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Polish Fiscal Criminal Law, Legislative Tradition and Special Features

SUMMARY:

The article refers to the essence and specific characteristics of the Polish Fiscal Penal Code. Polish legislative traditions in this area have been taken as a starting point. The philosophy guiding the fiscal criminal law, including the system of penal sanctions and measures, with the adopted regression of punishment, is extensively analysed. The article discusses the structure of this code, leading characteristics of the substantive, procedural and executive provisions contained therein, and several legal institutions specific to this code that are not found in common criminal law.

Keywords: Fiscal criminal law, Polish fiscal criminal responsibility, degression of punishment, substantive, procedural, executive criminal law, intervention in fiscal criminal law, subsidiary liability.

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I. Introduction

Fiscal criminal law, as a separate codification is not common in the European countries. In general, European legislatures avoid placing such norms in one separate law. The "decentralization" of the fiscal criminal provisions prevails and the provisions are located in numerous special laws. Against this background, Poland represents a commendable exception. For the sake of accuracy, it should be noted that separate fiscal criminal codifications also function in Switzerland and Austria (Finanzstrafgesetz). Countries like Germany, Czech Republic, Russia and Hungary have ceded the substantive fiscal criminal law norms to special laws. In the face of violations of these norms' elements, the procedure ensured in the general criminal procedure codes is applied and the perpetrators of crimes and offenses, regardless of their type are tried following the same rules.[1] In this perspective, it is worthwhile to analyse the formation of fiscal criminal norms in the Polish legal order and characterize specific institutions that are the subject of the Fiscal Penal Code regulation.

II. The Tradition of Maintaining a Separate Fiscal Criminal Regulation in the Polish Legal Order

Poland's first fiscal criminal law was enacted in 1926. Earlier, there were three fiscal criminal acts in force nationwide established by the partitioning states.[2] In the Austrian partition, the Fiscal Penal Law dated July 11, 1835 (Collection of Political Laws, Vol. 63, No. 112) was in effect. In the Russian partition, the principles defined in the fiscal and criminal provisions of the Russian laws listed in the 5th and 6th volumes of the Collection of Russian Laws were in force. On the other hand, in the Prussian partition, the Law on Administrative Criminal Procedure in Customs and Indirect Taxes dated July 26, 1897 was effective. In parts of the Silesian province, the All-German Tax Ordinance dated December 13, 1919, was temporarily effective. It also contained fiscal penal norms (Reich Gazette, p. 1993).[3]

After the restoration of independence, the Fiscal Penal Law of August 2, 1926 (Journal of Laws No. 105, item 609) was enacted. It came into force on January 1, 1927 and at that time the partition laws were ceased. The Fiscal Penal Law was the

[1] Zgoliński I., Voluntary Surrender to Liability in Fiscal Penal Law, Warsaw, 2011, 14.

[2] Ibid., 17.

[3] Borowski W., Principles of criminal law, Vol. II, Special part, Warsaw, 1923, 74.

first comprehensively drafted Polish law of that time, which testifies to its social importance. This is because it safeguarded the interest and financial order of the state.[4] It consisted of two parts: substantive and procedural. This piece of legislation was a kind of foundation for further fiscal criminal regulations in Poland, based on various solutions contained in the partition laws. It drew from them what was most beneficial and proven in practice.[5] Later, the Fiscal Penal Law of March 18, 1932 (Journal of Laws No. 34, item 355) was enforced. Its novelty was the introduction of the general criminal law solutions.[6] This law, like its predecessor, included substantive and procedural provisions. The next and last law of the interwar period was the Presidential Decree dated November 3, 1936, titled as the Fiscal Penal Law (Journal of Laws No. 84, item 581). This was a legal act with the main purpose to bring fiscal penal regulations in line with the legal solutions adopted by the Criminal Code of July 11, 1932 and the Criminal Procedures Code of 1928. Compared with the previous regulation, the general part was significantly expanded.

