

**Admissibility of penal fiscal proceeding against absent defendants in the light of
the guarantees of a fair criminal trial**

Summary

Penal proceeding against absent defendants (accused and auxiliary accused) might be divided into, firstly, trial *in absentia*, when the defendant is unaware of the process, secondly, absence that occurs after the beginning of trial, thirdly, trial by default as well as fourthly, present is not present because of the impossibility of the perception or the participation during a hearing. We should point out that the Polish legislator has decided on creating the special penal proceeding against absent defendants, which includes not only absences that occur after the beginning of trial but also trial *in absentia* solely in Penal Fiscal Code of 10 September 1999, in order to secure the interest of the Treasury and other eligible public subject.

Therefore only absence of defendant, who does not know about the process, opens to doubt, the doctoral dissertation is focused only on trial *in absentia*, but other kinds of absence, also resulted from casual process, are compared, what aims to research the place of penal fiscal proceeding against absent defendants among other regulation of defendant's absence and through it to bring to determine the criminal nature of fiscal penal proceeding against absent defendants. We should highlight that strict separation of trial *in absentia* and absence that occurs after the beginning of trial due to defendant's actions might come out impossible because the part of the regulation is common and because it is not only going about the knowledge about the process but also the awareness about the indictment or the auxiliary charging.

The core of fiscal penal proceeding against absent defendants is creating the special proceeding by the modification of the casual process because of the absence of accused or auxiliary accused. It is achieved by the reduction actions which cannot be worked by reason of the defendant's absence, by the compulsory defence, by the request for re-examination as well as by the limitation of the sentence to forfeiture of items.

The purpose of the dissertation is to solve the scientific problem, if existing of the fiscal penal trial *in absentia* might be admissible in the light of the guarantees of a fair criminal trial, what shape this trial should have to be admissible, what this trial has current shape and what we should amend to the proper construction of this proceeding be realised. When possible irregularities in relation to one of the kind of the absence in the fiscal penal proceeding against

absent defendants influence on the evaluation of all this proceeding, the main thesis of the paper is formulated as follows: the fiscal penal proceeding against absent defendants in the current shape is inadmissible in the light of the guarantees of a fair criminal trial.

The dissertation has been divided into six chapters.

The first chapter is an attempt at searching the criminal nature of the penal fiscal proceeding against absent defendant. In the first place, the regulations of defendants' absence beyond the penal fiscal proceeding, also in history, are demonstrated and compared to the described proceeding. Next, the alternatives to the fiscal penal proceeding against absent defendants are indicated. Then, the fiscal penal proceeding against absent defendants are described in the light of the information about the special criminal proceedings. It leads to point out the suitable classifications of the fiscal penal proceeding against absent defendants. The considerations of this chapter are ended by research in relation to applying Code of Criminal Procedure of 6 June 1997 to the fiscal penal proceeding against absent defendants and by individualities of the fiscal penal proceeding against absent defendants form the administrative procedure. Acknowledgement of the criminal nature of the fiscal penal proceeding against absent defendants allows on the further consideration in relation to applying the guarantees of a fair criminal trial to the described proceeding.

Admissibility of the fiscal penal proceeding against absent defendants in the evolution of the penal fiscal regulations is the matter of the second chapter of this dissertation. The regulations of the fiscal penal proceeding against absent defendants in history and actual towards them acts of a high order, which show the requirements of admissibility of such proceedings, are demonstrated. Simultaneously, evaluation of them consistency is carried out, except current regulations, which is examined in the further disquisitions of the paper. The considerations of this chapter provoke thought over general requirements of amendments this proceeding.

The third chapter is devoted admissibility of the penal fiscal proceeding against absent defendants in the foreign countries of Europe and USA divided into the continental systems' countries and the common law systems' countries against the background of its legal systems. The fiscal penal proceeding against absent defendants is regulated apart from criminal proceeding or administrative proceeding in some countries and together with criminal proceeding or administrative proceeding in other countries. Such description allows on comparison of admissibility of this regulations and leads to answer to the following questions: what trends are in this scope, if presented proceeding is modern and ipso facto if existing of this proceeding in the foreign countries justifies existing of this proceeding in Poland.

Establishment of the admissibility of the fiscal penal proceeding against absent defendants or proposing some amendments requires sketching the pattern of the accuracy of the construction this regulations, what is discussed in the fourth chapter. At the beginning, capability of applying the standards form European Convention of Human Rights of 4 November 1950, International Covenant on Civil and Political Rights of 19 December 1966 and Polish Constitution of 2 April 1997 to the fiscal penal proceeding against absent defendants, despite the fiscal nature of this proceeding, is demonstrated. Then, the attitude of the European Court of Human Rights, the Committee of Ministers of the Council of Europe, the Human Rights Committee ONZ and the Court of Justice of the European Union to admissibility of keeping of penal proceedings against absent defendants in the light of the guarantees of a fair criminal trial, including existing of the principle of the equal rights of parties, is outlined. The attitude of the Polish Constitutional Tribunal to correspondence of proceedings against absent accused and the fiscal penal proceeding against absent defendants with the principle of a fair judicial criminal trial. It allows on determination, what the standard of the penal proceeding against absent defendants is within the guarantees of a fair criminal trial.

The check, if the penal fiscal proceeding against absent defendants achieves the standards of a fair criminal trial, is the matter of five chapter. It takes the following requirements into consideration:

- necessity of existing of the public interest, which justifies existing such proceeding,
- influence the value and the nature of the criminal act on such proceeding,
- requirement of the diligence of the notice about the process,
- requirement of the compulsory defence,
- requirement of information about the right to be present at trial,
- necessity of re-examination of the case.

The disquisition of this chapter leads to establish what shape of the fiscal penal proceeding against absent defendants should be in order to become acceptable in the light of the guarantees of a fair criminal trial.

In the six chapter, there is examined, how the fiscal penal proceeding against absent defendants currently appears in practice. There is presented, what way the described proceedings are carried out and for how much they are different. This information has been gathered, after selecting additional criteria, on the basis of research of the court judgments, which are available in the database of common courts of law and in the database LEX.

Each of chapters contains an introduction to the issues covered and summary. In the conclusions of the dissertation we can find the reminder of the main line of the disquisition, the verification of the hypothesis from the opening and presenting of the results from the research.

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