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Summary

Penalization Degression in the Polish Criminal Fiscal Law

From the very beginning a unique penalization philosophy was adopted in the criminal fiscal law which is a specialised branch of the criminal law, made separate due to the subject it protects, that is mostly the State's financial interest and income (and up to a point also of the local authorities and the European Union). It includes attributing the highest importance to the perpetrator paying the public law due payment reduced with a prohibited act. Repression of perpetrators is of secondary importance. As criminal fiscal law has the function of enforcement regarding the reduced public law due payments such as taxes, customs duties and other public levies, it includes an elaborate and varied system of incentives for fiscal crimes and offences perpetrators for voluntary full payment of the dues that they reduced. In exchange the criminal fiscal law offers sometimes complete impunity and always a degression of penalty. This thesis focuses on such degression.

The doctoral thesis includes the Introduction, six chapters and a Conclusion.

Chapter one presents this penalisation philosophy unique to criminal fiscal law, which also due to this was made separate as a specialised branch of the criminal law and codified in a separate act – the Criminal Fiscal Code of 1999.

Chapter two focuses on a traditional and also unique criminal fiscal law institution of voluntary fiscal disclosure. It includes the self-denunciation of the fiscal crime or offence perpetrator after it was committed but before the law enforcement agency got to know about it. If the perpetrator discloses significant circumstances of the committed act, including cooperating persons and if the reduced due public law payment is paid in full in the specified time, items which are to be foreclosed according to the act or their money equivalent – then the perpetrator is granted impunity by the act (article 16 of the Criminal Fiscal Code). The fiscal authorities prefer to disclose the persons acting to their detriment and regaining the payments due than possible penalisation of the perpetrator, which – what should be noted – is possible only if the perpetrator of the prohibited act is found, which is not easy or sure.

The third chapter presents and discusses the institution of conditional discontinuation of criminal fiscal proceedings which was taken from the general criminal law. It can only be used for perpetrators of fiscal crimes, under the condition that they were not previously penalised for an intentional crime and are not within the category of perpetrators which are considered by the Criminal Fiscal Code as a threat for the legal order and for which it provides an obligatory, extraordinary exacerbation of the penalty. Moreover the social harm of the act and the perpetrator's guilt cannot be significant. The conditional discontinuation of the proceedings includes the resignation from further criminal proceedings and sentencing the perpetrator for a trial period (from one year up to 3 years) (see article 66§1 and 67 of the Criminal Code in connection to article 20§2 of the Criminal Fiscal Code i article 41§1 Criminal Fiscal Code). A number of various duties can be imposed on the perpetrator during the trial period, one of them is obligatory. If with his act the perpetrator caused the decrease of the public law dues – then the court obliges him to pay this due in full within the specified time (article 41§2 Criminal Fiscal Code). Avoiding the payment of the public law due – or other duties imposed – can result in reinitiating the conditionally discontinued proceedings and sentencing the perpetrator for the committed crime, the penalty for which he was able to avoid (article 41§3 Criminal Fiscal Code).

Chapter four of the thesis was devoted to another institution of penalty degression available in the criminal fiscal law which does not have its counterpart in the general criminal law. It is the institution of voluntary submission to liability, which has a very wide use in practice, as it is favourable both for the perpetrator and the protected assets, that is the financial interests and income of the public law entities. Voluntary submission to liability is possible only if fiscal crimes or offences penalised by a fine were committed. It is not allowed in case of more serious fiscal crimes that are penalised with more severe punishments such as imprisonment or restriction of liberty (article 17§2 point 1 Criminal Fiscal Code). Also when for the fiscal crime is penalised only with a fine the perpetrator cannot be allowed to voluntarily submit to liability if there are premises for obligatory extraordinary increase of penalty specified in article 37§1 or article 38§2 of the Criminal Fiscal Code and if there was an intervention concerning an item designated for foreclosure (article 17§2 point 2 and 3 Criminal Fiscal Code). Permission for voluntary submission to liability is given by the court with a verdict at a single person session (see article 148 Criminal Proceedings Code). Increasing criminal fiscal liability with he use of the voluntary submission to liability is characterised by a significant degression in the scope of imposed punishments as the amount

