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Revamping Anti-Organised Crime Approaches in the Criminal Law System in Poland – A Presentation of Selected Institutions

- **ABSTRACT:** *New types and shades of crime emerging today require that state authorities develop new defence mechanisms. The sophistication and ingenuity of criminals must be countered with an appropriate response of the state responsible for maintaining public order and safety. Therefore, states must build new institutions as effective tools for combating organised crimes. In Poland, the adequacy of the current institutions employed in the fight against organised crime is now being widely discussed. This study sets out to present the institutions of the informant witness, anonymous witness, and extended confiscation as examples of modern approaches for combating organised crime in Poland.*
- **KEYWORDS:** combating organised crime in Poland, informant witness, anonymous witness, extended confiscation.

1. Introductory remarks

Organised crime is a specific type of criminal activity, and its reach is often global. Its operation is highly sophisticated, both in terms of structure and methods. It usually takes the form of activity of certain organised groups of people linked by close personal relationships, based on established enterprise objectives, methodology, and hierarchy. Operating together within such an organisation means being guided by absolute mutual compatibility and reliance, often with strict isolation from other groups. The key point is that members of this type of group form a closed whole and use increasingly advanced methods of operation. Thus, situations emerge where, on the one hand, a serious and advanced crime group is organised for criminal enterprise, and on the

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other hand, the state is obliged to either prevent the formation of such a group or, once one has formed, try to eliminate it. State authorities have an advantage as it is the state that has the exclusive power to initiate such legal regulations that would allow for combating organised crime effectively. Nonetheless, it is obviously very difficult for state authorities to be one step ahead of criminals. A certain reconnaissance and identification of the directions of activity and objectives that organised crime groups are formed for is therefore necessary, followed by a rapid and intensive response of the state in the form of effective legal regulations introduced into the legal system to combat this very complex criminal activity.

Recently, there has been a debate in Poland on the effectiveness of the existing institutions employed in the fight against organised crime. Currently, the most known and effective legal institutions enabling effective prosecution and combating organised crime include the institutions of the informant witness, anonymous witness, and extended confiscation.

This study sets out to present these institutions as examples of systemic revamp efforts in relation to the existing approaches to combat organised crime in Poland.

2. The concept of organised crime

In principle, there is no legal definition of organised crime in the Polish legal system. For the purposes of legal practice in Poland, attempts to provide this type of definition have been made based on both the jurisprudence of Polish courts and the doctrine of criminal law.

A dictionary definition most often assumes that an organised crime is a range of criminal activities that operate in many forms on an international and national scale, which cannot be strictly limited to the facts of a single offence.²

It is emphasised that the lack of a complete and uniform definition of organised crime is due to several independent factors. That the definition is missing, for instance, is due to 'the fact that we now live in an era of enormous and rapid social and economic changes. These are mainly spurred by the technological revolution and globalization processes. Consequently, criminal organizations constantly upgrade and flexibly adapt their structures to the transformations of the environment in which they operate. This brings about the diversity and transient nature of the forms of organized crime in the world'.³

Indeed, the nature, variability, and moving dynamics in the development of criminal activity make it impossible to define organised crime in a clear and restrictive manner.⁴ What adds to this picture is the global scale of impact; in Poland, it is

2 Dictionary definition of 'organized crime'. In: Encyklopedia PWN (03/10/2020) Online: <https://encyklopedia.pwn.pl/haslo/przestepczosc-zorganizowana;3963636.html>

3 Kurowski, 2006, p. 26.

4 Pływaczewski, 2011, p. 23.

noted without doubt that ‘organized crime is not a problem only in a selected country or part of the world. It is an international-scale problem, against which both national organizations and international organizations established solely for this purpose have been struggling for a long time’.⁵

However, it is not that the concept of organised crime remains undescribed. There have been several attempts to define this concept. In the Polish science of criminal law, there are several distinctive features of organised crime, such as activities carried out for profit accumulation or out of lust for power, activity of indefinite or long-term duration, division of roles, tasks or powers between group members, special hierarchy, discipline and internal control over members of a criminal group, use of violence or other means of intimidation, committing crimes of significant gravity, international-scale operation, money laundering, or even influencing government policy and law enforcement agencies.⁶