III. Fiscal Criminal Law in the People's Republic of Poland

In the People's Republic of Poland, there were three legal acts, with the fiscal criminal law as the subject of regulation. The first was the Decree of the Council of Ministers dated April 11, 1947 which was enforced on May 1, 1947. It had almost all-encompassing character, for it did not criminalize only foreign exchange offenses.[7] The following enforced law was the Fiscal Penal Law of April 13, 1960 (Journal of Laws No. 21, item 123, as amended). The law was enacted for the need to adapt the legislation to the requirements of a socialist country. The law criminalized tax offenses, customs offenses, offenses related to various types of fees, foreign exchange offenses, lottery offenses, offenses related to settlements with state funds, bonds and entries in the register of government-owned enterprises. It largely replicated institutions known to the common criminal law with an extensive general section.

On October 26, 1971, another fiscal criminal law was enacted (Journal of Law, No. 28, item 260, consolidated text of Journal of Laws of 1984, No. 22, item 103). The law was enacted in the wake of changes in criminal legislation concerning common

[4] Prusak F., Revenue Criminal Law and Proceedings, Warsaw, 2002, 6.

[5] Siwik Z., Fundamentals of Fiscal Criminal Law, Warsaw, 1983, 9-10.

[6] Konarska-Wrzosek V., Oczkowski T., Criminal Fiscal Law, Zagadnienia materialnoprawne i wykonawcze, Toruń, 2005, 24, 29.

[7] Siwik Z., Systematic Commentary to the Fiscal Penal Law, General part, Wroclaw, 1993, 4.

crimes. It was undoubtedly one of the manifestations of changes in the systemic model of the state.[8]

IV. Fiscal Criminal Law in its Current Normative Form

The law being currently in force in Poland, was adopted on September 10, 1999. Fiscal Penal Code is thus the seventh regulation, albeit the first one with the systematic characteristics of a code. As part of this law, three ranges of regulation can be distinguished: substantive law, procedural law and executive law. In the given prism there is a complete structure not completely separate from the other criminal laws represented by the Criminal Code, Criminal Procedures Code and Executive Criminal Code.

It should be noted that in the substantive legal part, the Fiscal Penal Code is independent from the 1997 one and the 1971 Misdemeanour Code. This is due to the fact that it independently determines the principles of incurring fiscal criminal liability, institutions that exclude criminal liability, a catalogue of penalties, punitive, probationary, protective measures and the directives for their adjudication. Moreover, it contains the terminology, providing for a number of statutory definitions. The set of definitions, which are the subject of legal interpretation, is much more extensive than the Criminal Code. However, generally, they are analogous to the institutions ensured in the Criminal Code and Misdemeanour Code, or modified accordingly. However, there is no doubt that the Code includes a set of features enabling it to be considered an independent, specific criminal law regulation with its legal principles and philosophy of punishment. Among the most important distinguished elements, one should emphasize the following:

- Different object of defense than in common criminal law,
- Autonomy vis-à-vis the common criminal law,
- Subsidiarity to financial law,
- The blanket legislative technique adopted by the legislator with reference to the types of fiscal criminal offenses,
- The airtight nature of fiscal criminal norms,
- The priority of enforcement purpose over repression.

[8] Konarska-Wrzosek V., Oczkowski T., Skorupka J., Prawo i postępowanie karne skarbowe, Warsaw, 2013, 33.

These elements are subordinate to various code solutions; namely, the applied degression of punishment, institutions enabling the omission of the offender's punishment, the phenomenon of voluntary surrender of responsibility and other characteristic solutions, like subsidiary liability and procedural intervention.

V. Philosophy of Fiscal Criminal Repression

One of the main characteristics of the Polish fiscal criminal law solutions is the priority of enforcement of public-law receivables over repression. The norms of the Code at each stage of the proceedings enable the fiscal offense perpetrator or misdemeanour to pay the depleted public-law receivable, associated with a milder punishment (in proportion to the various stages of the proceedings). The Code ensures a wide range of instruments aimed at the earliest possible payment of due public debts, the offender evades to pay so far. For this behaviour, the offender is offered a reduction in criminal liability, headed by the impunity guarantee, albeit only in certain situations. Authorities conducting fiscal criminal proceedings for this reason must (Article 114 of the Fiscal Penal Code) inform the fiscal criminal act perpetrator about his rights in the event of a financial loss compensation to the State Treasury, a local government unit or another authorized entity. Of course, the fiscal criminal law also has other functions that are similar to the norms of common criminal law. Among the main ones there are protective, preventive and educational, repressive-justice and guarantee function.[9]

