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SUMMARY OF THE DOCTORAL DISSERTATION

Evolution of the institution of confiscation and forfeiture in the Polish criminal law till 1990

The topic of the present doctoral dissertation consists of two extensive issues, which are at the same time separate legal institutions: confiscation and forfeiture. In both cases their evolution will be presented, from the beginning of the Polish state until the elimination of the penalty of confiscation of property from the Polish legal order in 1990. The timeframe of the dissertation stretches therefore from the beginnings of the Polish statehood, through the time of the partitions and regaining of independence by Poland, the period of the Second Republic of Poland and People's Republic of Poland, until the transformation of the political system and creation of the fully sovereign Republic of Poland. Outside the scope of interest, however, will remain considerations on the functioning of confiscation and forfeiture during World War II under the regime of foreign legal orders (German and Soviet).

Due to a very broad historical and legal approach the mainstream of considerations will not cover the issues concentrated around the contemporary institutionalization of forfeiture. Therefore, the following will be omitted: the Code regulation of forfeiture of objects and forfeiture of financial gain derived, even indirectly, from a crime since 1997; the expansion and extension of the subject and object scope of forfeiture of financial gain derived, even indirectly, from the commission of a crime in 2000; the unification of terminology through the introduction of a collective concept of forfeiture in 2003; the major amendment of the Criminal Code, which entered into force on 1 July 2015, situating forfeiture in Chapter Va of the Criminal Code as a sui generis measure; the solutions introduced in 2017, aimed, inter alia, at implementing EU directives, implementing the assumptions of the so-called extended confiscation (extended asset forfeiture); the regulations concerning the responsibility of collective entities for acts committed under penalty, as well as subsequent amendments to the criminal law in the area of forfeiture. Undoubtedly, these issues, both from the perspective of national and international regulations, require a deeper, separate study.

The proposed topic has not yet received a proper and complete elaboration from the point of view of the historical evolution of confiscation and forfeiture. So far the authors have

focused in their monographs mainly on the solutions in force at a given time, bringing closer the formal-dogmatic side of forfeiture itself. Some of them touched upon historical issues, however, either in a narrow scope or from the perspective of the evolution of criminal measures in gremio.

The main aim of this paper is to show the changes that have taken place in Polish criminal law in the scope of both institutions being in the centre of research interest, i.e. confiscation and forfeiture. This will allow not only to show their genesis and gradual transformations, but also to capture the developmental tendencies and intentions that guided the legislator against the background of general regularities occurring in the process of criminal law development. The aim of the study is not only to show the formal-dogmatic evolution of both institutions, in the case of the 20th Century chapters (3. and 4.) mainly through the code and non-code regulations, but also to present, although to a limited extent, the practice of applying both penalties and the views of the doctrine, which had a fundamental impact on their shape.

The dissertation is assumed to be of historical-legal as well as of legal-criminal-material nature, thus it should be situated in the subdisciplines of legal sciences: history of law and criminal law. The main axis of consideration of the dissertation is, first of all, the evolution of confiscation and forfeiture of property in substantive criminal law in the broad sense of this term. Due to the specificity of the first two chapters, the main sources were analysed, especially acts issued by monarchs and rich parliamentary legislation of the period of the Polish Noblemen's Republic, as well as studies and opinions of scholars from both ancient and more recent history, which were referred to as auxiliary sources. Legal history and historical workshop are therefore of paramount importance here. In chapters 3. and 4., covering the 20th Century, the examined institutions were considered first of all from the perspective of code and non-code regulations, as well as doctrinal views and theses of judicial decisions. No less important sources will also be the drafts of legal acts, including printed matter and parliamentary transcripts. In this part of the work, the most important aspect was the criminal-material aspect and the related dogmatic analysis of regulations.

The subject of consideration is above all universal criminal law, i.e. containing general and general norms concerning all areas of social life and persons. In the case of pre-partition Poland, important distinctions will be taken into account (e.g. land law, urban law, rural law). Historically, criminal law primarily concerned criminal offences, which for a long time were treated in a uniform manner. However, we should not forget about misdemeanours, which,

constituting criminal law in its broadest sense, will stand out as a separate category of prohibited acts, but with reduced legal consequences. The law of misdemeanours regulates penal responsibility for acts of lesser social harm than crimes. The creation of a separate law of misdemeanours can be discussed only after the Republic of Poland regained its independence in 1918, when extensive work on the codification of Polish law began. The law of trespasses will therefore also be the subject of this dissertation.

The dissertation has been divided into four chapters. In the first one, the pre-partition period of Poland is described in the context of the evolution of confiscation as a punishment which for many centuries was in the basic repertoire of discretionary sanctions at the disposal of the monarch. This is the longest period covered by the research and it is very diverse in terms of the legal orders applied. For the first subsection, due to the limited source base, the narrative is inherently more fragmentary. In the following sections of the paper, the search covered the different layers of law according to state division. These were primarily land law, but also, to a lesser extent, urban and rural law. The main sources of law of this epoch were also used, i.e. statutes of Casimir the Great, privileges of the nobility of the Jagiellonian period, as well as parliamentary legislation of the 16th–18th Centuries. The penalty of forfeiture is mentioned to a lesser extent, as it was much less frequently applied at that time, which is evidenced by the fact that it did not constitute a separate legal institution until the end of the 18th Century.

The second chapter of the dissertation presents the most important regulations concerning confiscation and forfeiture in the times of the partitions. The aim of this part of the dissertation is to show the essential dichotomy between the two penalties under the different annexations, namely how the repressive character of the penalty of confiscation looked like in the Russian partition, which paid most attention to this issue, especially in terms of the tsarist response to the Polish national liberation movements, and how it looked like in the Prussian (German) and Austrian (Austro-Hungarian) partitions, where this sanction experienced numerous limitations and was gradually replaced by forfeiture.

The third chapter of the dissertation covers the period of the Second Polish Republic, in which confiscation was regarded as an anachronistic sanction and was therefore largely supplanted by forfeiture, as evidenced both by the penal code of 1932 and by a wealth of extra-code legislation. The chapter also shows the trends followed by the legislature in unifying the legislation of the former partitioning states, as well as mentions attempts to create a systemic regulation concerning the restitution of property seized by these powers.

The fourth chapter presents the evolution of confiscation and forfeiture in the period of the People's Republic of Poland. Particularly during the Stalinist period, which is covered in the first subchapter of this chapter, the penalty of confiscation experienced a renaissance, which was part of a trend whereby the communist authorities took aim at the criminal repression of opponents of the new legal and political system. This applied not only to political, but later also to economic offenders. This chapter also presents the evolution of the forfeiture itself, which, as a punishment materially related to the crime committed, was not subjected to such far-reaching transformations as in the case of confiscation. The fourth chapter presents the evolution of both penalties also after 1956, their mutual competitiveness on the grounds of the penal code from 1969, as well as the tightening of penal policy in the field of confiscation in the first half of 1980s. The chapter, and at the same time the whole dissertation, ends with a discussion of changes in the law made in 1990, when confiscation, under the influence of strong criticism from the doctrine, but also of the socio-political transformations of that period, was eliminated from the catalogue of penalties.