The above definition considerations related to organised crime are mostly outcomes of the criminal law doctrine. Nevertheless, the term can also be traced in the provisions of the Polish Penal Code currently in force. It contains a regulation in which it uses the term organised crime directly; however, it does not define it, thus, leaving a considerable margin for definition deliberation in the doctrine and jurisprudence. To be precise, it is the provision of Article 258 of the Penal Code, which specifies the offence of participation in an organised crime group or association. According to Article 258 of the Penal Code, any person who participates in an organised group or association with the aim of committing a crime or tax offence shall be liable to the penalty of imprisonment for a term of between 3 months and 5 years. If the group or association referred to in § 1 are armed or operate with the aim of committing a terrorist offence, the perpetrator shall be liable to the penalty of imprisonment for a term of between 6 months and 8 years. Any person who sets up a group or association specified in § 1, including those of an armed character, or heads such a group or association shall be liable to the penalty of imprisonment for a term of between 1 year and 10 years. Further, any person who sets up a group or association with the aim of committing a terrorist offence or heads such a group or association shall be liable to the penalty of imprisonment for a term of not less than 3 years.

As is clear from the above, Article 258 of the Penal Code provides for the criminalisation of running organised crime structures in various forms, that is, an organised crime group or association. From a historical perspective, the provision indicated above distinguishes two varieties of such structures: a crime association known to Polish criminal law from the 1932 Penal Code and an organised crime group, first introduced into the 1969 Penal Code in 1995.⁷ The difference between a crime association and a crime group is highlighted. It is assumed that an organised group is a set of at least three persons, which creates its structure to commit offences, while a crime association

5 Karpel, 2017, p. 20.

6 Pływaczewski, 1992, p. 25; Rau, 2002, pp. 44–45.

7 Michalska – Warias, 2013, p. 100.

is a group of numerous mutually linked persons with the aim of committing offences. An association further differs from an organised group in the manner of admission to the group.⁸

Meanwhile, the jurisprudence of Polish courts has clearly adopted a certain fair uniformity in deciding on an organised crime. *Inter alia*, it was indisputably assumed in Poland that 'a crime group must consist of at least three persons and should be organised in a certain way, while also having an established objective of repeatedly committing offences'.⁹ It is emphasised in the jurisprudence that 'the concept of "being organized" encompasses the conditions of a basic internal organizational structure, even if with a low level of organization, including also durability, existing organizational ties under conspiracy, crime planning, endorsement of common objectives, perpetuity in meeting the group's needs, and coordinated *modus operandi*. Heading a group in a managerial role consists of directing the activities, giving orders and coordinating the activities of the group's members'.¹⁰

Therefore, Polish jurisprudence has adopted an approach in which an organised crime group must have the following attributes. First, an organised group must consist of a set of at least three persons. Second, there is an organisational component that is manifested in the allocation of tasks (roles) and coordination of activities of the members. It is not necessary that all members of an organised crime group should conspire on how to commit an offence or further be linked by bonds of mutual acquaintance. Third, there is a component of directing and discipline. An organised group must have a head, who does not have to be a permanent head or the one who originally organised the group. Fourth, the level of group organisation remains unspecified; a low level of organisation is therefore sufficient. Fifth, the group must have been organised before the commission of its planned criminal offences. The organisation components must be developed in advance and cannot be created *ad hoc* during the commission of an offence. Simultaneously, this factor distinguishes an organised crime group from complicity or co-perpetration, which, as an act accessory to the principal, may arise only during the commission of wrongdoing (accessory after the fact). Sixth, two components jointly are constitutive to an organised crime group, namely conspiracy and organisation. Therefore, conspiracy is a basic component of an organised group, but it does not exhaust its essence. Seventh, members of an organised group do not have to know each other personally or conspire together. It is sufficient for each group member to be aware of their activity within its organisational structure; Eight, the component of durability is required, consisting not only in the fact that the commission of wrongdoings is continuous but also that steady sources of income over a period of

8 Skala, 2004, p. 53.

9 Judgement of the Supreme Court of 20 December 2006, case ref. IV KK 300/06, OSNwSK 2006, no. 1, item 2551; Judgement of the Court of Appeal in Krakow of 19 December 2003, case ref. II AKa 257/03; Judgement of the Court of Appeal in Katowice of 16 July 2009, case ref. II AKa 150/09, KZS 2009, no. 9, item 67.

