

Summary of the doctoral dissertation

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Dissertation thesis: "The crime of abuse of trust on the grounds of the Italian crime *infedeltà patrimoniale*"

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The subject of the doctoral thesis is devoted to criminal responsibility for the crime referred to in the literature as "abuse of trust", "criminal mismanagement" or "manager's mismanagement". As the title of the work indicates, criminal regulations which define the crime of abuse of trust in the Polish criminal law and the crime of *infedeltà patrimoniale* in the Italian legal system have been adopted as the subject of research and scientific deliberations.

The main purpose of the dissertation is to conduct a dogmatic analysis of article 296 k.k. (Polish Penal Code). The type of the crime which is regulated in article 296 k.k., provides a wide range of interpretation issues, but the greatest controversy seems to be raised by the subject of elementary meaning, i.e. how to define the field of criminality in that case, which is narrowly understood by some representatives of the criminal law doctrine, and by others much more broadly. The analysis of the indications of the Italian crime *infedeltà patrimoniale* is not the aim in itself, but serves as a measure leading to a concrete, more practical purpose, which is to seek solutions for the issues and doubts which are described in the dissertation.

The doctoral dissertation is divided into four chapters and numerous subsections. The work begins with a chapter devoted to the historical introduction, in which the analysis of the provisions that preceded article 296 k.k. is performed with the accordance to the Penal Code of 1932¹, the Penal Code of 1969² and the Act on the Protection of Business Activity of 1994³. The further part of the work contains the genesis of regulation of article 296 § 1a k.k., which has been introduced into the Penal Code of 1997 by the Act of June 9th 2011 amending the Act - Penal Code and certain other acts⁴. Therein, the accompanying amendments, doctrinal statements and selected opinions in the discussion on amending the provision of article 585 k.s.h. (Polish Commercial Code) have been presented, and also this article itself has been analyzed in detail. For the full presentation of the historical background of the crime listed in article 296 § 1a k.k. the analysis of article 300 and article 482 of the former

¹Decree of the President of Poland of July 11th 1932 – Penal Code (Dz.U. 1932, no. 60, sec. 571 with further amendments).

²Act of April 19th 1969 – Penal Code (Dz.U. 1969, no.13, sec. 94 with further amendments)

³Act of October 12th 1994 on Protection of Business Activity and amendments of Penal Code provisions (Dz.U. 1994, no. 126, sec. 615 with further amendments.).

⁴Dz. U. 2011, no. 133, sec. 767.

Commercial Code⁵ has been performed, where the crimes of acting to the detriment of the company in the form of limited liability and in the form of joint-stock company have been described. This part of the work presents the views of the past doctrine and the controversies and discrepancies existing in the jurisprudence as well as in the literature of that time.

Chapter I is ended by the genesis of the Italian crime *infedeltà patrimoniale*, and the *ratio legis* of the introduction to the Italian Civil Code – on the basis of Decree-Law n° 61 of April 11th 2002 – article 2634, which should be the implementation of the postulates of the Italian doctrine, already raised in the 1930s⁶. The decade-long legislative path of the Italian regulation has been presented. The drafts of legal acts were also discussed, including those which were not implemented in article 2634 i.c.c., but it was impossible to deny their the quality of high value due to the considerations made thereon.

Chapter II was devoted to reflections on the economic nature of the Polish crime of abuse of trust. In Italian criminal law, due to the special way of typicality and the location of the crime *infedeltà patrimoniale* in the Italian Civil Code, and more specifically in the Title devoted to criminal law concerning commercial companies, consortiums and other private entities, its character as an economic crime is not undermined neither by the Italian doctrine, nor in the jurisdiction of local courts. In the Polish criminal law, the area of criminality, and thus the scope of protection - in comparison with the criminal liability provided in the Italian legal system - have been covered much more widely. In the work, an attempt was made to demonstrate that the protection of criminal law which arises from article 296 k.k. covers the interests of all participants in business transactions, both professional and non-professional ones, in accordance with the assumption adopted in this dissertation, that people who do not run a business cannot be deprived of criminal law, protected by the provision of article 296 k.k. However, the presented position does not deprive the economic character of the crime of abuse of trust, therefore the individual subchapters are devoted to the conceptual grid, which consists of the following expressions: "economic turnover", "economic crime", "economic criminal law" and "economic criminality".

The central part of the dissertation is constituted by Chapter III, which has been devoted to the analysis of statutory criteria of types of crimes specified in article 296 k.k., on the grounds of solutions adopted by the Italian legislator in article 2634 i.c.c.. The subject of protection has been analyzed in detail on the grounds of Polish and Italian regulations, with the accordance to the doubts and controversies appearing in the doctrine and jurisprudence of both systems, and above all to the differences between those systems.

A further analysis has been dedicated towards the group of subjects of the described crimes, which were comprehended as individual crimes, confronting with each other the descriptions of those subjects, adopted in particular legal systems. Next, the criteria

⁵Decree of the President of Poland of June 27th 1934 r. – Commercial Code (Dz. U. 1934, no. 57, sec.. 502 with further amendments).

⁶Codice civile, Regio Decreto 16 marzo 1942, n. 262 (Gazzetta Ufficiale Repubblica Italiana 4 aprile 1942, n. 79 with further amendments). Cf. article 2634.

of the subject and subjective side of the types of prohibited acts specified in article 296 k.k. were discussed with an indication of selected views expressed on the grounds of Italian regulations. The performed analysis covered the abuse of trust in the Polish legal order referring to entities conducting economic activity, as well as to non-professional entities harmed by the perpetrator of an act that has the characteristics of abuse of trust.

The doctoral work ends with Chapter IV, which is devoted to the legal reaction to crimes of abuse of trust and *infedeltà patrimoniale*. An attempt was made to present a criminal analysis in a way that would allow highlighting certain similarities and differences between the discussed regulations, from the perspective of solutions adopted by national legislators, in particular as regards the statutory penalty threat. In the further part of the work, the prosecution mode and problems occurring on the basis of both systems were discussed, including the entitlement to submit a prosecution application. The last part of Chapter IV is devoted to non-criminal clauses, with particular attention to the solution provided by the Italian law, which forms the basis for excluding the perpetrator's criminal liability in the event of material damage to a company belonging to a capital group if it was compensated by an appropriate benefit within the group⁷. Despite the fact that the Polish regulation lacks the equivalent of the Italian non-criminal clause listed in article 2634 section. 3 i.c.c., it turns out that the problem of criminal-law evaluation of the situation in which the perpetrator is acting to the detriment of the company, which is also part of the holding, has also been noticed in our doctrine.

In spite of presenting numerous *de lege ferenda* postulates, no separate chapter on this title has been provided for in the work. The formulation of such postulates was a logical consequence of the arguments made, which determined their placement in specific areas of the dissertation. However, the most important demands for the legislator have been once more repeated among the final theses ending the dissertation. In this study, I also tried to underline these problems, which I have come across during my legal practice and tried to solve them. Some of them have become the subject of an in-depth analysis, others have only been pointed out as they require more in-depth studies.

Keywords: "crime of abuse of trust", "criminal mismanagement", "manager's mismanagement", "crime of injustice mismanagement", "*infedeltà patrimoniale*".

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⁷ Cf. article 2634 sec. 3 i.c.c.: „In ogni caso non è ingiusto il profitto della società collegata o del gruppo, se compensato da vantaggi, conseguiti o fondatamente prevedibili, derivanti dal collegamento o dall'appartenenza al gruppo”. (Gazzetta Ufficiale del 4 aprile 1942, n. 79 with further amendments)