VI. Various Legal Instruments for the Adopted Punishment Philosophy

The first among the instruments of degression of punishment is active fiscal criminal regret. It is based on the fact that despite the perpetrator's commission of a fiscal offense or fiscal misdemeanour, it guarantees the maintenance of impunity (Articles 16, 16a, 16b of the Fiscal Penal Code). It is further provided for other institutions, such as the following:

- Conditional discontinuance of fiscal criminal proceedings (Articles 66§1, 67 and 68 of the Criminal Code in conjunction with Article 20§2 of the Criminal Code),

[9] V. Konarska-Wrzosek, T. Oczkowski, Criminal fiscal law, Zagadnienia materialnoprawne i wykonawcze, Toruń, 2005, 25-26.

- Voluntary surrender of responsibility (Articles 17-18 of the Criminal Code),
- Waiver of punishment (Article 19 of the Criminal Penal Code),
- Application of a sentence of freedom restriction (Article 58§1 of the Criminal Code in conjunction with Article 20§2 of the Criminal Code) in lieu of imprisonment (Article 26 of the Criminal Code),
- An obligation to treat imprisonment as *ultima ratio* (Article 58§1 of the Criminal Code in conjunction with Article 20§2 of the Criminal Code).

The offender is also entitled to use procedural instruments to mitigate his liability. They rely on a consensus with the prosecuting authority on the duration of the threatened penalty (while maintaining the obligation of paying the public debt). According to all discussed above, the catalogue of penalties adopted in the Fiscal Penal Code is also attractive. It provides for three among the four penalties known to general criminal law. The Fiscal Penal Code does not know the penalty of life imprisonment. Moreover, the penal measures of prohibition and injunction, listed in Article 39, sections 2a-2e and 3 of the Fiscal Penal Code and monetary benefit, listed in Article 39, section 7 of the Fiscal Penal Code. In formal terms, the Fiscal Penal Code also does not recognize the category of compensatory measures. However, the obligation of paying the due public debt is omnipresent here. The catalogue of the criminal law measures is divided into three groups: penalties, punitive measures and protective measures. This division is disputed in the doctrine, since the probationary measures in relation to putting the offender on probation, are included in the list of criminal measures in Article 22 § 2 (sections 1-7) of the Criminal Penal Code. Their essence and functions, diametrically opposed to the other criminal measures, are contained therein. The division of criminal legal measures in Article 22 of the Criminal Penal Code also leads to concerns for the inclusion in this group of the institution of voluntary submission to responsibility. It has a rather clear procedural tinge and does not end with the conviction of the offender. Instead, the fine remains the leading punitive measure, which is financial in nature. This is the only punishment provided for the commission of fiscal offenses (Art.47§1 of the Criminal Code). In the case of fiscal offenses, the other penalties are imprisonment and freedom restriction. Interestingly, the penalty of freedom restriction as a basic penalty provided for in the sanction of a special provision occurs only once (Art.110 of the Fiscal Penal Code). However, it is possible to impose it as an alternative penalty. On the other hand, imprisonment is not ensured on its own, although it is indicated as a sanction in 39 types of fiscal