10 Judgement of the Court of Appeal in Wroclaw of 11 December 2019, case ref. II AKa 271/19, LEX No. 2772931

time are secured. Related to durability is the component of ‘cohesiveness’, meaning readiness to operate on a continuous basis’.¹¹

Elsewhere, it is emphasised that ‘an organised crime group may only be a set of perpetrators that organised themselves to commit criminal offences. The organisation of the group is understood to mean that it operates by established rules and has an internal structure: a vertical one, with a head directing its activities, or a horizontal one, usually with a permanent set of members in charge of coordinating the activities by established rules, with individual members performing specific functions within it. Participation in an organised crime group is an intentional offence,; therefore, the awareness of the existence of such a group is a prerequisite for being charged with membership in the same’.¹² However, the legislator has not specified the minimum period required to fulfil the qualification of participation in an organised group. Such a group may be formed with a view to committing a single criminal offence only.¹³

3. Anonymous witness

The institution of an anonymous witness is the first instrument of combating organised crime to be analysed in this study. With all Polish codifications of criminal procedures considered, it should be noted that only the Code of Criminal Procedure of 1997 introduced the institution of an anonymous witness by way of the Act of 6 July 1995 amending the Code of Criminal Procedure (Journal of Laws No. 89, item 444), which entered into force on 4 November 1995.

The justification for the introduction of the anonymous witness referred to the needs of an active criminal policy dedicated to combating organised crime.¹⁴ It was substantiated enough for the legislator to introduce that institution earlier, ahead of the enactment of the 1997 Code of Criminal Procedure currently in force in Poland. The intensified activity of criminal groups was particularly prominent in Poland’s political system transformation.¹⁵ The uptrend in the numbers of criminal offences committed was manifested in the phenomenon of intimidation and even the elimination of witnesses to wrongdoing.

The growing criminality levels in social life led to a justified response from society, demanding that state authorities put in place a more radical penal policy against perpetrators.

Therefore, the postulate was raised to provide better protection for witnesses in criminal procedures.

11 Judgement of the Court of Appeal in Wrocław of 14 June 2017, case ref. II AKa 52/17.

12 Judgement of the Court of Appeal in Kraków of 20 February 2019, case ref. II AKa 190/18.

13 Judgement of the Court of Appeal in Wrocław of 22 November 2017, case ref. II AKa 341/17.

14 Wielec, 2014, pp. 165 – 174.

15 The number of crimes in 1990, compared to the previous year, increased by 61%, that is, from 547,589 to 883,340 [in:] Pływaczewski, 1996, pp. 356 – 357.

In general, a witness in the Polish criminal procedure is one of the most important sources of evidence for law enforcement agencies. The testimony of a witness is an invaluable help in the fact-finding process and plays a fundamental role in the pursuit of the truth, in line with the objective of the adjudicative process, that is, to know and establish substantive truth.¹⁶ The introduction of the institution of an anonymous witness excited much controversy in Poland, as there had been no such institution in the Polish penal and procedural system before, hence understandable uncertainties. Opinions were circulated, which denied the usefulness of the institution of an *incognito* witness, pointing to the excessive cost of its application and violation of the cardinal rules of criminal procedures. Supporters of the anonymous witness treated it as the best available countermeasure to the powerlessness of law enforcement agencies, which were unprepared to carry out their statutory investigation and prosecution tasks in the new legal reality after the political system transformation in Poland.

Despite these reservations, the institution of an anonymous witness was introduced into the criminal law system. Currently, the basic legal regulations for the anonymous witness in Polish criminal procedure are the provisions of Article 184 of the Code of Criminal Procedure (hereinafter ‘CCP’) and Article 191 § 3 CCP.

