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Edmund Nych

Department of Misdemeanor Law,

Criminal Fiscal and Criminal Economic

Faculty of Law, Administration and Economics

University of Wrocław

### **Summary**

**doctoral dissertation entitled: "Forfeiture of items and forfeiture of financial benefits in criminal fiscal law" written under the supervision of dr hab. Janusz Sawicki prof. UWr**

From the beginning of the fiscal penal legislation in Poland, i.e. from 1926, the penalty of forfeiture of items (things) was a particularly preferred measure of economic ailment for fiscal offenses, while pursuing the objectives of the state's financial policy. This statement remains valid today despite the change in the status of forfeiture of items into a penal measure, making a number of changes in this institution and extending the forfeiture to other forms.

The subject of this hearing is fiscal forfeiture, understood as a set of regulations (legal solutions) that allow the perpetrator of a tax offense to be deprived of all the fruits that he obtained from said offence, objects that were used to commit it, objects strictly connected with the object of the act and used for its packaging, and items the manufacture, possession, trade, storage, transport, transfer or transmission of which is prohibited. It covers four forms of forfeiture, such as: forfeiture of items, collection of the monetary equivalent of forfeiture of items, forfeiture of financial benefits and the collection of the monetary equivalent of the forfeiture of property benefits of different status and functions.

The aim of this dissertation is to evaluate these regulations primarily in terms of the selection of appropriate institutions and their shape, bearing in mind primarily the criterion of rationality. Their analysis is intended to show the entirety of the forfeiture of a fiscal penal tax, i.e. with all its imperfections, identified disputed problems, difficulties in applying and in the

environment of the presented opinions, doctrine views, positions of practice and judicial decisions. Due to the fact that the fiscal forfeiture functions in changing economic conditions and not all regulations that make up the fiscal forfeiture are universal enough to perform the functions assumed by the legislator in all conditions, the hypothesis was adopted for the assessment that some regulations constituting fiscal forfeiture requires changes so that in the current economic and political conditions they can effectively perform the functions assumed by the legislator. This thesis is an attempt to answer the following questions:

- or fiscal forfeiture, as a structure composed of specific institutions, such as and the constituent institutions themselves are rational, so are they well planned, effective and do they correspond to the current economic and political conditions?
- whether and what difficulties are associated with the application of the regulations making up the forfeiture of a fiscal forfeiture?
- what changes should be introduced in the scope of these regulations so that they can effectively fulfill the functions assumed by the legislator?

This thesis uses the historical-comparative, dogmatic and empirical method. The first one showed the process of shaping individual institutions of forfeiture in fiscal penal law. The dogmatic method was used to analyze the applicable forfeiture regulations. The empirical method was used to analyze statistical information obtained from the Department of Strategy and European Funds, Department of Statistical Management Information of the Ministry of Justice.

This thesis consists of eight chapters in which issues closely related to the issue of fiscal forfeiture are discussed.

Chapter I - "Property penal measures specific to the specificity of fiscal penal law" covers three issues, such as: the legitimacy of a separate regulation of fiscal penal law, the enforcement and compensation function of this law and the statutory priority of economic ailments measures. The aim of this chapter was to present the means of forfeiture in the specific environment of fiscal penal law, which is a specialized area of criminal law and aimed at protecting public finances against attacks against them in the form of tax, customs, foreign exchange and gambling crimes and offenses.

The purpose of chapter II - "The institution of forfeiture in Polish criminal law in historical terms" was to show the essence (content), functions and forms (forms) of forfeiture and the evolution of forfeiture in fiscal penal law. This chapter also presents the institution of confiscation of property in the fiscal criminal law as a means of criminal reaction for a fiscal offense.



Chapter III - "The significance of forfeiture in the light of the applicable legal regulations" is devoted to the issues of forfeiture in the Constitution of the Republic of Poland and international treaties, as well as in the common criminal law and in the law of petty offenses. The last part of this chapter indicates the consequences of forfeiture in the field of civil law.

