

Selected issues of penalisation in penal economic law. Remarks on the crimes against economic circulation (Chapter XXXVI of Criminal Code)

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I. Definitions of economic crimes

The European approach to defining economic crimes differs significantly from the definitions binding in the common law countries¹. The elements concerning the features of perpetrators of these kinds of crimes are essential for American definitions, whereas in European definitions the specific character of a legal interest which was violated or endangered due to this crime is stressed². The foundations for the American approach to examining this phenomenon were made by E. Sutherland³, who defined a white collar crime as a “crime committed by a person of

¹ S. Żółtek, *Prawo karne gospodarcze w aspekcie zasady subsydiarności*, Warszawa 2009, pp. 24–34.

² Examples of definitions see: O. Górniok, “Pojęcie prawa karnego gospodarczego i jego szczególne problemy”, [in:] *Prawo karne gospodarcze*, ed. O. Górniok, Warszawa 2003, pp. 2–4.

³ During a speech given in 1939 to the American Sociological Society.

respectability and high social status in the course of his occupation”⁴. European definitions of this term are slightly different. K. Lindermann is regarded to be the father of the term “penal economic law”, in 1932 he asked the question concerning this separate branch of criminal law⁵, pointing out that it is “a collection of penal regulations the subject of which is to protect the entirety of economics or some of its branches or institutions especially important for this economic entirety”⁶. The process of defining economic crimes in Poland goes in a similar direction where the special character of a legal interest is its distinctive feature. It does not mean, of course, that in the Polish science of penal economic law there is consent regarding this term. As there is no single definition of economic crime which would satisfy all⁷. Basically, the reconstruction of special good which is protected by the law, such as violation of rules of proper economic circulation⁸ or safety, stability and trust to basic institutions of economic circulation⁹, is the common element of the formulated definitions. In professional literature, the division of economic crimes was proposed in which mutational economic crimes and proper economic crimes are differentiated¹⁰. The relation of economic crimes to the traditional ones is the basis of this division. Whereas mutational economic crimes are a variety of classic crimes created according to the specificity of economic circulation, proper economic crimes do not have the equivalents among ordinary criminal offences.

⁴ E.H. Sutherland, *White Collar Crime*, New York 1949. It is worth noting that the concept was primarily conceived by E.A. Ross in 1907 (*Encyclopedia of White-Collar and Corporate Crime*, vol. 1, ed. L.M. Salinger, 2013, p. XXVII). Historic conditioning of this phenomenon was pointed out by D. Friedrichs, *Trusted Criminals: White Collar Crime in Contemporary Society*, 2010, pp. 2–7.

⁵ K. Lindeman, *Gibt es ein eigenes Wirtschaftsstrafrecht*, Jena 1932.

⁶ Quotation after A. Bachrach, “Przestępczość gospodarcza. Pojęcie i próba systematyki”, *Państwo i Prawo* 1967, no. 6, p. 953.

⁷ See: S. Żółtek, op. cit., pp. 29–31; P. Ochman, *Ochrona działalności bankowej w prawie karnym gospodarczym. Przepisy karne ustaw bankowych*, Warszawa 2011, pp. 134–135.

⁸ For example *Przestępstwa przeciwko mieniu i gospodarcze. System Prawa Karnego. Tom 9*, ed. R. Zawłocki, Warszawa 2011, p. 435.

⁹ Ibid.

¹⁰ S. Żółtek, op. cit., pp. 185–191.

II. Crimes against economic circulation

Dispersion is also a significant feature in the area of economic crime typing in Poland. It means that apart from the Criminal Code economic crimes have been defined in several so called additional penal acts. This circumstance causes significant difficulties in orientation regarding the limits and the range of criminalization of economic circulation and also the model of penalization in this aspect. As the code's model of penalization is relatively coherent and stable, in the extra-code penal economic law liability of criminalization and penalization can be observed.

The basic catalogue of economic crimes¹¹ has been defined in chapter XXXVI of the Act of 6 July 1997 — the Criminal Code¹², entitled “Crimes against economic circulation”¹³. Presently this chapter contains in total 15 articles and typing regulations, i.e. defining the features of the types of forbidden acts and the statutory penalty range¹⁴, are contained in 12 such editorial units (Art. 296–306 CC). The remaining units foresee the special basis of extraordinary mitigation of penalty and waiving of penalty execution (Art. 307 CC), both obligatory (§ 1) and a facultative one (§ 2), clause of substitute responsibility for some economic crimes¹⁵ (Art. 308 CC) and a special base for pronouncing the penalty of fine for the perpetrator of some code economic crimes (Art. 309 CC).