offenses and their varieties. It appears in the greatest number as part of the sanctions threatened for tax (22) and customs offenses (10). It leads to the conclusion that no fiscal crime is socially harmful to an extent that might require exclusively this penalty.[10] The type of sanction in question always occurs in an alternative-cumulative formula, where the fine represents an accompanying penalty. It is sometimes possible to impose these penalties together. Thus, the punishment of imprisonment is primarily intended to fulfil a preventive function. Its duration should also be noted, for when it comes to a basic type, the highest penalty is five years, while in the extraordinary aggravation circumstance it hits ten years (Article 38§2 of the Criminal Penal Code). Besides, when it comes to the imposition of a total penalty it equals fifteen years (Article 39§1 of the Criminal Penal Code). The relatively low upper limit of imprisonment is the aftermath of the social harmfulness level of fiscal offenses. It is lower than that of common crimes. Therefore, special-preventive considerations also do not back the need of punishing fiscal offenders with imprisonment. An organized fiscal crime represents an exception against this background. Usually, by their behaviour, fiscal offenders harm the income and financial interests of the country, local government units or the European Union, i.e. society in its entirety. Here we should also add that under the provision of Article 58§1 of the Criminal Code, applied through Article 20§2 of the Fiscal Penal Code, if the law provides for the possibility of choosing the punishment type and the crime is subject to imprisonment for maximum 5 years, the court can impose imprisonment only if another punishment or punitive measure fails to meet the punishment objectives. This is a special directive, formulated for the use of judicial sentencing, which prescribes treating imprisonment as *ultima ratio*. There is also a functioning norm of Article 26§1 of the Criminal Penal Code, enabling the imposition of the freedom restriction in lieu of imprisonment as an alternate penalty. This solution intends to minimize the imposition of short-term sentences.[11] The Fiscal Penal Code, moreover, gives a way to reinforce such an alternate punishment with a punitive measure from Article 22§2(2-6) of the Fiscal Penal Code, or it gives a way to the fine. This construction introduces the possibility of imposing a penalty of freedom restriction and the fine for the same act simultaneously. In case of the basic

[10] Konarska-Wrzosek V., Commentary to Article 27 of the Fiscal Penal Code, in: Fiscal Penal Code. Commentary, edited by I. Zgoliński, Warsaw, 2018, 177.

[11] Raglewski J., Principles of punishment for fiscal crimes and fiscal offenses – an attempt to assess and directions of changes, in: The Fiscal Penal Code after ten years in force – assessment and perspectives of changes, edited by Z. Siwik, Wroclaw, 2010, 69.

sanction type, such a possibility is provided for in Article 110 of the Criminal Penal Code. In the Polish criminal law this is a rare combination of punishments, found in non-Code criminal law. As for the fine, it is listed first in the catalogue of penalties, which illustrates the priority of measures of economic annoyance. The fine is imposed under the so-called Scandinavian system, which boils down to determining the number of rates, adequate to the degree of social harmfulness of the committed crime and level of guilt and adjusting its amount with the individual financial capacity of the offender. In one hand, it intends to consider the phenomenon of inflation in the code, while on the other hand – to prevent the passing of expiation to other persons, mainly members of the immediate family. It also minimizes the execution of the fine as a substitute for imprisonment. The focus is made on the upper limit of the fine. At the basic level, its daily rate equals 720. Declared under extraordinary aggravation its daily rate even totals 1080 (Article 23§1 and Article 28§2 of the Criminal Penal Code). The daily rate amount is set in a range and can be from 1/30 of the minimum wage to 400 x 1/30 of the minimum wage (Article 23§3 of the Criminal Penal Code). On a comparative basis, it is a rather low amount. Indeed, it remains on the eighth place from the end among the EU member countries. Lower minimum wages are set in Lithuania, Slovakia and Czech Republic, Croatia, Hungary, Romania and Bulgaria. However, relativizing the income earned by offenders to the general economic situation in Poland, it should be recognized that the upper limit of the fine for a fiscal criminal offense has been set at a very high level. Thus, the perpetrator of a fiscal criminal offense has two obligations. After all, he is not exempt from compensating for the financial damage caused by his actions and the fine is imposed on him.[12]

The adopted philosophy of punishment in the Fiscal Penal Code is also subordinate to criminal measures. These are additional sanctions of a penal nature, making the punishment more flexible and strengthening the preventive function. This is because they minimize the possibility of committing further crimes and allow for the seizure of unlawful gains or items which are banned to be manufactured, possessed, circulated, stored, transported, transferred or transmitted. Most importantly, one can point to the forfeiture of objects or collection of the monetary equivalent of the forfeiture of objects, forfeiture of pecuniary gain or collection of the monetary equivalent of the forfeiture of pecuniary gain and prohibition to conduct a certain business, practice a certain profession or hold a certain position. It is also significant that the

[12] See: Skowronek G., Commentary to Article 23 of the Criminal Code, Legalis/el., 2020.

very fact of being convicted of an intentional crime, while all fiscal crimes are considered international, leads the convicted to lose the right to practice these professions or conduct various types of business activities), where their practice prerequisite is the requirement of not having a criminal record or impeccable character.