The provision of Article 184 of the CCP sets out the foundations for the use of the anonymous witness. The main premise is a justified concern of danger to the life, health, liberty, or property of a substantial value of a witness or their next of kin. In such a case, the competent court, and in the preparatory proceedings, the prosecutor, may issue an order to keep secret the circumstances enabling the disclosure of the witness’s identity, including personal data, if these are irrelevant to the resolution of the case. Proceedings in this respect take place without the appearance of the parties and are covered by secrecy as classified information with the ‘secret’ or ‘top secret’ clause. Where that order is issued, the circumstances related to the identification of an anonymous witness remain only for the attention of the court and the prosecutor, and where necessary, also for the police officer in charge of the investigation. The witness examination report may be made available to the accused or the defence counsel only in a manner that prevents the disclosure of these circumstances. An anonymous witness is interviewed by the public prosecutor as well as the court, which may order a judge designated from its panel to perform this task in a place and manner that prevents the disclosure of personal identification circumstances of the anonymous witness. The prosecutor, the accused, and their defence counsel have the right to participate in the questioning of the witness by the court or a designated judge. If the witness is interviewed with the use of technical devices that enable this activity to be performed remotely, the report of examination attended by technical specialists should indicate their forenames, surnames, area of expertise, and the type of activity performed. However, if it turns out that at the time when the anonymisation order was issued, there was no justified concern that the life, health, liberty, or property of a substantial

¹⁶ Murzynowski, 1976, p. 131.

value of the witness or their next of kin would be in danger, or that the witness had deliberately given false testimony or their identity had been disclosed, the prosecutor in the preparatory proceedings, or the court in court proceedings, may, at the request of the prosecutor, revoke this order. The witness examination report is then disclosed.

However, the anonymisation process is not obligatory, which means that the relevant authority in the trial should thoroughly assess the grounds for granting the status of an anonymous witness and refuse to grant the same if they are not confirmed.¹⁷

The regulation of the Code of Criminal Procedure is complemented by the Regulation of the Minister of Justice of 18 June 2003 on the proceedings for the confidentiality of the circumstances enabling the disclosure of the identity of a witness and the procedure for handling examination reports of that witness.¹⁸

This clarifies the technical issues related to the anonymisation of anonymous witness data. The Regulation specifies the manner and conditions for submitting an application for an order to keep secret the circumstances enabling the disclosure of the witness's identity, including personal data of the witness, examination of the witness for whom such an order has been issued, and the preparation, keeping, and disclosure of examination reports of that witness as well as the permissible manner of referring to their testimony in judicial decisions and pleadings.

There is no doubt that evidence from the testimony of an anonymous witness, as evidence of a specific nature, seriously restricts the principle of immediacy and the right to defence.¹⁹ Any further restriction of these principles than that provided for in procedural law constitutes a flagrant breach of procedural law, which usually has a significant impact on the content of the judicial decision.²⁰ There is no dispute that the introduction of anonymity of the witness and the associated procedural limitations, by their nature, negatively affect the procedural guarantees that are overriding in criminal proceedings, as vested in the participants in the proceedings (e.g. suspects, accused).²¹ Nevertheless, these conflicts of values should be considered justified and natural from the point of view of the specific nature of criminal proceedings.²²

It is also worth noting that under the Polish Code of Criminal Procedure, there is an additional institution that is commonly known as 'the anonymous witness *sensu largo*'.²³ It is provided for in Article 191 of the CCP, according to which if there is a justified concern that violence or an unlawful threat would be used against the witness or their next of kin in connection with their activities, the witness may reserve the data concerning the place of residence for the sole attention of the prosecutor or the court. In that case, pleadings are delivered to the establishment where the witness is employed or to their other indicated address. The point is primarily about keeping

17 Łobacz, 2010, p. 294

18 Journal of Laws 2003.108.1024

19 Płachta, 1998, p. 110; Wiliński, 2003, p. 27.

20 Judgement of the Supreme Court of 23 September 2004, case ref. II KK 132/04

21 Gronowska, 1999), p. 255.

22 Wielec, 2017, p. 125.

23 Grzegorzczak and Tylman, 1997, p. 458

secret the data concerning the witness's place of residence, which remain solely accessible to the prosecutor or the court.