Within the typing regulations located in chapter XXXVI of the Criminal Code there are 41 editorial units of a lower rank (paragraphs). The

¹¹ See: *ibid.*, p. 184.

¹² Journal of Laws from 1997, No 88, point 553, with later changes. The subject act did not type the crime of corruption in economic turnover, usury and forging identity signs.

¹³ It is worth noting that dispersion of penal regulations influence the shape of Penal Economic Law. Only a small part of the penal economic law can be found in the Criminal Code. The prevailing majority — regardless of the problems related to the definitions of this term — is in the so called extra-code penal economic law. More on this subject S. Żółtek, *op. cit.*, pp. 184–185; R. Zawłocki, *op. cit.*, pp. 427–428.

¹⁴ J. Majewski, “Budowa przepisów prawa karnego i norm w nich zawartych”, [in:] *System Prawa Karnego. Tom 2. Źródła prawa karnego*, ed. T. Bojarski, Warszawa 2011, p. 424.

¹⁵ Also called a clause of penal responsibility of representative of a collective entity (see: R. Zawłocki, *Klauzula odpowiedzialności karnej reprezentanta podmiotu zbiorowego*, Warszawa 2013, *passim*).

given number, however, is not the same as the number of forbidden acts typed in this chapter. It is so for several reasons. First, sometimes selected paragraphs do not contain typing regulations but the clauses “of not being a subject to the penalty” (Art. 296 § 5, Art. 296a § 5, Art. 297 § 3, Art. 298 § 2, Art. 299 § 8, Art. 300 § 3), special regulation of forfeiture (Art. 299 § 7), procedure regulations related to the mode of prosecution (Art. 296 § 4a, Art. 300 § 4, Art. 303 § 4, Art. 305 § 3). Second, in two cases (Art. 304 and 306) there are no editorial units of a lower rank (paragraphs). Third, finally, sometimes in one penal regulation there can be more than one variety of the basic, privileged or qualified type of crime.

A detailed state in the above range looks as follows:

— in the regulation of Art. 296 CC the crime of trust abuse was typed as a punishable mismanagement. The basic type of this crime is contained in § 1. Among its qualified types there are varieties in which the qualifying feature is a special purpose of action of the perpetrator in the form of private financial gain (Art. 296 § 2 CC; two qualified types) and variations where the qualifying feature is an effect in the form of substantial financial damage (Art. 296 § 3 CC; two qualified types). Among the privileged types, a privilege because of creating a threat for the legally protected good (bringing a defined danger of a substantial financial damage — § 1a) and the involuntary variety (Art. 296 § 4 CC; three privileged types) can be distinguished;

— in the regulation of Art. 296a CC the crime of corruption of managers was typed. In § 1 and 2 two basic types of this crime are included: the crime of active corruption of managers (Art. 296a § 1 CC) and the crime of passive corruption of managers (Art. 296a § 2 CC). There is also a qualified type of the crime of passive corruption because of the consequences of the forbidden act which is causing a substantial financial damage (Art. 296 § 4 CC). Among the privileged types a “case of lesser importance” can be distinguished¹⁶ (Art. 296 § 3 CC; two privileged types), referring both to the crime of active and passive corruption;

— in the regulation of Art. 297 and 298 CC three basic types of frauds in economic circulation in the form of a credit fraud (Art. 297 § 1

¹⁶ On the subject of a legal character of a “case of lesser importance” see K. Banasik, “Wypadek mniejszej wagi w prawie karnym”, *Prokuratura i Prawo* 2008, no. 3, pp. 48–67.

and 2 CC) and an insurance fraud (Art. 298 § 1 CC) were defined. There are no modified types;

— in the regulation of Art. 299 CC code crimes of money laundering were typed. Paragraphs 1 and 2 contain the basic types. Among the modified types the varieties in which the special circumstances of the act are a qualifying feature, i.e. operation in agreement with other persons (Art. 299 § 5 CC; two qualified types) and the varieties where the consequence of the forbidden act which is achieving a substantial financial gain (Art. 299 § 6 CC; two qualified types) were listed. The present qualified types refer to both basic types indicated above. There is also a penal responsibility foreseen for preparing crimes from § 1 and 2 (Art. 299 § 6a CC);