Chapter IV - "Forfeiture of items for fiscal crimes and fiscal offenses" presents the most important issues concerning the measure of forfeiture of items and the measure of collection of the monetary value of forfeiture of items. As regards to the forfeiture of items, its individual forms were characterized, and the views of the doctrine and jurisprudence regarding their definition were analyzed. A significant part of this chapter is devoted to general forfeiture directives and detailed rules for the confiscation of objects. As part of the latter, the obligatory and optional forfeiture of items, the rules for adjudication of forfeiture of items for tax offenses, and the principle of forfeiture of items regardless of their property were discussed. The restrictive nature of the provisions on forfeiture in the Fiscal Penal Code (Article 31 § 1) means that their absolute application in some cases would be pointless, therefore the cases where the forfeiture of items is excluded. Assessment of the regulations concerning the forfeiture of items for fiscal offenses and offenses cannot do without referring to the rights of third parties in relation to the items covered by the forfeiture, therefore part of Chapter IV is devoted to the institution of intervention. The last part of this chapter covers the issue of a penal measure of recovering the monetary equivalent of forfeiture of items.

To present the entirety of the issue of fiscal forfeiture, it was also necessary to refer to the specific functions that some forms of forfeiture perform. These issues are presented in Chapter V - "Special functions of forfeiture of items". The first part of the chapter is devoted to the institution of a measure securing the forfeiture of items. As part of this issue, the essence and objectives of adjudicating the forfeiture of items as a precautionary measure were presented, and the defects related to the limitation of adjudication of forfeiture as a precautionary measure to only one form - forfeiture of items were indicated. This part of the chapter also analyzes the regulations constituting the grounds for adjudication of forfeiture as a precautionary measure and quasi-protective measures, as well as the prerequisites for the possibility of adjudicating them. The remaining part of this chapter is devoted to the issues of the forfeiture of objects and its substitute form in institutions of punishment degression, where these measures occupy a special place.

Chapter VI - "Forfeiture of financial benefits for fiscal offenses" presents issues concerning the measure of forfeiture of financial benefits and the measure of recovering the monetary value of the forfeiture of financial benefits. The chapter presents the essence of



individual institutions, the rationale for their application, statutory exclusions and significant changes that had an impact on the shape of these institutions. The starting point for considering these penal measures was to show the differences between the forfeiture of property benefits and the confiscation of property. In the absence of an unequivocal definition of the concept of "financial benefit", the views of the doctrine relating to this concept were analyzed and its scope was determined. The largest part of the chapter is devoted to the detailed rules of forfeiture of financial benefits. As part of this issue, the principle of declaring the forfeiture of property benefits in the event of impossibility to order forfeiture of items was discussed, and a detailed analysis of the presumption: "obtaining property benefits from committing a fiscal offense" and "transfer of ownership of property by the perpetrator to another person" was discussed. Later in this chapter, the action against the State Treasury to rebut the presumption is discussed and the cases in which the declaration of forfeiture of financial benefits is excluded. The last subsection is devoted to a penal measure in the form of collecting the monetary equivalent of the forfeiture of financial benefits.

This part of the dissertation is supplemented by Chapter VII - "Securing and forfeiting". It covers issues related to securing and executing the forfeiture of the four criminal measures, a measure securing the forfeiture of items and quasi-protective measures. They are of a particularly complex nature due to the regulation of this issue in many legal acts and the lack of consistency between them. The aim of this chapter was to present the entirety of the issues related to the security and execution of the forfeiture of a fiscal penalty.

A reflection of the theory in practice is the last, VIII chapter of the dissertation - "Forfeiture of objects and forfeiture of financial benefits in practice", containing a presentation of research material prepared on the basis of data obtained from the Department of Strategy and European Funds, Statistical Management Information Department of the Ministry of Justice. They apply to persons legally convicted of crimes under the Fiscal Penal Code according to the size of the sentence, as well as final convictions against whom punitive measures have been imposed, including forfeiture of items and forfeiture of property benefits. This data cover the years 2013-2016. This chapter is limited in nature, as it concerns only two penal measures: forfeiture of items and forfeiture of financial benefits. The inability to obtain statistical data on other penal measures, as well as the measure securing the forfeiture of items, did not allow for a full presentation of the fiscal forfeiture in practice. The presentation of the statistical material was intended to illustrate specific trends in the application by common courts of penal measures for the forfeiture of objects and forfeiture of financial benefits, in particular to determine: the

share of these two penal measures in the total number of penal measures adjudicated for punitive measures and trends in the application of both measures over the period considered.

The dissertation ends with a summary of the undertaken topics, verification of the research hypothesis, answers to the questions posed in the thesis, and proposals for changes in the form of *de lege ferenda* conclusions.

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