which must be paid as a fine is limited by the act and cannot be more than half of the amount being the top limit of statutory threat for the given prohibited act (and of course under the condition that the perpetrator agrees to such a penalty in negotiations with the financial authority conducting the preparatory proceedings – see article 143§1 point 2 in connection to article 146§2 point 1 and article 18§1 point 1 Criminal Fiscal Code). Also the statement of foreclosure of items or their money equivalent is restricted to the scope for which the perpetrator finally agreed (see article 18 §1 point 2 Criminal Fiscal Code). Proceedings costs that must be paid by the perpetrator are usually a lump sum (low) – see article 17§1 point 4 Criminal Fiscal Code). The largest benefit for the perpetrator in case of voluntary submission to liability, especially in connection to the perpetrated fiscal crime, is that the legally valid court verdict on permission for voluntary submission to liability is not entered into the National Court Register [Krajowy Rejestr Karny] (article 18§2 Criminal Fiscal Code) so as a result the perpetrator is considered an unpunished person. What is important according to article 18§3 of the Criminal Fiscal Code, the payment of the amount specified in the fine penalty for a fiscal crime in the scope of voluntary submission to liability is not a premise for fiscal reoffending. Of course gaining the above benefits in the scope of punishment degression due to voluntary submission to liability is possible only when the perpetrator, in addition to fulfilling the above requirements – pays in full (no later than by the end of preparatory proceedings) the required public law payment due, if such a payment was reduced in connection to the alleged fiscal crime or offence (see article 17§1 point 1 Criminal Fiscal Code).

Chapter five of the thesis presents another institution of penalty degression, which includes sentencing the perpetrator of the prohibited act with simultaneous waiver of administering punishment and independent stating punitive measures or with simultaneous complete withdrawal from any punishment. If the perpetrator's act resulted in decreasing the public law payment due – the condition for complete or partial waiver of punishment is the payment of the due amount in full before the sentence of conviction is passed (article 19§2 Criminal Fiscal Code). The court may use this form of penalty degression in cases specified in the Code, for example in case of a perpetrator that is tenaciously late with tax payments, if the arrears are paid before the start of the proceedings (see article 57 Criminal Fiscal Code), as well as for all the perpetrators of other fiscal offences, if they deserve such an equable treatment and for perpetrators of fiscal crimes, if such crimes are not the gravest that is are not punished with imprisonment for up to 3 years or a more equable penalty, and the degree of

social harm caused by the crime is not significant. Of course those perpetrators of fiscal crimes for which the Code provides obligatory extraordinary increase of penalty were excluded from the possibility of using the benefits of the institution of conviction with complete or partial penalty waiver (article 19§1 Criminal Fiscal Code).

Conviction for a fiscal criminal act with with simultaneous waiver of administering punishment with the exclusion of possible foreclosure is not always dictated by the lesser significance of the act and positively assessed attitude of the perpetrator, including the rebalancing of the loss caused in public finance. Sometimes it is dictated by the pointlessness of proclaiming any penalties or penal measures as due to the perpetrator's absence (permanent stay abroad or no possibility to establish his place of stay) it would be impossible to perform them. For this reason in criminal fiscal proceedings conducted against an absent person practical reasons can result in a fragmentary verdict that is restricted to foreclosure of items that were seized and are secured concerning the case (article 19§4 Criminal Fiscal Code).

Chapter six of the thesis presents the statutory obligation of the courts to rationality and degression in punishing the perpetrators of the most serious fiscal crimes, that is ones that fall under the alternative-cumulative sanction that includes the possibility of restricting the fine or imprisonment, or both jointly – by way of reception by article 20§2 of the Criminal Fiscal Code onto the criminal fiscal law special directive concerning the choice of the penalty stated in article 58§ 1 of the Penal Code. According to this provision – if the act provides the possibility of choosing the penalty and the crime is punished with imprisonment not exceeding 5 years (and this is the highest penalty of this type provided in Criminal Fiscal Code), then the court should pronounce the penalty of imprisonment only if an other penalty or punitive measure cannot fulfil the objectives of the penalty. This means that when convicting the perpetrators of fiscal crimes, even most serious ones, the choice and pronouncement of the penalty of imprisonment, both in immediate and conditionally suspended form, is supposed to be the *ultima ratio,* so be used only in extremity, in cases when financial penalty and measures as well as other punitive measures cannot achieve the objectives that a criminal penalty is supposed to achieve.

The conclusion of the thesis is that criminal fiscal liability is shaped in a way that is supposed to enable the regaining of the public law due payment reduced with a prohibited act of the perpetrator by way of voluntary payment, while a criminal sanction is – as a rule – supposed to be material, which on one hand is supposed show to the perpetrator and the rest f

the society that committing fiscal crimes and offences does not bring profit, but not necessarily to acutely victimize and stigmatize for the future. On the other hand the preference to pronounce the financial penalty over imprisonment results in avoidance of further additional costs of penalties for the State while at the same time providing substantial income for the State Treasury.