— in the regulation of Art. 300 CC the crime of frustrating or depleting claims of the creditor were typed. In § 1 a basic type of the subject crime was introduced. This crime also has two qualified types. In the first crime the qualification is done through circumstances in the form of acting with the aim of frustrating the execution of the decision of the court or another state organ (Art. 300 § 2 CC). Another qualified type is qualified by the consequence which is “causing damage to numerous creditors” (Art. 300 § 3 CC);

— in the regulation of Art. 301 CC the crime of apparent bankruptcy was typed. This regulation introduces two basic types of the subject crime based on transferring the components of the property to a new economic unit (Art. 301 § 1 CC) and bringing about own bankruptcy or insolvency (Art. 301 § 2 CC). Among the modified types there is one privileged type from Art. 301 § 2 CC which is a reckless bringing about own bankruptcy or insolvency (Art. 301 § 3 CC);

— in the regulation of Art. 302 CC three basic types of crimes against creditors were typed (in § 1 the crime of arbitrary satisfying creditors’ claims in § 2 active corruption to the detriment of the creditors and in § 3 passive corruption to the detriment of the creditors);

— in the regulation of Art. 303 CC the crime of falsification of economic records was typed. In § 1 one basic type of this crime was listed. Among the modified types there are both a qualified variation and a privileged one. The qualification takes place regarding the consequence which is causing a substantial financial damage (Art. 303 § 2 CC). The

privileged type is a case of lesser importance of the crime defined in § 1 (Art. 303 § 3 CC);

— in the regulations of Art. 304–306 CC the crime of usury (Art. 304 CC) two types of crimes of hindering public tenders (Art. 305 § 1 i 2 CC) and the crime of falsifying identification signs (Art. 306 CC). In the above type there are no modified types.

Introduction of almost all crimes mentioned above to the Polish system of Criminal Law took place earlier, in the moment when the Act of 12 October 1994 on the protection of economic circulation came to force¹⁷, i.e. 31 December 1994. Passing this law resulted from the necessity of adjusting contemporary Polish penal regulations to the demands of emerging market economy and efficient prevention of pathologies in this aspect¹⁸. Undoubtedly the directives of the Council of Europe also had a significant influence on the shape of the catalogue of forbidden acts¹⁹. It is worth stressing that the present shape of the catalogue of the crimes typed in this chapter is a little different from the one which was present in the original text of the Criminal Code. It is worth noting that in the justification to the governmental project of the penal code in relation to crimes against economic circulation chapter XXXVI “contains modern solutions directed to a free market economy”, and in addition that “the rules of economic circulation of a free market economy with possible interventionism of the state directed especially against degenerations bringing harm to the subject participating in economic operation or the state”²⁰ require special protection.

The catalogue of crimes typed in chapter XXXVI of the Criminal Code underwent further changes which were determined both by the necessity of adjusting the Polish law to the regulations of the Euro-

¹⁷ Journal of Laws from 1994, No. 126, point 615, with later changes.

¹⁸ G. Grabarczyk, *Przestępczość gospodarcza na tle przemian ustrojowych w Polsce*, Toruń 2002, pp. 101–102; O. Górniok, “Przestępstwa przeciwko obrotowi gospodarczemu”, [in:] *Prawo karne gospodarcze...*, p. 71; R. Zawłocki, op. cit., pp. 419–422.

¹⁹ Recommendation No. R (81) 12 of The Committee of Ministers to Member States on Economic Crime, Strasbourg 1981. See also O. Górniok, “Problemy przestępczości gospodarczej w świetle zaleceń Rady Europy”, *Państwo i Prawo* 1991, No. 9, pp. 45–54.

²⁰ Justification for the governmental project of the Criminal Code [in:] *Nowe kodeksy karne — z 1997 r. z uzasadnieniami*, Warszawa 1997, p. 209.

pean Union²¹ and the criminal-political needs as well²². Starting with the moment of the Criminal Code's coming into force, i.e. 1 September 1998 in chapter XXXVI of the Criminal Code the changes concerned adding of a new kind of crime of malpractice — the so called crime of no-claims mismanagement (Art. 296a CC)²³, the crime of economic corruption (Art. 296a CC)²⁴, modification of the crime of credit fraud (Art. 297 CC)²⁵, money laundering (Art. 299 CC)²⁶, frustrating or depleting claims of the creditor (Art. 300 CC)²⁷ and also increasing the penalty fine for some crimes against economic circulation (Art. 309 CC)²⁸.

²¹ See the changes to the content of the regulation of Art. 297 CC.

²² See the amendment to the regulation of Art. 296 CC in the aspect of adding § 1a i 4a.

²³ The change was introduced by the Act of 9 June 2011 about the change of the Act — Criminal Code and some other acts (Journal of Laws No 133, point 767).

