

Summary

The subject of this dissertation is the forfeiture of a proceeds of crime in the Polish Penal Code. This institution is governed by article 45 of the Penal Code. The forfeiture of a proceeds of crime is a penal measure whose purpose is to deprive criminals of the profits they have obtained from committing a crime. The application of this measure is primarily aimed at counteracting organized and economic crime.

This institution is controversial. Doubts are raised in particular by the presumption under Art. 45 § 2 of the Penal Code, the so-called extended forfeiture, according to which, in certain situations, the property obtained by the perpetrator within 5 years before committing the crime may be forfeited, unless he presents the evidence of legally acquired property. Some representatives of the doctrine claim that it is unconstitutional because the standard of the criminal trial is that the prosecutor bears the burden of proof. However, the Polish lawmaker has indicated that the amendment to the provision was related to the implementation of EU directives and was necessary to effectively combat organized crime.

The first chapter presents the historical background of the forfeiture of a proceeds of crime. For this purpose, the regulation of forfeiture under the Penal Code of 1932 and 1969 was developed. The institution of confiscation of property, which was in force in the times of the Polish People's Republic, was also analyzed. This section also presents the forfeiture of items as the primary and historically first form of this measure. The main purpose of this chapter was to present the place of forfeiture in Polish penal codifications.

The second chapter is devoted to the analysis of international issues related to the forfeiture, including selected declarations of United Nations and directives of European Union. The analyzed penal measure is in conflict with the property right, protected under the Constitution of the Republic of Poland and acts of international and the European Union law. This part also deals with the relationship between forfeiture and the principle of proportionality of penal measures and the principle of the presumption of innocence.

The next part concerns the concept of proceeds of crime and its equivalent. Issues related to the forfeiture of financial benefits have been also discussed.

Chapter four is devoted to the presumptions criminal origin of property, i.e. extended forfeiture. This section examines the recent legislative amendments in this area and controversial issues related to the application of this measure.

The last chapter deals with the specific grounds for forfeiture in the Penal Code, including forfeiture without conviction, forfeiture of enterprise and forfeiture in the offense of money laundering.