As for the testimony of an anonymous witness, the Polish judiciary emphasises that in view of the limited declaratory reliability and credibility of the accounts given by an anonymous witness, their testimony should be: a) limited to the absolute minimum necessary, that is, to proceedings in serious crimes and only to cases where there is a justified concern that the legal rights of the witness, which deserve protection no less than those protected by the proceedings, could be in danger; b) given to the court (a judge) under conditions enabling the accused (defence counsel) to control them through appropriate cross-examination questions, directly asked, though with the use of devices that prevent the identification of the witness (curtains, image, voice distorting devices, etc.), or through the court, including in writing; c) available to the parties, except for the data identifying the witness and the evidence that would allow the witness to be exposed; such data are omitted in open copies of the witness statements, with omissions duly marked; any further classification is not permitted; d) backed by other evidence so that the testimony is not the only evidence justifying the conviction; and e) especially carefully assessed in the context of the pre-sentencing evidence analysis.²⁴

This is based on the jurisprudence of the Polish Supreme Court. It is confirmed by the judgement of the Supreme Court of 9 November 1999, under which the evidence from the testimony of an anonymous witness cannot be the sole (exclusive) or the dominant evidence of the perpetration of a specific person, which means that among the other evidence obtained in the case, there must also be some that directly proves the perpetration of that person.²⁵

4. Informant witness

The purpose of the appointment as well as the structure and procedure for granting the status of an informant witness to a person holding essential information relevant to criminal proceedings are completely different.²⁶

The difference between an anonymous witness and an informant witness lies in both subjective and objective components.²⁷

An anonymous witness is an ordinary witness with an unusual form, who holds interesting information of significance for the criminal proceedings that they should disclose to the relevant authority in the trial but does not do so for fear of the consequences of charging specific persons through such information.

²⁴ Judgement of the Court of Appeal in Krakow of 14 January 1999, case ref. II AKa 210/9, KZS 1999/2/28.

²⁵ See judgement of the Supreme Court of 9 November 1999, case ref. II KKN 295/98, OSNKW 2000/1-2/12.

²⁶ Ocieczek, 2016, p. 20 ff.

²⁷ Karsznicki, 2013, p. 25.

On the other hand, an informant witness is an accomplice in wrongdoing, who, after considering their situation, decides to cooperate with law enforcement agencies. It is a peculiar contract between the state and the criminal under which an exchange transaction is concluded in the form of the state's commitment to protect such an accomplice and refrain from sanctioning them for their criminal history. In exchange, they provide state authorities with relevant information about the criminal acts they have knowledge about.

The institution of an informant witness is not regulated by the provisions of the Polish Code of Criminal Procedure. In the context of the notorious postulate for combating organised crime in the 1990s, the legislator in Poland, in a sense, copied this institution from other legal systems and introduced this institution under the Act on the informant witness of 25 June 1997.²⁸ Initially, it was a fixed-term act, that is, with a specified end date of its application, but subsequently, it was transformed into a permanent act.²⁹

The informant witness as an institution comes from English systems. The roots of the informant witness (*King's evidence*, *Queen's evidence*) date back to the beginning of the medieval English trial.³⁰

The essence of this type of special witness is that the state grants the perpetrator of an offence immunity or a reduction of the penalty in exchange for disclosing the identity of co-perpetrators of further crimes committed together in an organised group or providing evidence against co-perpetrators for the commission of offences they have been charged with.

The main assumption behind the institution of this type of witness is the fight against organised crime.³¹ A person obtaining the status of an informant witness is (as opposed to an anonymous witness) an accomplice in criminal offences characteristic of organised crime. It is a party that is often a witness to a criminal act and simultaneously an active participant in it.