²⁴ The change was introduced by the Act of 13 June 2003. About the change to the Act — Criminal Code and some other acts (Journal of Laws No 111, point 1061). The subject Act introduced also a type of a crime of sport corruption which was later moved to the Act of 25 June 2010 on sport. The range of the features of the crime of economic corruption was modified with the Act of 24 October 2008 about the change of the Act — Criminal Code and some other bills (Journal of Laws No 214, point 1344).

²⁵ For the first time by the Act of 18 March 2004 about the change of the Act Criminal Code, Act — Code of Criminal Procedure and the Act Code of Petty Offences (Journal of Laws No 69, point 626), and next with the Act of 12 July 2013 about the change of the Act on payment services and some other acts (Journal of Laws, point 1036).

²⁶ For the first time by the Act of 16 November 2000 on counteracting introduction of property values coming from illegal or not revealed sources to financial turnover and counteracting of terrorism financing (Journal of Laws No 116, point 1216), and next with the Act of 25 July 2009 about the change of the Act on counteracting introduction of property values coming from illegal or not revealed sources to financial turnover and counteracting of terrorism financing and the change of some other acts (Journal of Laws No 166, point 1317) and finally with the Act of 9 October 2015 about the change of the Act Criminal Code and some other acts (Journal of Laws, point 1855).

²⁷ By the Act of 16 September 2011 about the change of the Act — Code of Civil Procedure and some other acts (Journal of Laws, No 233, point 1381).

²⁸ The Act of 5 November 2009 about the change of the Act — Criminal Code, the Act — Code of Criminal Procedure, the ACT — Executive Criminal Code, Criminal Fiscal Code and some other acts (Journal of Laws No 209, point 1589).

III. The objective of penalization of economic crimes

As it results from the report on research on economic crimes in Poland prepared by the Team of Investigation Services and Abuse Risk Management PwC Polska²⁹, the economic crimes in Poland are a serious problem and the financial losses are their measurable consequences. The influence of economic crimes on the extra-financial area (e.g. employees' morale) is also significant. The losses resulting from the economic crime should be assessed not only in the financial categories but also as lowering of the company's reputation, or the value of the given brand and also worsening interpersonal relations among the employees or with the investors³⁰.

In scientific research concerning the factors deterring the managerial staff from committing crimes³¹ the biggest power is ascribed to imprisonment. Its impact was so high that it would deter from breaching the economic ban regardless of the assessment of its justification³². The indicated study proved also that in this case informal costs, moral sanctions related to the defined behaviour (e.g. condemnation of the milieu, difficulty in finding a job, rejection by the family) have higher impact than legal sanctions.

As it was stressed over twenty years ago in the aforementioned directives of the Council of Europe, it would be necessary to pay more attention to the preventive impact in the area of economic crimes³³. The institutional solutions not allowing (or limiting the ability) to commit the crimes of this kind again should be a priority. It is also important to make the citizens form the habit of observing ethical codes which, together with informal group sanctions, may constitute support for institutional solutions.

²⁹ [http://www.pwc.pl/pl/pdf/research on economic crimes in Poland-2016.pdf](http://www.pwc.pl/pl/pdf/research%20on%20economic%20crimes%20in%20Poland-2016.pdf) (access: 30.01.2017).

³⁰ *Przestępczość gospodarcza: czynnik ludzki i mechanizmy kontrolne*, 2008, p. 6.

³¹ S.S. Simpson, "The Problem of White-Collar Crime Motivation", [in:] *White-Collar Crime Reconsidered*, ed. K. Schlegel, D. Weisburd, Boston 1994, pp. 295f.

³² It was not only the matter of imprisonment but also about the fact of putting in the state of indictment (prosecution).

³³ Recommendation No. R (81) 12 of The Committee of Ministers to Member States on Economic Crime, Strasbourg 1981.

The *ultima ratio* principle in the area of penalization of economic activity should also concern the choice of the kind of penalty. It seems that deterring a potential perpetrator should be the goal in this area. Educational impact in relation to the perpetrators of economic crimes should not gain priority over other goals of penalization³⁴. According to the directives of the Council of Europe³⁵, the following should be aimed at: reaching for imprisonment penalty in case of serious offences; ensuring to reflect the financial situation of the perpetrator and the weight of the crime in the amount of the fine; preventing using the sanction of deprivation of the professional license as a main sanction and in the situation when it is possible reaching for the measures of a compensational character.