VII. Fiscal criminal offenses

The above-mentioned leading sanctions, i.e. the fine and criminal measures as forfeiture of objects or collection of the monetary equivalent of the forfeiture of objects, also represent leading means of repressing fiscal offenses (Article 47§1 and 2(2) and (3) of the Criminal Penal Code). Of course, the fine penalty here is set at lower limits, as we deal with a lower degree of social harmfulness of this type of act. Nonetheless, the fine for a fiscal criminal offense can also be a great annoyance. The minimum fine for a fiscal offense is 1/10 of a minimum wage. The maximum dimension is 20 times more than the minimum wage. We should remember that those acts in which the amount of the public liability was depleted or exposed to depletion or the object value of the act does not exceed the minimum wage five times during its commission are considered misdemeanours.

VIII. Instruments to compensate for the impairment of fiscal receivables

Regardless of the system of gradation of sanctions in the Polish Fiscal Penal Code, there is also a system of instruments aiming to induce the perpetrator to compensate for the matured receivables depleted by the fiscal criminal act as soon as possible. To achieve this goal, they operate with the possibility of mitigating the punishment and sometimes even guarantee non-criminal punishment. Thus, quick and voluntary compensation of the loss of fiscal receivables is beneficial to both parties. The wronged parties receive their due with interest for late payment, avoiding losses therefore. However, an appropriate incentive is required for this. It must be significant enough to lead the perpetrator to strive to quickly and fully cover the resulting financial depletion. Otherwise, it would be impossible to achieve the stated goal. For this reason, the perpetrator is granted exemption from fiscal criminal liability decreasing in direct proportion to the stage of the proceedings at which the depletion is compensated. For this reason instruments for the punishment regres-

sion play an extremely relevant role in fiscal criminal law. Among such instruments, the most far-reaching one is the so-called "active regret," which guarantees that the case will not be subject to punishment if the law enforcement agency is notified, the relevant circumstances of the commission of the act are disclosed and the due public receivable is fully paid (Articles 16 and 16b of the Fiscal Penal Code). This construction is unprecedented in its form in the common criminal law, although it provides for active regret based on the benefit of impunity.[13] The phenomenon of conditional discontinuance of fiscal criminal proceedings represents another means of response. However, it is dedicated exclusively to fiscal criminal offenses. It is applicable to perpetrators who were not previously punished for an intentional crime and for whom there is a positive criminological prognosis (Article 66§1 of the Criminal Code in conjunction with Article 20§2 of the Criminal Tax Code). In this case, it is required the offender to be obliged to pay the entire depleted public liability within a specified period and it is optionally permissible to impose other obligations as well (Article 41§2 of the Criminal Code, Article 67 of the Criminal Code in conjunction with Article 20§2 of the Criminal Code). The offender, however, avoids further proceedings, conviction and the imposition of punishment and criminal measures. On the other hand, however, he considers the possibility of taking proceedings in specific situations, including the ones when he evades an obligation of paying the public liability (Art. 41§3 of the Criminal Penal Code). Another form of the punishment de-escalation is voluntary submission to liability.[14] The initiative to use this mode of termination of fiscal penal proceedings belongs to the perpetrator, although there are quite few exclusions in this regard, i.e., entitled ones are the perpetrators of all misdemeanours and fiscal criminal offenses, the commission of which is sanctioned by the fine (Article 17§1 and §2(1) of the Fiscal Penal Code). On the side of the perpetrator, various obligations are outlined. In addition to the obligation of paying the due public receivable in full (if they actually caused the depletion of this receivable), their number includes paying a specific amount as a fine (however, this is not a fine in the strict sense), agreeing with the forfeiture of objects or paying their monetary equivalent and bearing the lump sum equalling the costs of the proceedings (Articles 17§1 and 18§1 of the Criminal Penal Code). However, the benefits on the part

[13] Łabuda G., Commentary to Article 16 of the Fiscal Penal Code, in: Kardas P., Łabuda G., Razowski T., Fiscal Penal Code. Commentary, Warsaw, 2017, 298.

