

PhD thesis summary

"Execution of penalty of a fine"

First of all, the focus of my dissertation is on issues of origin and outline of the history of penalty of a fine, its essence and meaning, as well as meanings within the structure of adjudicated sanctions in the years 1970 – 2015 – chapter I.

The said chapter also includes brief description of evolution within historical development of the system construction concept for measures of reaction in penal matters. The purpose of this description was to present legislator's views on types of penalties envisaged for commission of an offence in various historical periods, especially in the periods when three different penal acts (1932, 1969 and 1997) were in force. Determining penalties in the lists included for the above-mentioned codes, the legislator specified directives for their application and in this way established priority for penalties of a particular type. The scheme of penalties and their arrangement in the list of penalties show legislator's views on extent of severity of individual forms of reaction in penal matters. One can also make themselves familiar with direction of penal policy implemented by the legislator in particular historical periods. The classification of penalties is also significant in terms of perception of evolution of statutory penalties referring to individual types of prohibited acts, which outline the limits for adjudication of such measures of reaction in penal matters.

The issues discussed in my dissertation also refer to stages of execution of penalty of a fine: its payment within statutory period, payment by instalments, execution proceedings and its alternative forms: work done in the public interest and substitutive penalty of deprivation of freedom. Therefore, it was necessary to analyse statutory model of execution of the discussed penalty, including: examination of penal cases where fine was paid in its entirety or by instalments as well as analysis of activity of law enforcement bodies with regard to obtaining information about situation of the perpetrator, effectiveness of law enforcement, the importance of work done in the public interest and conduct of the sentenced person following adjudication of substitutive penalty of deprivation of freedom. Information obtained enabled me to make an attempt to answer the question about the most effective form of execution of penalty of a fine. It also enabled me to present my views in reference to hypotheses formulated in my dissertation stating that 1) institution of work done in the public interest as substitutive form of execution of penalty of a fine does not fulfil its purpose in the process of

execution of penalty and that 2) substitutive penalty of deprivation of freedom supports execution of penalty of a fine by its payment.

Moreover, my dissertation includes description of institution of security on property against penalty of a fine and its influence on execution of this penalty. The purpose of analysis of penal case files was, among others, to draw attention to a number of cases where security measure was employed. It enabled me to present my views in reference to another hypothesis formulated in my dissertation stating that 3) security on property is an institution of key importance for the process of execution of penalty of a fine.

The purpose of my dissertation was also to discuss the institution of discontinuance of penalty, most of all specifying the grounds for discontinuance and by this making an attempt to examine whether such discontinuance is of special nature and whether it is hedged with very radical limitations from the judge's viewpoint. Consequently, it enabled us to obtain a more complete picture of the way in which discontinuance of penalty of a fine is exercised by courts and taking position on exceptional nature of the discussed institution - especially, whether discontinuance meets the assumptions for a special institution adjudicated by courts upon utilization of all possibilities envisaged by the Executive Penal Code in the scope of forcing the sentenced person to pay the fine. Taking position on exceptional nature of the discussed institution was necessary to confirm or deny another hypothesis stating that 4) by making use of institution of discontinuance, courts fail to make use of all available forms of execution of this particular penalty.

The institution of penalty of a fine envisaged in the Code of Petty Offences required separate description, including practical application of the amount-based model of this penalty which is a solution different from the one adopted in the currently applicable Penal Code. The theoretical part focusing on execution of penalty of a fine in the Code of Petty Offences was supplemented with statistical data on proportion of a fine in structure of penalties awarded for petty offences and amounts of adjudicated fines.

Similar data have been presented with regard to penalty of a fine in penal fiscal law, where the discussed penalty is a basic instrument used to combat fiscal crime, which is quite understandable, taking into consideration the fact that fiscal crime damages financial interests of the state and the purpose of a perpetrator is to achieve financial gain. It seems that in this area of the law penalty of a fine is the most adequate sanction.

Chapter five consists in presentation of research methods regarding empirical examination used in work. The chapter includes description of circumstances deemed to influence the severity of penalty, that is: age, gender, education or profession of the

perpetrator. What is more, description of the group subject to research with respect to their professional activity and amount of income was included, as these circumstances are significant in adjudication on severity of the penalty.