Bearing this in mind it seems that the aforementioned penalties for economic crimes should have a nature of personal discomfort. Undoubtedly the penal measures having impact on the perpetrator's prestige (e.g. public announcement of a sentence) or on his/her ability to further perform economic activity of a certain kind (disqualification from specific posts, the exercise of specific professions or engagement in specific economic activities) and the necessity of depriving the perpetrator of the advantages coming from the crime (forfeiture) may constitute such a discomfort.

IV. Code model of sanctions for the crimes against economic circulation

Analysing the present model of penalty sanctions for the crimes against economic circulation defined in chapter XXXVI of the Criminal Code it is worth noting that the penalty of imprisonment in a simple sanction dominates. These are:

- imprisonment from 1 month to 3 years,
- imprisonment from 3 months to 5 years,
- imprisonment from 6 months to 8 years,
- imprisonment from a year to 10 years.

³⁴ O. Górniok, "Rola karania w przeciwdziałaniu patologicznym zachowaniom gospodarczym", *Przegląd Ustawodawstwa Gospodarczego* 1999, No. 5, p. 14.

³⁵ Recommendation No. R (81) 12 of The Committee of Ministers to Member States on Economic Crime, Strasbourg 1981.

Only in relation to four types of crimes (so called privileged crimes) the alternative sanctions have been foreseen which consist of a fine, limitation of freedom and imprisonment:

- penalty of fine, limitation of liberty or imprisonment up to 1 year,
- penalty of fine, limitation of liberty or imprisonment up to 2 years.

It is worth remembering that applying penal measures is also possible for the crimes against economic circulation. For example, it can be disqualification from specific posts, the exercise of specific professions or engagement in specific economic activities³⁶, forfeiture or public announcement of a sentence.

Attention should be paid to the fact that the shape of sanctions mentioned above which are foreseen in selected penal regulations typing selected crimes against economic circulation can be modified by the presence of the institutions allowing to toughen or mitigate the repression³⁷.

Among the regulations allowing for the application of so called progression of penalization in relation to the discussed crimes against economic circulation the following should be listed:

- possibility of application by the court of the fine penalty in addition to imprisonment if the perpetrator committed the act in order to gain material advantage or if he/she gained material advantage (so called cumulative fine — Art. 33 § 2 CC)³⁸,

- possibility of extraordinary tightening of the penalty up to the highest statutory limit further increased by a half in case when the perpetrator commits the crime in the conditions of so called basic special recidivism (Art. 64 § 1 CC).

On the other hand, among the penal means defined in the Penal Code which allow for degression of penalization in relation to the discussed crimes against economic circulation the following should be listed:

³⁶ These penal measures can be pronounced in years, from one year to 15.

³⁷ These institutions can be included — depending on their character — to the so called special directives of court penalty, and can constitute extraordinary mitigation or lightening of the penalty. More on this subject *Nauka o karze. Sądowy wymiar kary. System Prawa Karnego. Tom 5*, ed. T. Kaczmarek, Warszawa 2015, passim.

³⁸ In relation to the perpetrators of the crimes of abuse of trust (Art. 296 § 3 CC), credit fraud (Art. 297 § 1 CC) or money laundering (Art. 299 CC), a fine pronounced besides imprisonment can be of the amount of 3000 day-fine units (Art. 309 CC).

— possibility of waiving the punishment in relation to:

— perpetrator of the crime under the threat of imprisonment not exceeding 3 years or a milder punishment where the social danger is minor in the case of judging a penalty means at the same time when the goals are fulfilled by this means (Art. 59 CC),

— perpetrator of the crime defined in Art. 296 or 299–305, who voluntarily repaired the damage in total (Art. 307 CC),

— a so called small key witness (Art. 60 § 7 related to § 3 CC);

— possibility of application of an extraordinary leniency of the penalty:

— in relation to the perpetrator of the crime defined in Art. 296 or 299–305, who voluntarily repaired the damage in total or in a major part (Art. 307 CC),

— in the so called especially grounded cases when even the lowest penalty foreseen for the crime would be disproportionally high (e.g. when the damage was repaired or the victim and the perpetrator agreed upon the repair of the damage or because of the approach of the perpetrator especially if he/she was making efforts to repair the damage or to prevent it) (Art. 60 § 2 CC),

— in relation to a so called small key witness (Art. 60 § 3 CC).

It is important to remember that in such a system of penal means against a perpetrator of a crime against economic circulation special directives of judicial penalties operate as well. These are the following:

— the *ultima ratio* principle of absolute penalty of imprisonment (in relation to the situation where the bill foresees the possibility of choosing the kind of penalty, the court decides upon the imprisonment penalty without conditional suspension of its execution only when another penalty or penalty means cannot satisfy the criteria of a penalty) (Art. 58 § 1 CC).