The provisions of the Act on the informant witness apply in cases involving a criminal or fiscal offence committed in an organised group or association with the aim of committing a criminal or fiscal offence.³²

When defining the informant witness, it was assumed that it is a suspect who has been admitted to testify as such a witness. The Act on the informant witness also provides for the conditions for acquiring the status of an informant witness. The Act stipulates that evidence from an informant witness may be admitted if the following conditions have been met jointly: 1) until the indictment is presented to the court, the person, as a suspect, has given in their accounts to the authority conducting the proceedings information that may contribute to the disclosure of the circumstances

28 Journal of Laws 2007.36.232

29 Kiełtyka, Kurzępa, Ważny, 2013, p. 9.

30 Lach, 2001, p. 173 ff.

31 Grajewski, 1994, p. 15 ff.

32 Adamczyk, 2011, p. 81.

of the offence, identification of other perpetrators, detection or prevention of further offences; 2) the suspect has disclosed their assets and the assets of other perpetrators of a criminal or fiscal offence known to them; and 3) the suspect undertook to give exhaustive testimony to the court about those participating in the criminal or fiscal offence.

Furthermore, the Act sets out the exclusions to the application of its provisions. It is emphasised that the Act does not apply to a suspect who, in connection with participation in a criminal or fiscal offence, 1) attempted to commit or committed the crime of homicide or co-perpetrated such crime; 2) induced another person to commit a wrongdoing with a view to directing criminal proceedings against such person; or 3) headed an organised group or association with the aim of committing a criminal or fiscal offence.

The reward for cooperating with law enforcement agencies guarantees that the perpetrator granted the status of an informant witness will not be liable to a penalty for criminal or fiscal offences in which they participated and which they disclosed to law enforcement agencies in their capacity as an informant witness.

However, the status of an informant witness can be lost where, in the course of the proceedings, the person granted the status of an informant witness 1) gave a false testimony or concealed the truth as to the essential circumstances of the case or refused to testify before the court; 2) committed another criminal or fiscal offence, acting in an organised group or association with the aim of committing a criminal or fiscal offence; or 3) concealed criminal assets.

In the event of a threat to the life or health of an informant witness or their next of kin, they may be granted personal protection and obtain assistance in changing the place of stay or employment. In particular justified cases, they may be issued with documents enabling the use of personal data other than their own, including those giving entitlement to cross the state border as well as offered other forms of assistance, in particular, a surgical procedure to remove distinctive features of appearance or plastic surgery.

The admission of evidence from an informant witness in the fact-finding process requires that primarily two conditions be met jointly: first, submission, until the indictment is presented to the court, in their accounts to the authority conducting the proceedings of information that may contribute to the disclosure of the circumstances of the offence, identification of other perpetrators, detection or prevention of further offences; and second, undertaking to give exhaustive testimony to the court about those participating in the criminal or fiscal offence and any other circumstances of the commission of offences in an organised group or association with the aim of committing offences.³³

33 Jasiński and Potakowski, 1998, p. 253 ff.

A person who has been granted the status of an informant witness is required to testify to all circumstances related to the commission of offences specified in the provisions of the Act on the informant witness.

The *ratio legis* of this institution consists precisely in the close cooperation of the witness with law enforcement agencies by providing credible testimony as to the offences specified in the Act, in exchange for forbearance of the legal sanctions for these offences. The duty of cooperation is absolute, as the person appearing as an informant witness will not be held criminally liable specifically for these offences. In exchange, they are obliged to testify. This absoluteness is so far-reaching that the informant witness will not have the right to refuse to testify, or the right to refrain from answering a question that may expose them or their next of kin to liability for a criminal or petty offence, nor the right to refuse to answer a question, where this would entail liability for a criminal or petty offence, nor the right to be questioned in closed court hearing due to the possibility of exposure to shame, or the right to request a release from legs testifying due to the next-of-kin relationship with the accused.³⁴ In the context of the above assumptions, it is clear that from the point of view of relevant authorities in the trial, the institution of an informant witness is an essential tool in combating crime, including organised crime, as it introduces an element of distrust into the criminal community, before offences have been committed, and prompts offenders to reveal the truth before their co-perpetrators do so.

