orally to the injured parties, entered as a fictitious contractual partner into written proposals with clients for the conclusion of commission contracts to arrange the purchase or sale of securities for investment purposes with a promised so-called annuity. When negotiating these contracts (and later as well), they concealed from the injured parties that the funds obtained from them would not be used for the declared purchase of securities or for any other investments (in fact, the financial product they declared was entirely fictitious). Instead, the provided "investments" were used for subsequent payouts of annuities to other clients and, in part, for their own consumption. In sixteen cases, they thus caused direct damage to the injured parties in the amount of CZK 13 million, while within the framework of annuity payments, they paid the injured parties an amount of approximately CZK 4,7 million[75].

Their actions were assessed under criminal law as fraud under Section 209(1), (5)(a) of the Criminal Code, i.e., fraud causing extensive damage[76]. For this, they were each sentenced to six years' imprisonment and a prohibition of activity – ban on engaging in any independent or dependent gainful activities related to financial consulting and the brokerage of financial and insurance products and services for a period of six years.

Throughout the criminal proceedings, both defendants consistently invoked their good faith in the existence of the investment fund (blaming each other), however, these objections were refuted by the evidence presented. The Supreme Court concluded that both had known from the outset that the fund was fictitious and fraudulent; their mutual cooperation and coordination was clearly documented, including their joint handling of the victims' money to cover their own liabilities. It was not proven that they themselves had been deceived, since both had all the necessary information to a comparable extent from the beginning of the criminal activity, when they actually took the funds from the victims with the promise to return them within a certain time period, including the promised profit.

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75 Judgement of the Supreme Court dated November 19, 2024, case No. 7 Tdo 775/2024.

76 Section 138(1)(e) of the Criminal Code.

Given the above circumstances, I believe that this case can also be considered a Ponzi scheme, albeit on a much smaller scale. In this respect, the court of first instance stated that it must have been clear to the perpetrators that, without generating sufficient funds to cover their own obligations, they would not be able to meet their obligations in the long term, especially to pay the agreed sums to clients. At the same time the court stated that this was not a classic Ponzi scheme with an unlimited number of participants, but rather a smaller version, limited in scope and possibly originally intended as a means of obtaining a cheap credit only up to a certain amount[77].

Conclusion

It can be concluded that Ponzi schemes and pyramid games represent specific forms of fraudulent conduct that, despite their long history, continue to appear even today – often in more sophisticated forms, hidden behind false legitimate structures. Both undermine trust in financial markets and cause extensive harm to individuals and society, and therefore require a robust legal response. Although they are similar in many respects, their legal qualification differs in the Czech context.

With regard to the Ponzi scheme under investigation, case law and academic literature confirm that, when assessing the criminal liability of perpetrators, it is necessary to evaluate not only the objective course of events but also the subjective aspect – primarily the perpetrator's initial intent and his awareness of the impossibility of meeting the declared obligations. From the perspective of criminal proceedings, the most difficult thing is to prove this specific fraudulent intent, with marginal business activities appreciating the received funds playing a significant role in this regard, which confirms the fact that the investment company was designed as a means of extracting funds from gullible people.

A significant factor in the assessment is the fraudster's ability to build trust. An analysis of case law confirms that a common defence used by perpetrators is shifting the blame onto others, accompanied by a declaration of good faith in the information and promises. Fraudulent behaviour of this type manifests in various forms: from massive structures causing damage in the hundreds of millions of crowns to more 'modest' forms of fraud committed between individuals. However, the common denominator is always the pretence of legitimate investment activity as a means of subsequently

[77] Judgement of the Regional Court in Brno dated December 7, 2023, case No. 46 T 12/2023.

exploiting investors. The penalties imposed are therefore of a non-alternative nature, especially in view of the enormous amount of damage caused.

In conclusion, it can be stated that despite the considerable media attention given to these frauds and the legal framework enabling their prosecution, Ponzi schemes and pyramid games remain a threat – not only due to their sophistication, but also because of the persistent human gullibility, susceptibility to the illusion of quick profit, and the difficulty of detecting them in time.

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Summary

Ponzi schemes – insights from Czech case law

Keywords: criminal law, Ponzi scheme, pyramid game, case law, fraud.

The article examines Ponzi schemes and pyramid games within the context of Czech criminal law, offering both a theoretical overview and an analysis of selected court cases. The aim of this article is to distinguish between these fraudulent structures. In addition to outlining theoretical differences in certain elements, the paper also seeks to analyse the possible criminal law consequences of such conduct, including the appropriate legal qualification. Finally, to demonstrate the connection with the decision-making practice of Czech courts, three notable rulings are analysed in detail. The article highlights both the similarities and differences between Ponzi schemes and pyramid games, particularly their common reliance on the recruitment of new participants to sustain payouts and the eventual inevitability of collapse. It examines the legal qualification of such conduct, which is typically considered fraud, although pyramid schemes may alternatively fall under the offence of the practice of unfair games and wagers. Czech court rulings repeatedly emphasise recurring patterns of deceptive behaviour, financial losses, and challenges in proving intent. Ultimately, the study underlines the continued relevance of such schemes and the need for robust legal mechanisms to protect victims and safeguard market integrity.

Streszczenie

Schematy Ponziego – wnioski z czeskiego orzecznictwa

Słowa kluczowe: prawo karne, schemat Ponziego, gra piramidowa, orzecznictwo, oszustwo.

W artykule zanalizowano schematy Ponziego i gry piramidowe w kontekście czeskiego prawa karnego, zarówno w kontekście przeglądu teoretycznego, jak i analizy wybranych orzeczeń sądowych. Celem artykułu jest rozróżnienie tych oszukańczych struktur. Oprócz przedstawienia teoretycznych różnic w niektórych elementach autorka podejmuje próbę analizy możliwych konsekwencji prawnokarnych takiego postępowania, w tym odpowiedniej kwalifikacji prawnej. W celu ukazania powiązania z praktyką orzeczniczą czeskich sądów przeanalizowano szczegółowo trzy istotne wyroki. W opracowaniu zwrócono uwagę zarówno na podobieństwa, jak i na różnice między schematami Ponziego a grami piramidowymi, w szczególności ich wspólne podejście w pozyskiwaniu nowych uczestników celem utrzymania wypłat

oraz ich nieuchronnego upadku. Przeanalizowano kwalifikację prawną takiego postępowania, które zazwyczaj jest traktowane jako oszustwo, choć schematy piramidowe mogą również zostać zakwalifikowane jako przestępstwo prowadzenia nieuczciwych gier i zakładów. Orzeczenia czeskich sądów wielokrotnie wskazują na powtarzające się wzorce wprowadzającego w błąd zachowania, straty finansowe oraz trudności w udowodnieniu zamiaru. Ponadto wskazano na nieustającą aktualność tego typu schematów oraz potrzebę skutecznych mechanizmów prawnych chroniących ofiary i integralność rynku.