— prohibition of sentencing to the penalty of restriction of liberty which is excessively oppressive (meaning that the penalty of restriction of liberty related to the duty mentioned in Art. 35 § 1 CC, is not pronounced if the health state of the accused or his/her properties and personal conditions justify the opinion that the accused will not satisfy this duty) (Art. 58 § 2a CC).

Only the superficial analysis of the system of penal means for the crimes against economic circulation mentioned above indicates that this system is rich and allows to adjust the penal reaction to the situation of the perpetrator. It should be indicated that this system is co-created by the so called legal effects of the sentence, i.e. being a consequence of pronouncing the limitation in the ability of taking up a selected position or performing a profession³⁹ (e.g. Art. 18 § 2 of the Act of 15 September 2000 — Commercial Companies Code⁴⁰).

V. The practice of punishing for crimes against economic circulation

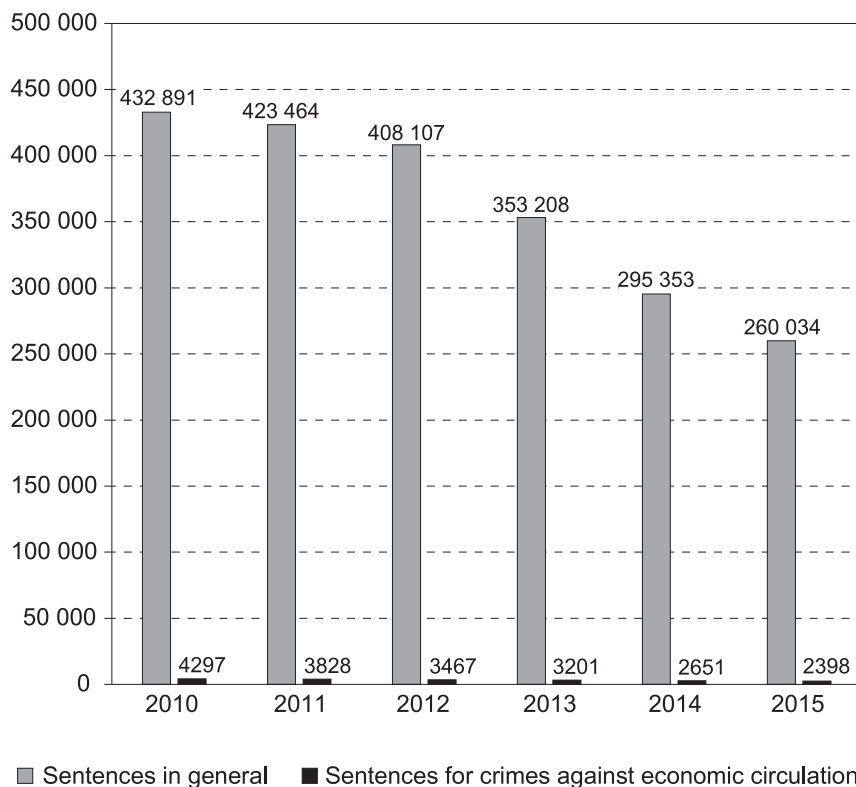
In such normative frames an analysis of practice in the functioning of a judiciary system in the cases against economic circulation (chapter XXXVI CC) in the years 2010–2015 can be carried out. The subject analysis will be carried out based on official statistics prepared by the Department of Statistical Management Information in the Department of Strategy and European Funds of the Ministry of Justice⁴¹.

Sentences for the crimes against economic circulation in the years 2010–2015 constituted less than 1% of sentences in general. The detailed dynamics of final and binding sentences of adults in the years 2010–2015 for crimes against economic circulation against the sentences in general is presented in the graph 1 below.

³⁹ Zob. J. Waszczyński, “Prawne skutki skazania”, *Państwo i Prawo* 1968, No. 11, pp. 807–818; S. Pławski, “Zagadnienie kar dodatkowych i skutków skazania”, *Nowe Prawo* 1958, No. 1, pp. 13–24; B.J. Stefańska, “Prawne i społeczne skutki skazania. Część 1”, *Wojskowy Przegląd Prawniczy* 2008, No. 1; idem, “Prawne i społeczne skutki skazania. Część 2”, *Wojskowy Przegląd Prawniczy* 2008, No. 2.

