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Summary of doctoral dissertation
"Execution of the penalty of restriction of liberty adjudicated for committing a crime"

The subject matter of the doctoral dissertation shall be the issue of executing the penalty of restriction of liberty for committing a crime. The penalty of restriction of liberty is the latest penalty introduced in the Polish legal system and recently there was the 50th anniversary of its introduction.

From the very beginning, the legislator indicated a special objective to be achieved by introducing the penalty of restriction of liberty. It was meant as one of the main measures of responding to petty and medium-severity crimes as well as protecting the perpetrator of the act from prison isolation. In reality, however, this objective was achieved only to a small extent, because in practice its share in the sentencing structure was small (often it did not even reach the threshold of 10% of all convictions). The legal and criminal response to such crimes was taken over by the penalty of imprisonment, and above all the penalty of imprisonment with conditional suspension of its execution. The flawed structure of the adjudicated penalties and the related challenges for the entire penitentiary system provided an impetus for the legislator to take measures in the years 2015-2016 aimed at rationalising criminal policy by increasing the frequency of imposing non-custodial sentences, in particular the penalty of restriction of liberty, while reducing the share of penalties of imprisonment with the conditional suspension of their execution.

The legislator intended to achieve this objective primarily by limiting the adjudication of the penalty of imprisonment with a conditional suspension of its execution, extending the principle of *ultima ratio* to the penalty of imprisonment as well as the penalty of imprisonment with a conditional suspension of its execution, introducing additional grounds for adjudicating non-custodial sentences (Article 37(a) of the Penal Code, Article 37(b) of the Penal Code and 75(a) of the Penal Code) and intensifying the severity of the penalty of restriction of liberty. The last of these elements was implemented on two levels. On the one hand, there was a significant interference in the substance of the penalty of restriction of liberty, and on the other hand, there was a significant expansion of its temporal limits. Although the legislator withdrew some of these amendments (mainly concerning the penalty of restriction of liberty), only a few months after their entry into force, the amendment of July 2015 (as well as the amendment of March 2016) even today has a large impact on the current shape, level, and grounds for

adjudicating this penalty, and thus on the course of enforcement proceedings regarding the adjudication of this penalty.

The aim of the dissertation was to present numerous dogmatic, theoretical, and practical issues concerning the execution of the penalty of restriction of liberty adjudicated for committing a crime. This analysis was also supplemented by considerations regarding the current criminal and material regulations regarding the penalty of restriction of liberty because they directly determine the course of the enforcement proceedings.

The subject matter discussed in this dissertation concerned three basic research issues, which included:

1. demonstrating the evolution of the penalty of restriction of liberty, especially in view of the normative amendments introduced in the years 2015 and 2016,
2. defining the position of the penalty of restriction of liberty in relation to the current assumptions of criminal policy,
3. reconstructing the course of the enforcement proceedings regarding the penalty of restriction of liberty, together with diagnosing the difficulties related to the execution of this penalty.

Presenting a research issue in such a way was associated with the need to apply several complementary research methods to examine it. As far as the theoretical and legal approach was concerned, historical as well as dogmatic, and legal methods were applied. In this regard, legal regulations, case law as well as the doctrine were analysed. At the same time, the theoretical considerations were supplemented with an examination of the practical approach related to the discussed subject matter. For this purpose, an empirical method was applied.

The subject matter was presented in four main chapters supplemented by an introduction, final conclusions, a list of legal acts, a list of literature, a list of electronic sources, a list of case law, and a list of tables and charts.

In the first chapter, an attempt was made to determine the position of the penalty of restriction of liberty in the system of legal and criminal measures of responding to a crime. In this regard, first of all, historical and legal arrangements were made, under which the creation of the discussed penalty was presented as well as shaping the substance of the penalty of restriction of liberty until 2015 was presented. The aim was to show the origins of the penalty of restriction of liberty and to present the evolution of the substance of the penalty of restriction of liberty since its introduction in the Polish legal system. Next, the considerations were presented regarding the nature of the penalty of restriction of liberty and its position in the system of legal and criminal measures of responding to a prohibited act. Another element of this part of the dissertation was to analyse the issue of the penalty of restriction of liberty from the point of view of the directive of a judicial adjudication of punishment. Those directives have an impact on the selection of a particular penalty, its level, and, in the case of a penalty of restriction of liberty, also on the substance of the penalty imposed on a particular convicted person. The first chapter ends with the presentation of international standards regarding the so-called sanctions and alternative penalties to the penalty of imprisonment. In this regard, the

focus was primarily on the General Assembly Resolution (45/110) containing the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) and Recommendation Rec (2000) 22 of the Committee of Ministers to Member States on improving the implementation of the European Rules on Community Sanctions and Alternative Measures. These documents contain guidelines to be followed by the Member States both in the formulation of criminal policy (in particular by requiring restrictions on the imposing custodial sentences) and in the setting of standards concerning penalties and alternative measures to the penalty of imprisonment, which include the penalty of restriction of liberty.

