ABSTRACT

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"Detriment and its compensation in criminal law"

The subject of the dissertation is the issue of compensation in Polish criminal law, with particular emphasis on the changes that occurred as a result of the reform of criminal law in 2015. In order to cover the subject as fully as possible, the work has been divided into six chapters, which adequately present.

Chapter I presents introductory issues, where the genesis of the compensatory function of criminal law is presented and the concept of "harm", which does not have a legal definition, is discussed. The findings in this respect, therefore, implied the problem of the concept of "harm" in the area of criminal law; thus, an attempt was made to define the concept of "harm" at the level of criminal law.

In turn, Chapter II presents the criminal law regulations related to the compensation of damage, resulting, in particula, from the normative acts in force in Poland during the partitions, respectively, under the Penal Code of 1932 and the Penal Code of 1969. Comparative historical legal solutions with the currently binding provisions of the Penal Code. The process of the evolution of specific institutions, not only those relating to measures of a restitution nature, has been highlighted in particular.

Chapter III is an attempt to comprehensively present the problem of compensation before the entry into force of the 2015 criminal law reform. The focus was on presenting specific criminal measures, in particular on the obligation to redress the damage and an alternative to it. The subject of the findings was the achievements of the doctrine, both those derived from the period when the given regulations were in force, as well as the historical one, i.e. resulting from the literature created under the provisions of the Penal Code of 1969.

Chapter IV is an analysis of *de lege lata* criminal law. This is an extremely important topic in the light of the fact that compensatory measures have only been used in Polish criminal law since 1 July 2015. It was, therefore, important to compare the relevant measures with the solutions currently in force. The issue in question still requires a broader interest from the doctrine, but it is worth noting that the judicial decisions provide an excellent basis for its examination. This chapter, similarly to chapter III, focuses primarily on the obligation to redress the damage and the indemnity, however – as compensatory measures, not as punitive measures.

Compensation for damage in procedural terms is presented in Chapter V. The subject of the analysis is the no longer binding institution of an adhesive claim. It presents the genesis of the claimant's institution in criminal proceedings and its functioning, in particular in the period immediately before the annulment. The provisions of the Code of Criminal Procedure concerning compensation ordered ex officio were also presented.

Chapter VI presents mainly research – its scope, methods, techniques, tools, but also conclusions related to the topic of this work. Based on the conducted research, the changes introduced in the area of the institution of interest and adhesion claim were analyzed and comparing with the assumptions contained in the justification to the draft act of February 20, 2015 amending the act - Penal Code and some other acts (Journal 396). At the same time, the obtained results of the research made it possible to formulate certain practical theses concerning the tendencies prevailing in the area of a given court appeal, both within the jurisprudence and among other legal professions dealing with criminal law.

Moreover, the conducted research proves that at the turn of the introduced changes, i.e. in the period of 2-3 years before their entry into force, the adhesive claim was used only marginally. In the vast majority of analyzed cases, there were not many criminal cases within which a civil action was brought. On the other hand, the jurisprudence practice in the field of excess was different. In the subsequent years covered by the research, the number of cases in which the excesses were adjudicated increased systematically or remained at a similar level. It follows that the courts and the aggrieved parties were more willing to use the measures under Art. 46, and basically as a result of Art. 46 § 2 of the CC, which was an alternative to the obligation to redress the damage or compensate for the harm suffered.

The implemented reform certainly largely resolved the problem related to the understanding of the concept of harm in the context of criminal law. So far, despite earlier significant changes, there were positions in the doctrine that in certain cases the term in question differed from the meaning in the civil law. Depending on the institution used, damage was understood in the same way as in civil law, i.e. it covered both property (actual and lost benefits) and non-pecuniary damage (harm). Of course, currently some provisions of the Civil Code directly use harm, which should be understood as non-pecuniary damage. However, one can also find provisions where the legislator has not introduced such a clear division and uses only the collective term "damage". As a result of the introduced changes, it should be assumed that in such cases, in principle, it is also about non-pecuniary damage.

Regardless of the above, despite the changes introduced on 1 July 2015, the regulations on redressing damage under criminal law pose practical problems. First of all, they result from interim provisions, i.e. appropriate verification which provisions apply to prohibited acts committed before the amendment enters into force. There are also problems with the application of civil law provisions, despite the fact that the extension of their application was to facilitate the investigation of compensation for harm or compensation for harm resulting from a crime.

As a result of the considerations, the author came to the basic conclusion that the changes that took place on July 1, 2015 in the area of compensation under criminal law should be assessed positively, although they are not devoid of some shortcomings. There is still a problem with the application of civil law provisions to adjudication of compensatory measures, in particular to the obligation under Art. 46 § 1 of the CC The work in question also proves that criminal law regulations related to compensation for damage have been constantly and will probably be subject to evolution. As it turns out, all changes aimed primarily at improving the position of the victim, which are in line with the assumptions of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985 and other acts of international importance. Nevertheless, it is also important to define a clear limit of the permissible rights of the aggrieved party, which can be guaranteed by the criminal law so as not to overly interfere with the spheres that are specific to other branches of law.