⁴⁰ Journal of Laws from 2013 point 1030, with later changes. See more P. Ochman, “Z problematyki zakazu pełnienia funkcji piastuna organu w spółkach handlowych — uwagi na marginesie przepisu Art. 18 § 2 KSH”, *Rejent* 2012, No. 12, pp. 69–96; idem, “Wykonywanie środka karnego zakazu zajmowania określonego stanowiska a zakaz pełnienia funkcji piastuna organu spółki handlowej”, *Nowa Kodyfikacja Prawa Karnego* 2014, No. 33, pp. 215–231.

⁴¹ These statistics are available at: <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,41.html> (access: 30.01.2017).

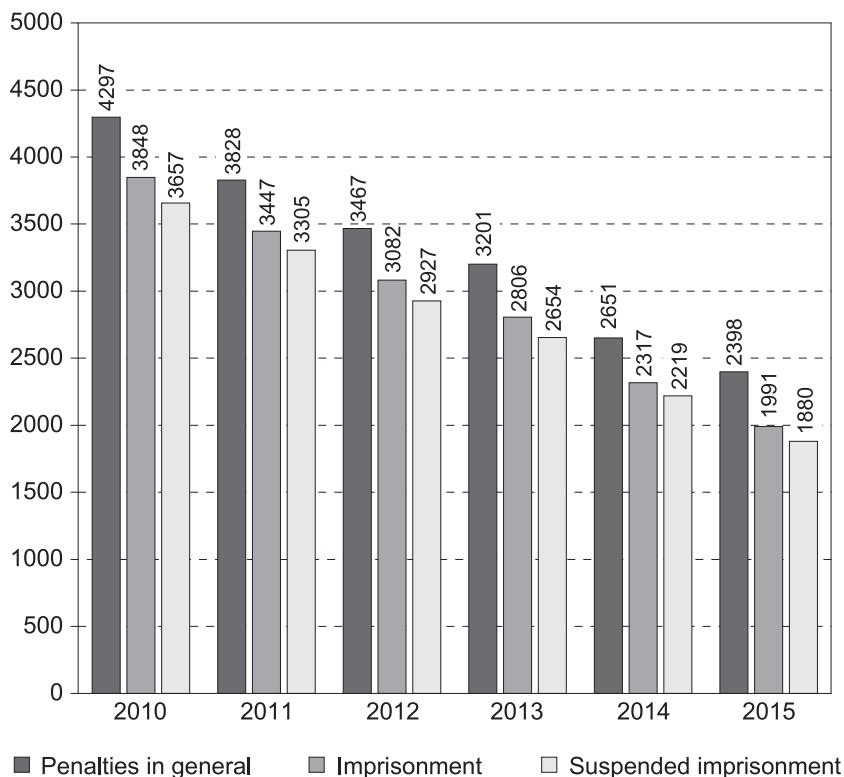


Graph 1. Dynamics of the sentences of adults in the years 2010–2015 for crimes against economic circulation against sentences in general

The number of final and binding sentences for the crimes against economic circulation is systematically falling. Since 2010 the fall has been by over 55%. It represents a general trend of the sentence dynamics in general.

The penalty of imprisonment dominates in the structure of penalties pronounced for crimes against economic circulation. In 2011 this penalty was pronounced in over 90% of sentences for crimes against economic circulation. In the majority of cases the penalty of imprisonment for crimes against economic circulation is applied with the use of a probation means — conditional suspension of penalty. In the years 2010–2015 conditional suspension of execution of penalty of imprisonment was applied

in about 95% cases of imprisonment. A detailed structure of the penalties pronounced for crimes against economic circulation of adults in the years 2010–2015 is presented in the graph 2 below⁴².