In the second chapter, a dogmatic and legal analysis of the current criminal and material regulations regarding the penalty of restriction of liberty was carried out. The starting point for the considerations undertaken here was the analysis of the substance and elements shaping the penalty of restriction of liberty. Individual elements of the penalty of restriction of liberty were assigned to one of three groups: obligatory elements, relatively obligatory elements and optional elements, which were then discussed in detail in particular editorial units. Subsequently, the grounds for the adjudication of the penalty of restriction of liberty were analysed, with particular emphasis on the new grounds for the adjudication of this penalty introduced in July 2015. In this part, the temporal limits of the penalty of restriction of liberty were also analysed. The second chapter ended with considerations on the issue of the cumulative penalty in the case of the penalty of restriction of liberty.

The third chapter presented a comprehensive analysis of normative solutions regarding the execution of the penalty of restriction of liberty. Considerations regarding this subject matter began with a discussion of the objectives that the legislator associated with the execution of the discussed penalty, and then comments were presented on the date of commencement and place of serving the penalty of restriction of liberty. The role of the court, the court clerk, and the probation officer in the enforcement proceedings regarding the execution of the penalty of restriction of liberty was also presented as well as the specificity of incidental proceedings, with particular emphasis on the differences related to the penalty discussed. Next, the execution of individual elements of the penalty of restriction of liberty was also discussed. Institutions allowing modification of the substance of this penalty (both in terms of relatively obligatory and optional elements) during enforcement proceedings were also analysed. The above-mentioned considerations were supplemented by an analysis of the issues related to the postponement and interruption of the execution of the penalty of restriction of liberty. The last element of this part of the dissertation was an analysis of the ways of terminating the proceedings regarding the execution of the penalty discussed.

The second part of the dissertation presents empirical research that supplemented historical as well as dogmatic and legal considerations on the discussed issues. The research material included the analysis of statistical data and data included in the reports on the judicial enforcement of judgments according to substantive jurisdiction (MS - S10 form) obtained from the Ministry of Justice (part one) and the analysis of court files of convicted persons serving a sentence of restriction of liberty in the districts of four district courts under the District Court

in Wrocław, i.e. the District Court for Wrocław – Krzyków in Wrocław, the District Court for Wrocław – Śródmieście in Wrocław, the District Court in Trzebnica and the District Court in Środa Śląska (part two).

In the empirical part, the initial focus was on presenting the structure of convictions in Poland, as well as determining the dynamic imposition of penalties of restriction of liberty for crimes in recent years. The national data on the level and types of adjudicated penalties of restriction of liberty in recent years were also analysed.

The second element of the empirical part was the analysis of files concerning enforcement proceedings regarding the penalty of restriction of liberty. The research covered a group of 332 convicted persons, against whom the penalty constituting the subject matter of this dissertation was imposed. The data necessary for the analysis was collected by means of a previously prepared questionnaire, which included four basic parts: issues regarding the general characteristics (profile) of persons subject to a penalty of restriction of liberty, issues regarding the grounds for adjudication of the penalty concerned, issues regarding the substance and level of the penalty imposed on the sentenced person as well as issues regarding the course of enforcement proceedings.

In the final part of the dissertation, conclusions were formulated on the basis of the conducted research and a comprehensive assessment of the issue of executing the penalty of restriction of liberty imposed for committing a crime.

The considerations made in the doctoral dissertation lead to the conclusion that the current normative solutions regarding the adjudication and execution of the penalty of restriction of liberty create a framework for conducting a rational criminal policy in our country, based on the principle of the *ultima ratio* of a penalty of imprisonment, where the basic measures of legal and criminal response to petty and medium-severity crimes will be non-custodial sentences, including the penalty of restriction of liberty. Moreover, the structure of the penalty in question allows for a far-reaching individualisation of the substance both at the stage of jurisdiction and enforcement proceedings, which creates an opportunity for a particularly preventive impact on the convicted person during the execution of this penalty. The flexibility of the penalty of restriction of liberty and the activity of the convicted person, combined with the free nature of this penalty, makes the penalty of restriction of liberty an extremely valuable means of legal and criminal response to prohibited acts. Undoubtedly, this is a punishment that has a very high potential, but both at the stage of creating and applying the law, care should be taken to ensure that this potential is fully deployed.

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