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The ideal concurrence of offences in the fiscal penal law

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SUMMARY

The doctoral dissertation is devoted to the so-called *ideal concurrence of offences* under Article 8, paragraph 1 of the Fiscal Penal Code. The ideal concurrence of offences, often called 'an ideal concurrence of crimes' or simply 'an ideal concurrence' is, along with the cumulative concurrence of penal law provisions and the eliminative concurrence of penal law provisions, one of the models for resolving the so-called real (actual) concurrence of penal law provisions. Although the ideal concurrence of offences is – as it is sometimes pointed out – a traditional, specific and typical construction for fiscal penal law, it is still one of the most contentious issues within broadly understood criminal (penal) law. This legal construction is entangled with complicated material and procedural issues connected with incomprehensible case law of the Polish Supreme Court. It can therefore be assumed that the ideal concurrence of offences has not been sufficiently explained from the theoretical and dogmatic side along with the fact that the application of this construction in the practice of the judiciary raises considerable difficulties. The main purpose of the doctoral thesis is to answer the question how the construction of the ideal concurrence of offences should be perceived and applied in practice, and above all, whether there are sufficient grounds at present to still mantain it as a construction resolving the concurrence of provisions at the interface of fiscal penal law, criminal law and the law of petty offences.

The first chapter of the thesis is devoted to the characteristics of the pre-normative basis of criminal responsibility. The basic premise of applying the construction of the ideal concurrence of offences is to ensure that there has occurred an actually existing object. In the doctrine, it is highly controversial, what that object is – whether it as an act or a human behavior. The author of the submitted paper puts forward the thesis that from the perspective

of the real concurrence of provisions and the choice of the appropriate model for its resolution, regardless of whether we recognize that the pre-normative basis of criminal responsibility is an act or a human behavior, we will have to use the same identity criteria for such object. At the same time – due to the wording of Article 8, paragraph 1 of the Penal Fiscal Code – only for the purposes of the analysis, it was considered that this object is an act. At the same time, it is not possible to determine the closed catalog of criteria used to determine its identity *in abstracto*, as only the analysis of individual types of prohibited acts allows *in concreto* indication of these criteria. It seems that the features of the causative activity are of key importance, and it is primarily on the basis of them that the identity of the pre-normative object should be determined.

In the second chapter a detailed description of all models used to solve the real concurrence of provisions has been made. Moreover, the author of the thesis presented her own division of concurrences of penal law provisions, which is mainly influenced by the character and status of particular rules of exclusion of multiple evaluation, adopted in this paper.

The next, third chapter of the dissertation includes an analysis of all historical regulations referring to the ideal concurrence of offences in the fiscal penal law. The purpose of such historical analysis was aimed primarily for presenting the reasons of the adoption of this legal construction in the fiscal penal law in the times, when constructions of cumulative concurrence of penal law provisions and the eliminative concurrence of penal law provisions were known in the broadly understood penal law. In addition, this part of the thesis discusses the construction of the ideal concurrence of offences in the law of petty offences, regulated in the Article 10 of the Polish Petty Offences' Code.

The fourth chapter is the main part of the thesis, which was fully devoted to the regulation of Article 8 of the Penal Fiscal Code. General and specific remarks were presented, referring, *inter alia,* to the issue of the application of the rules of exclusion of multiple evaluation to the ideal concurrence of offences, on the basis of the analysis presented in the second chapter. Also, the issue of constructing charges and formulating the description of an act in the event of an ideal concurrence of offences was discussed. As part of detailed considerations, many problems – such as imposing and enforcing the penalty and measures in the event of applying the construction regulated in the Article 8 of the Fiscal Penal Code, with a particular emphasis on the issues of assessing the level of social consequences of an act and attributing the guilt to the perpetrator of a prohibited act – were pointed. The issue of executing penalties and other measures in two situations: adjudication for ideal concurrence

of offences in one and two (or more) proceedings, as well as the issue of imposing the fine under Article 8, paragraphs 2 and 3 of the Fiscal Penal Code, were discussed. This part of the dissertation ends with analysis of the relations between Article 62 of the Penal Fiscal Code and Article 271a of the Criminal Code, while both of these provisions are related to the so-called 'invoice offences'.

The fifth chapter is devoted to the ideal concurrence of offences in the light of the conventional and constitutional principle of *ne bis in idem*. In the doctrine it is often claimed that the legal construction regulated by the Article 8 of the Fiscal Penal Code violates that principle. This part of the dissertation includes an analysis of the concept of *idem* in the light of the case-law of the European Court of Human Rights, on the basis of the conception of *idem factum, idem crimen* and the third one – composite conception of *idem.* The main aim of the analysis is to answer the question whether the ideal concurrence of offences violates the *ne bis in idem* principle or is it an exception from it. This part of the dissertation ends with reflections on the new regulation of Article 10a, paragraph 1 of the Petty Offences' Code in the light of the *ne bis in idem* principle.

The dissertation concludes with a brief summary of research. The main aim of this part is to answer the question what are the reasons of maintaining three different models for resolving the so-called real (actual) concurrence of penal law provisions, that is the ideal concurrence of provisions, the eliminative concurrence of provisions and the ideal concurrence of offences, in the broadly understood penal law. The dissertation ends with the proposal of a different than currently binding, normative model of resolving the concurrence of provisions at the interface of fiscal penal law, criminal law and the law of petty offences.

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