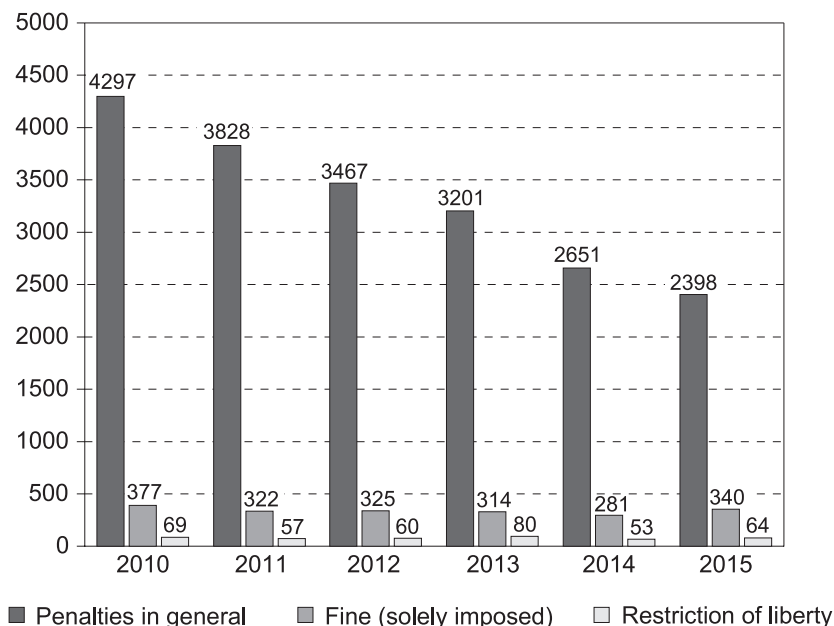


Graph 2. The structure of penalties pronounced for crimes against economic circulations of adults in the years 2010–2015

In the selected period non-custodial penalties such as fine or a penalty of freedom limitation were applied very rarely. The solely- imposed fine penalty oscillated between 10% to over 14% in 2015. And the penalty of liberty limitation oscillated between 2% to over 2,65% in 2015. The detailed analysis of non-custodial penalties pronounced for crimes

⁴² The data concerning 2015 require completing as in one case the so called mixed sanction was applied which was not included in the graph.

against economic circulation of adults in the years 2010–2015 against sentences for these crimes is presented in the graph 3 below.



Graph 3. The structure of non-custodial penalties pronounced for crimes against economic circulation against sentences for these crimes in the years 2010–2015

Solely imposed penal measures pronounced for crimes against economic circulation are almost never applied. In the analysed period they were applied three times in 2010 (twice monetary performance and once monetary performance and forfeiture), twice in 2011, once in 2013 and twice 2015 (monetary performance).

As can be seen above imprisonment was the most often applied penalty for adult perpetrators in the years 2010–2015. And in 95% of the cases it was conditionally suspended. Such a penalty certainly could not meet expectation related to its efficiency in fighting economic pathologies.

VI. Hope for changes

The Act of 20 February 2015 on the change of the Act — Criminal Code and some other acts created hope for change in the approach to punishing the perpetrators of crimes against economic circulation⁴³. Its passing was the largest and substantively the most significant amendment to the Criminal Code regulations since its entry to force⁴⁴. Creation of a new system of penalization resulting, in the opinion of initiators of the project, from the faulty structure of the penalties pronounced by the courts in relation to the level and characteristics of crimes, was the core of the February amendment⁴⁵. In consequence, the efficient application of non-custodial penalties such as restriction of liberty or a fine, was stressed.

The new introduced legal regulations will allow to pronounce a penalty of fine or a penalty of restriction of liberty instead of a penalty of imprisonment not exceeding 8 years which is foreseen in the sanction for this type of crime (Art. 37a CC). The mixed sanction allowing in the case of the offence threatened with imprisonment regardless of the lowest statutory penalty for a selected act, to pronounce simultaneously imprisonment not exceeding 3 or 6 months (if the highest statutory penalty is at least 10 years) and the penalty of restriction of liberty for up to 2 years is also a novelty (Art. 37b CC). Following the above-mentioned changes, the possibility of application of a probation means in the form of conditional suspension of the penalty execution was also limited. After the indicated changes to the Criminal Code come to life, its application will be only possible in relation to the penalty of imprisonment pronounced in the range not exceeding 1 year in the case when the perpetrator during committing the crime was not sentenced to imprisonment and it is sufficient to achieve the goals of the punishment especially his/her coming back to crime (Art. 69 § 1 CC).

⁴³ Journal of Laws, point 396.

⁴⁴ See justification to the governmental project of the Act — Criminal Code and some other acts, Parliamentary document No. 2393, <http://www.sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=2393> (access: 30.01.2017).

⁴⁵ Ibid.

New legal regulations mentioned above will be also applied to crimes against economic circulation. Their efficiency can be proved by analysing the court statistics after the discussed amendment to the Criminal Code comes to life.

Summary

The study examines the present model of penalty sanctions for crimes against economic circulation defined in chapter XXXVI of the Criminal Code. It also presents institutions allowing to toughen or mitigate the repression in that field. In the given normative context, the judicial system in cases of crimes against economic circulation (Chapter XXXVI Criminal Code) in the years 2010–2015 was analyzed.

Keywords: penal economic law, economic crimes, crimes against economic circulation, statistics of crimes against economic circulation.