[14] Almost half of the criminal fiscal proceedings in Poland find their conclusion precisely on this path, cf. I. Zgoliński, Voluntary Surrender to Liability in Fiscal Penal Law, Warsaw, 2011, 240 et seq.

of the perpetrator are important.[15] All this includes charging the offender with the consequences with which he agreed, including a financial sanction (paid as a fine), limited by law as to amount. Its amount falls within the range corresponding to the lowest fine threatened for the act in question up to maximum half of the sum corresponding to the upper limit (Articles 17§1(2), 18§1 and 146§2(1) of the Criminal Penal Code). It remains of utmost importance for the final court decision to allow voluntary surrender of responsibility not to be subject to entry in the National Criminal Register. Thus, the offender avoids the status of a convicted person, while the payment of a certain amount as a fine for a fiscal offense is not a prerequisite for fiscal recidivism (Art. 18§2 and 3 of the Criminal Code). The following similar phenomenon is the waiver of punishment. This solution can be implemented only by paying the public liability due entirely (Art. 19§2 of the Fiscal Penal Code) and only against perpetrators of fiscal misdemeanours and fiscal offenses subject to imprisonment for maximum 3 years or less. The perpetrator shall not be given a penalty or a penalty measure, or the penalty shall be waived, with the sanction being limited to a self-imposed penalty or penalty measure (Article 19§1 of the Criminal Penal Code). Elements of the regression of punishment adopted in Polish fiscal criminal law also include the so-called consensual modes, set forth in the procedural part of the Code (Art. 156§3 of the Criminal Code and Art. 161§1 of the Criminal Penal Code). They can be implemented as long as the offender does not refuse that he committed the act, admits his guilt and expresses his willingness to be convicted with an agreed penalty or punitive measures without trial or taking evidence at a trial. The benefit to the offender is undoubtedly smallest amounting to a reduction in the sanction. From the fiscal point of view, these tools are also not as attractive as the other ones. However, it is still a precondition for taking advantage of the two procedural agreements in question that the perpetrator pays the entire depleted public liability (Articles 156§3 and 161§1 of the Criminal Penal Code).

The primacy of execution and compensation over repression, does not include an absolute dimension in the Polish fiscal criminal law. This is for the incentives system for the depletion payment in exchange for the sanctions' reduction does not apply to offenders whose role was significant or reprehensible in the act commission and who are considered a threat to the legal order. This is the outcome of the conundrum that these perpetrators do not deserve leniency at the expense of a financial boost to fiscal.

[15] Sawicki Cf. J., Failure to Punish as an Element of Criminal Policy in Fiscal Criminal Law, Wroclaw, 2011, 175.

Given their role in the crime, they should be severely punished. We mean the perpetrators who are in charge, recommenders, provocateurs, i.e. the ones organizing or leading criminal associations or groups (Article 16§6 of the Criminal Code.), the ones having made a regular source of income out of committing fiscal criminal acts, those committing a sequence of fiscal criminal acts, fiscal recidivists, perpetrators operating in organized criminal structures and the ones using violence or threats of immediate use of abuse or cooperating with such people (Articles 17§2(2), 19§1(1), 156§2(1) of the Criminal Penal Code).

A rather pragmatic punishment philosophy on the level of fiscal criminal law given above is allegedly the most prominent feature of this law and one of the main reasons for the adopting a separate, autonomous regulation on this matter in the Polish law.[16]

IX. Other prominent features of the Polish Criminal Tax Code

Fiscal criminal liability is based on separate regulations, although it remains a typical criminal liability, generally based on the same principles. After all, it refers to the culpable liability of individuals for their behaviour, which is prohibited under the penalty. The differences in regulation are determined mainly by the type of reprehensible behaviour that caused or could have caused property damage to public law entities and the priority importance of the enforcement function. From the normative construction perspective, the Fiscal Penal Code consists of three titles, respectively referring to the matter of substantive, procedural and enforcement law. Title I (Articles 1 – 53 of the Fiscal Penal Code) regulates substantive law issues that are divided into the general part (Section I), including introductory provisions, phenomenon of the omission of punishment for the offender, other general regulations, relating to fiscal offenses and an explanation of statutory expressions. The second section normalizes the special part, the fiscal offenses and misdemeanours are styled in, divided into four groups, i.e., 1) fiscal offenses and misdemeanours directed against tax obligations and accounting for grants or subsidies (Articles 54-84 of the Criminal Code.); 2) fiscal offenses and misdemeanours directed against customs obligations and foreign trade rules in goods and services (Articles 85-96 of the Criminal Code);

[16] Konarska-Wrzosek V., Penal Code and Fiscal Penal Code – Convergences and Differences Prompting Reflection on the Legitimacy of Maintaining Separate Codifications, in: Problem spójności prawa karnego z perspektywy jego nowelizacji, edited by A. Marek and T. Oczkowski, Warsaw, 2011, 180.