I have employed research method in the form of non-reactive research consisting in assessment of statistical data collected by the Ministry of Justice. Another employed research method is qualitative analysis of court files with the use of a questionnaire covering two thematic areas. The first one applied to description of perpetrators, the second one included issues related to execution proceedings referring to offences being the subject of my research. The research part of my dissertation includes analysis of statistical data on execution of penalty of a fine (MS – S6, MS – S7 and NS – 1 reports) for the years 2010 – 2015 as well as analysis of court files for those penal cases in which the discussed sanction was adjudicated most frequently. The effectiveness of individual forms of execution of penalty of a fine is discussed on the example of three different offences:

- the offence defined in Article 278 of the Penal Code, with privileged form of the offence defined in paragraph 3, for which the legislator envisages, among others, penalty of a fine (as well as restriction of freedom or deprivation of freedom up to one year). It was distinctive for this article that the value of harm done was between PLN 600 and 1500 and to a large extent involved theft of mobile phones and theft of goods in grocer's shops.

- the offence defined in Article 286 of the Penal Code, with privileged form of the offence defined in paragraph 3. In this case, due to a case of lesser importance the legislator envisaged penal liability in the form of a fine, restriction of freedom or deprivation of freedom up to two years. Analysis of court files regarding this article showed that in majority of cases these offences consisted in obtaining credit by deception. By fabrication of salary certificates perpetrators were successful in obtaining credits of PLN 1500 up to 6000 under false pretences. It was characteristic that in all cases qualified under Article 286 of the Penal Code courts adjudicated obligation to redress the damage incurred by the wronged party (with the amount of compensation equal to the amount of damage) in addition to the penalty of a fine.

- the offence defined in Article 288 of the Penal Code with penal liability for the offence of destroying, damaging or making useless a thing belonging to somebody else. My analysis focused on privileged form of this offence envisaged in paragraph 2, for which a perpetrator is liable to a penalty of a fine, restriction of freedom or deprivation of freedom up to one year due to a case of lesser importance. The condition necessary to attribute liability for the above offence to a perpetrator is occurrence of damage to property. The amount of

damage to property did not exceed two thousand zlotys in penal cases analysed in reference to this area.

The listed offences are qualified as minor offences and are characterized by relatively high proportion of penalties of a fine adjudicated for them in reference to general structure of convictions in Poland. Unquestionably, the highest proportion of cases for which solely-imposed fine was adjudicated were cases qualified under Article 178a of the Penal Code. Yet, this category of cases, as well as cases defined in Article 270 of the Penal Code (the second numerous group of cases in which solely-imposed fine was adjudicated) and files of cases qualified under Article 190 of the Penal Code were subject of detailed analysis in the dissertation of Wojciech Dadak entitled "Solely-imposed fine in daily rates. Penal law and criminology aspects." The author meant to analyse that group of offences which is characterised by the highest proportion of penalty of a fine adjudicated for them in reference to general structure of convictions in Poland. In this case the period covered by research spread from 2004 to 2006 and included area of jurisdiction of four district courts in Kraków. In order to make the picture of execution of penalty of a fine more complete, a decision was made to include other categories of offences into this research. Inclusion of offences defined in Articles 278, 286 and 288 of the Penal Code allowed for realization of the purpose of the research – to analyse only those cases of penalty of a fine which are characterised by high proportion of adjudication in reference to a particular offence. Within this category of offences penalty of a fine was adjudicated most often for the offence defined in Article 278 of the Penal Code. In case of subsequent two offences solely-imposed fine was adjudicated slightly less often, but in reference to general statistical data it constituted large proportion against other offences for which penalty of a fine was adjudicated. Including areas of jurisdiction of six randomly selected district courts from Dolnośląskie [Lower Silesian] Province in the research allowed for more complete picture in terms of execution of the discussed penalty. The period of research covered the years 2010 – 2015. The research covered 280 randomly selected cases: 97 cases involving the offence defined in Article 278 § 3 of the Penal Code, 89 cases involving the offence defined in Article 286 § 3 of the Penal Code and 94 cases involving the offence defined in Article 288 § 2 of the Penal Code. Moreover, another group of cases was examined – 60 randomly selected court cases in which courts applied the institution of discontinuance of the discussed penalty.