An informant witness is not anonymous. However, it is undisputed that as for the circumstances beyond the statutory catalogue of offences permitting the use of the institution of an informant witness, the witness will be held criminally liable under applicable laws and regulations. In other cases, they should be treated as an ordinary trial witness who has certain obligations but also rights, including the right to refrain from answering a question that may expose them or their next of kin to liability for a criminal or petty offence.³⁵

Nevertheless, it is signalled that ‘one of the main problems related to the institution of an informant witness, raised both by the judiciary and journalists, is the assessment of the reliability and credibility of the testimony they give. We have often met with situations where independent courts, after many years of hearings with the participation of hundreds of witnesses (including informant witnesses), expressed negative opinions about the reliability and credibility of testimony given by informant witnesses’.³⁶

34 Grzegorzcyk, 2004.

35 Tarkowska, 2000, p. 104.

36 Ociecek, 2013, p. 75.

5. Extended confiscation

Another instrument for counteracting organised crime is the extended confiscation introduced into the Polish legal system. It is a completely new institution introduced quite recently, in 2017, undoubtedly as an unorthodox legal solution under which the burden of proof of the legitimate origin of assets is transferred onto the accused. The legal basis of this institution in the Polish legal system is Article 44a of the Penal Code. According to Article 44a PC, in the event of a conviction for a criminal offence, the commission of which has given the perpetrator, even indirectly, a material profit of substantial value, the court may order the forfeiture of the enterprise owned by the perpetrator or its equivalent, if the enterprise was used as an accessory in the commission of the offence or concealment of the profit obtained from the same. In the event of a conviction for a criminal offence, the commission of which has given the perpetrator, even indirectly, a material benefit of substantial value, the court may order the forfeiture of a natural person's enterprise other than property of the perpetrator, or its equivalent, if the enterprise was used as an accessory in the commission of the offence or concealment of the profit obtained from the same, and its owner willed that the enterprise be used to commit the offence or conceal the profit obtained from the same, or, in anticipation of such a possibility, consented to the same. In the event of joint ownership, such forfeiture is ordered considering the will and awareness of each of the joint owners and within their limits. An option is also provided that the forfeiture is not ordered if this would be disproportionate to the gravity of the offence committed, the degree of culpability of the accused, or the motivation and behaviour of the owner of the enterprise. Similarly, the forfeiture is not ordered if the damage caused by the offence or the value of the concealed profit is not substantial in relation to the size of the enterprise's operations. The court may desist from ordering the forfeiture, also in other, especially justified cases, where it would be disproportionately painful for the enterprise owner.

This is a completely new institution, and no uniform lines of jurisprudence have been yet established in Poland. However, the introduction of extended confiscation is aimed at increasing the pain of sanctions for those committing the gravest economic or fiscal offences. Apart from, for example, suffering a penalty of imprisonment, the perpetrator will also lose the profits obtained from the offence.³⁷

It should be noted at this point that in 2019, the above provisions were applied in 668 cases, and the seized property was worth over PLN 2.1 billion. This is a huge progress compared to that of the previous years. For example, in 2017, that is, the first year of application of the confiscation instrument, 237 orders were issued. According to the data of the Ministry of Justice, assets worth approximately PLN 189 million were seized based on these provisions. In 2018, in turn, there were 309 orders issued, and the seized assets were worth approximately PLN 294.5 million.

³⁷ Zawłocki, 2018, p. 19; Wielec and Oręziak, 2018, p. 76.

6. Summary

There is no doubt that the fight against organised crime will never end. Similarly, a closed catalogue of ways and methods used by criminal groups in running it will never be identified. Still, the essence of the problem on the part of the legislator lies in the correct and early diagnosis of threats related to the emergence and operation of organised crime. The three institutions presented in this study are not the only tools to combat this type of crime in the Polish criminal law system. However, these institutions stand out the most. Despite many critical points arising from the legal structure of these institutions in the system of Polish law, their application clearly enjoys approval. They are helpful and quite effective instruments in the fight against all types of organised crimes.

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