3) fiscal offenses and misdemeanours against foreign exchange (Articles 97-106[3] of the Criminal Code); 4) fiscal offenses and misdemeanours against the organization of gambling (Articles 107-111 of the Criminal Code). Fiscal offenses contained in Division II constitute a closed catalogue of this behaviour in the sense that the Polish fiscal criminal law is not subject to extra-Code regulation. As a result, the fiscal crime or fiscal offense status can only apply to the penalty-banned acts that are included in the Fiscal Penal Code (Article 53 § 1, sentence 2 of the Fiscal Penal Code). Therefore, only these acts will be subject to the rules of incurring liability, penalties, punitive measures and other norms provided in the Fiscal Penal Code. Title II (Articles 113-177 of the Fiscal Penal Code) normalizes proceedings during fiscal crimes and fiscal offenses. It also contains general provisions, with the guiding principle referring to the provisions of the 1997 Code of Criminal Procedure, unless otherwise provided for in the Fiscal Penal Code. (Article 113 § 1 of the Fiscal Penal Code). Thus, in this respect, the Fiscal Penal Code is not autonomous, but has a supplementary-modifying character to the common criminal procedure. A fiscal criminal procedure is coherent with the common criminal one, but contains numerous distinctions. In general, they arise from the peculiarities of fiscal criminal proceedings. It regulates phenomena like the holding of subsidiary liability, rules of procedural intervention, types and powers of financial and non-financial procedural bodies, procedure for authorizing voluntary surrender of liability or treatment of absentees. As part of the procedural provisions, the enforcement function of the fiscal criminal law is also observable, exemplified in the content of Article 114 § 1 of the Fiscal Penal Code. Title III of the Fiscal Penal Code (Articles 178-191 of the Fiscal Penal Code), on the other hand, regulates the enforcement proceedings in cases of fiscal crimes and fiscal offenses. Thus, it refers to the final stage of fiscal criminal proceedings directly performing the enforcement-liquidation function. The purpose of these proceedings is to execute the final decision made during fiscal criminal proceedings. This chapter contains only 16 articles, so it is the smallest part of the Code. Here is a reference (in Article 178 § 1 of the Fiscal Penal Code) to the appropriate application of the provisions of the Executive Penal Code of 6.06.1997. This reference is dictated by the assumption that the enforcement issues should be concentrated in a single legal act serving this purpose, i.e. the Executive Penal Code. Article 1 § 1 of the Code of Criminal Procedure contains the principle that the Code regulations apply both to the execution of judgments made in criminal proceedings on common and military offenses and in proceedings during

the fiscal offenses as well as in the ones when it comes to misdemeanours (so-called common offenses) and penalties and coercive measures involving deprivation of liberty – unless otherwise defined by the law. Thus, Title III of the Criminal Penal Code contains only additional norms that are not included in the Executive Penal Code and regulates some issues differently, if required due to the specific nature of punishments or other measures imposed, as well as the parties to the enforcement proceedings, enforcement bodies or a need to adequately secure the financial interest.[17] Title III includes the general (Articles 178-181 of the Criminal Penal Code) and special parts (Articles 182-191 of the Criminal Penal Code). The general one contains a norm on general application of the Executive Criminal Code provisions in executive proceedings, equates the financial pre-trial authorities' status with that of the prosecutor, defines a larger catalogue of executive authorities, special conditions for the destruction of objects, authorities with the authority to carry out security and enforcement of proper criminal measures, enforcement of claims by an intervener, settlement of execution of penalties and measures in case of a non-simultaneous conviction for the same act under the institution of a perfect concurrence of fiscal criminal offenses with other criminal ones. The special part, on the other hand, defines certain possibilities of mitigating the ailments of the imposed sentences, conversion of sentences into alternate forms, enforcement of vicarious liability and issues of executing criminal measures and possibility of recognizing criminal measures as previously executed.