The summary covers both, conclusions from conducted research and hypotheses formulated in the work. Analysis of materials collected during the research enabled me to make an attempt to describe specificity of the model of execution of penalty of a fine,

including among others: the influence of interlocutory proceedings regarding payment of a fine by instalments on execution of the penalty in its proper form – whether positive decision of the court in this scope truly motivates the sentenced persons to pay their fines; whether a fine is executed in its entirety and whether courts make use of all available forms of execution of this penalty when applying the institution of discontinuance and finally, what is the influence of possibility to adjudicate a substitutive penalty of deprivation of freedom on execution of the discussed sanction.

The research showed that a fine was paid within the statutory 30-day period only in 25% of the examined cases. Thirty-five persons paid their fines upon elapse of 30 days but before initiation of enforcement proceedings. Therefore, it was necessary to initiate other forms of execution of penalty of a fine against the remaining 177 persons.

The effectiveness of enforcement proceedings was relatively low. This form led to execution of a fine only in 42 cases. It was quite interesting that 15 persons paid their fines following declaration of ineffective execution. It may suggest that measures available to enforce payment of a fine were not employed thoroughly during execution proceedings, since the persons sentenced had funds sufficient to pay their fines. Payment of a fine after discontinuance of execution proceedings but before adjudication of a substitutive form of penalty may show that the sentenced persons did not reveal their assets and income, since they decided to pay the fine in full due to prospect of adjudication of a substitutive form.

Justifications of decisions determined the following reasons for ineffective execution: no employment of the sentenced persons, their failure to register with the Labour Office as well as no bank accounts. Debtors also obtained no retirement or disability benefits from ZUS [Polish Social Insurance Office]. They did not own any vehicles and were not recorded in register of persons conducting their own business activity. They also had no property to be subject to enforcement proceedings.

Another stage of execution of penalty of a fine – work done in the public interest – was a small proportion in the process of execution of the discussed penalty. Data obtained in the research led to a conclusion that performance of work done in the public interest before adjudication of substitutive penalty of deprivation of freedom was no alternative for deprivation of freedom. Therefore results of the research confirmed hypothesis no. 1 formulated in this dissertation, namely minor importance of this form of execution of penalty of a fine within the scope of execution proceedings. Only 12 persons performed work done in the public interest in full, thus making further proceedings irrelevant.

Analysis of the last stage of execution of penalty of a fine in the form of substitutive penalty of deprivation of freedom confirmed hypothesis no. 2 stating that substitutive penalty of deprivation of freedom supports execution of penalty of a fine by its payment. Substitutive penalty of deprivation of freedom was adjudicated in 64 cases. It is quite significant that 41 perpetrators paid their fines in the face of real perspective of execution of the substitutive penalty. Therefore, only 23 perpetrators served their substitutive penalty of deprivation of freedom in its entirety. Payment of a fine after adjudication of substitutive penalty resulting in deprivation of freedom could show that these convicts were people who aimed at delaying execution of their fines, since they could afford to pay them.

Analysis of the cases also confirmed hypothesis no. 3 referring to critical importance of institution of security on property in the process of execution of a fine. In courts where this particular institution constitutes significant proportion of all cases (Dzierżoniów, Wałbrzych), penalty of a fine was executed in its entirety, with no need to impose the substitutive penalty of deprivation of freedom.

This work also includes an attempt to answer the question on whether courts apply the institution of discontinuance of a fine too often. Information gathered during the research deny the last hypothesis no. 4 referring to failure to exercise all available forms of execution of a fine before its discontinuance by the courts. As it turned out, in definite majority of cases (66.7% of the population subject to research) discontinuance of penalty of a fine took place at the late stage of execution of a fine and before adjudication of substitutive penalty of deprivation of freedom. What is more, a small proportion of cases of discontinuance of penalty of a fine indicates that adjudicated penalties are mostly executed.

It is worth to underline the special role of institution of payment of a fine by instalments in proper execution of the discussed penalty. Request for payment of a fine by instalments was submitted with courts by more than one third of all sentenced persons. As a result, the penalty was served in this form by 54 persons. One can state that payment of a fine in the form of instalments plays significant role in the process of its execution. To a large extent it allows for elimination of expensive execution proceedings and substitutive penalty of deprivation of freedom (which was probably severe for the sentenced person) from the process of its execution.

Agnieszka Antkowiak
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