Among the distinguishing features of the Fiscal Penal Code, it is impossible to overlook two phenomena specific only to fiscal criminal liability proceedings, namely, the holding of subsidiary liability and procedural intervention. The first one implies derogation from the principle of liability individualization for unlawful acts. However, it is not a criminal, but property liability, dictated by the specific nature of fiscal criminal cases. It aims to safeguard the Treasury's financial interests in those situations when the convicted was unable to pay his charges. Auxiliary liability boils down to the responsibility of second parties for the fine and monetary equivalent of the crime objects' forfeiture, adjudged against the fiscal crime perpetrator. The basis for holding the secondary liability is a specific relationship linking the perpetrator to the entity held liable for secondary liability, based on the fact that the perpetrator was a deputy of that entity in managing its affairs and gaining or possibility to gain a financial benefit from the fiscal crime. Substitution in the conduct of the affairs of

[17] Konarska-Wrzosek V., Oczkowski T., Skorupka J., Prawo i postępowanie karne skarbowe, Warsaw, 2013, 494 et seq.

another entity may show various powers of attorney, such as the result of a power of attorney, exercise of management, conclusion of an employment contract, contract of mandate or actual representation. Vicarious liability shows a certain empowerment of the so-called fault in choice and fault in supervision. It is duly pointed out in the literature that the holding of subsidiary liability is excluded if the fiscal crime perpetrator acts independently, in his interest.[18] Subsidiary liability applies only to the fine and criminal measure of collecting the monetary equivalent of the objects forfeiture imposed on the fiscal offense perpetrator.

An intervention is a completely different type of institution, as it intends to guarantee bystanders with due protection of their rights during a pending fiscal criminal trial. It concerns the subjects who, not being suspects or defendants in a proceeding for a fiscal offense or fiscal misdemeanour, made a claim to the items subject to forfeiture in that proceeding (Article 53 § 41 of the Fiscal Penal Code). Thus, an intervener is a person (natural person, legal entity, unincorporated organizational unit, as well as a person held under subsidiary liability) who makes a claim to objects subject to forfeiture, be it mandatory or optional.[19] The concept of right to things includes not only the right of ownership, but other claims as well, including limited rights.[20]

X. Conclusion

The above-given analysis illustrates an outline of certain peculiarities and legislative traditions of the Polish fiscal criminal law. It is the subject of a separate regulation from the provisions of general criminal law, procedural law and executive law. In practice, these norms function properly, fulfilling the purpose they were intended to serve. They also bear a well-established interpretation through judicial jurisprudence. However, it should be noted that currently in the Polish literature there is a noticeable trend to make the broadest possible modification of these norms and even their partial shift to the regime of administrative law.[21] It is a clear doctrinal answer to the question of whether the adopted model is still effective for prosecuting and combat-

[18] Rydz-Sybilak K., Institution of Drawing Subsidiary Liability in Polish Fiscal Penal Law, Lodz 2014, 97-98.

[19] Skorupka J., Commentary to Article 119 of the Fiscal Penal Code, in: Fiscal Penal Code. Commentary, edited by I. Zgoliński, Warsaw, 2018, 702.

[20] Skowronek G., Evolution of Process Institutions in the Fiscal Penal Law, Warsaw, 2005, 62.

[21] More extensively see: Sepioło-Jankowska I., Optimal Model of Legal Responsibility for Fiscal Criminal Acts, Warsaw, 2016, 97 et seq.

ing this type of crime, especially tax crime. This is because this crime increasingly coexists with the organized crime. This forces law enforcement agencies to do much more that requires specialization and appropriate logistics. There must be an appropriate normative basis for such activities. In its current form, the Fiscal Penal Code is not prepared for the kind of challenges posed by strictly economic crime. This is no surprise, however, as it was by design dedicated to other types of behaviour. However, the Polish legislator has implemented certain mechanisms for responding to this most serious type of crime into the general criminal law. The result is that perpetrators can now bear criminal and fiscal criminal liability.

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