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## A FEW WORDS ON THE PERCEPTION OF JUSTICE IN THE CONTEXT OF PENAL FISCAL LAW

### **Summary**

*In the context of penal fiscal law there has been a discussion over a proper reaction to a fiscal tort. This is even more important in connection with the increase of the number of criminal offences, particularly in terms of tax offences and the decrease in effectiveness of administrative proceedings of public levies<sup>1</sup>. Beyond doubt, the proposals tabled in the discussions aim at objective settlements. This paper comprises an attempt to answer the question of how the justice is perceived in the context of penal fiscal law.*

**Key words:** tax offences, penal reaction, justice

In Polish language the word *sprawiedliwość* [justice – translator’s note] means “honest, righteous demeanour”<sup>2</sup>. It comes from the adjective *sprawiedliwy* [just - translator’s note], which is a borrowing from Czech and came into Polish in the 15<sup>th</sup> century. Initially *sprawiedliwy* meant “honest, righteous”, “compliant with the law”, “impartial” and “acquitted, justified, innocent”<sup>3</sup>.

It is stated that in the Slavic languages law was identified with justice. Both the words had a close etymological connection with truth, which for some time was also comprehended as “justice”<sup>4</sup>. Obviously, this word will be comprehended differently by philosophers, theologians

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<sup>1</sup> See e.g.: K. Czichy, *Skuteczność egzekucji administracyjnej w Polsce a prawo karne skarbowe*, *Zeszyty Prawnicze UKSW*, no 15.4.

<sup>2</sup> *Słownik języka polskiego PWN*, (ed.) W. Doroszewski, available at <http://sjp.pwn.pl/>, accessed 24 May 2016

<sup>3</sup> As cited in: W. Boryś, *Słownik etymologiczny języka polskiego*, Kraków 2005, p. 572.

<sup>4</sup> K. Kłosińska – an explanation of the word *sprawiedliwość* in *Słownik języka polskiego PWN* (<http://sjp.pwn.pl/szukaj/sprawiedliwość.html>, accessed 24 May 2016) taken from the doctoral thesis by Anna Mróz titled „Sprawić się prawem i lewem – historyczne i językowe meandry prawa” written under the supervision of R. Pawelec, defended at the Institute of Polish Language of the University of Warsaw in 2014.

or lawyers. In the context of law, apart from justice itself, there are also terms like “social sense of justice” or “social justice”. The aim of this paper is not to explain how justice is comprehended by lawyers<sup>5</sup>, but in the context of penal fiscal law. Additionally, it does not refer to all penal and fiscal acts but only those which are committed “en passant”, during normal activities<sup>6</sup>.

In literature it is usually stated that historically the primary function of the penal law is the function based on justice<sup>7</sup>. The penalty as a requital appeared in the form of an instinctive reaction to a crime in primordial societies<sup>8</sup>. As anthropologists and philosophers of culture say a tendency to revenge is one of the fundamental characteristics of human nature and occurs in all communities<sup>9</sup>. Despite the evolution of the human and society and, along with the development of civilization, a stronger postulation of a protective function and principles of humanity, the sense of punishment as a requital has not changed, the same like the human nature over the centuries. It boils down to satisfying the sense of justice not only of the society as a whole, but also a particular individual, who became a victim of an offence. It involves both educational impact of the penal law on the society and calming the social opinion and restoring the authority of the law, weakened by the committed crime<sup>10</sup>.

It is impossible to explain in a simple way what the social sense of justice is. It is disputable (however the opinion belongs to sociologists) if one can talk about the social sense of justice at all. It is connected with ethical rules and feelings of particular individuals who create the given

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<sup>5</sup> Because this such a broad subject that it would be difficult to exhaust it in a comprehensive monograph.

<sup>6</sup> Therefore, in the paper there is no space to include the answer to the question of the fairness of a situation when the deed is committed by a „professional” criminal or the one acting for an organised criminal group. Usually, in such cases normal operating is only simulated in order to use the mechanisms of the fiscal law for illegal activity. See more: L. Wilk, *O naturze przestępczości podatkowej i metodach jej przeciwdziałania*, [in:] *Teoretyczne i praktyczne problemy współczesnego prawa karnego księga jubileuszowa dedykowana Profesorowi Tadeuszowi Bojarskiemu*, (ed.) I. Nowikowski, A. Michalska-Warias, J. Piórkowska-Flieger, Lublin 2011, idem „Kryminalne” aspekty przestępczości podatkowej, *Archiwum Kryminologii* Volume XXXI/2009, p. 209-221.

<sup>7</sup> L. Gardocki, *Prawo karne*, Warszawa 2005, p. 6.

<sup>8</sup> J. Makarewicz, *Prawo karne ogólne*, Kraków 1914, p. 18.

<sup>9</sup> R. Girard in a interview for Newsweek form 1 November 2009 titled „Zemsta ludzka rzecz”, available at <http://m.newsweek.pl/spoleczenstwo,-zemsta-ludzka-rzecz,48172,1,1.html>

<sup>10</sup> M. Cieślak, *Polskie prawo karne. Zarys systemowego ujęcia*, Warszawa 1990, p. 14.

society. In the age of a common access to the Internet and the technology development, e.g. a possibility of taking photos or recording films with a mobile phone, the transferred information has a serious impact on the society. To simplify, everyone will give a different answer to the question: should the punishment be inflicted so that it is just, and if so, what kind of punishment should it be then? Even if the discussed subject is the social sense of justice, it is beyond doubt that not only a severe punishment will meet the demands but also the one which is inevitable, rapid and implemented<sup>11</sup>. In this context it may be stated that the penal law satisfies „the social sense of justice”, which in the most lapidary manner may be associated with giving everyone what they deserve in terms of right and wrong<sup>12</sup>.

In case of common offences the matter of satisfying the social sense of justice seems much easier than it is in case of fiscal offences, which was acting to the detriment of the financial interests of the country, local authorities or the European Community.

In the 1930s A. Mogilnicki indicated so called dichotomy of penal repressions of ordinary and fiscal acts, claiming that those two matters differ significantly. As the author mentions, in spite of the proper provisions of penal law, which allow prosecution of certain behaviour, the law generates penal and fiscal regulations when the subject of the act regards fiscal problems, because the legal certainty of the society ”does not allow the fact that the human, who illegally aims at decreasing their public burden, is a criminal of the same rank as the one who by illegal acts aims at profits based directly on the harm of the fellow citizens”<sup>13</sup>.

Today, Z. Siwik rightly notes that if the penal fiscal code is the law based on completely different axiological, systemic, functional, technical and legislative assumptions, the proper reading, comprehending, mastering and applying of the code requires splitting off from traditional schemes of thinking and acting<sup>14</sup>.

Therefore, there arises a question of what justice is and how it should be comprehended in the context of autonomous regulation of the penal

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<sup>11</sup> J. Warylewski, *Prawo karne. Część ogólna*, Warszawa 2005, p. 58.

<sup>12</sup> A. Muszyńska, *Naprawienie szkody wyrządzonej przestępstwem*, Warszawa 2010, p. 43.

<sup>13</sup> A. Mogilnicki, *Dwutorowość represji karnej przy przestępstwach zwykłych i skarbowych*, „Ruch Prawniczy, Ekonomiczny i Społeczny” 1937, z. 3, p. 42 i 337.

<sup>14</sup> Z. Siwik, [in:] *Nowe kodyfikacje karne – kodeks karny skarbowy*, published by the Ministry of Justice, Warszawa 1999, z. 25, p. 6.

fiscal law. In the opinion of this paper's author an attempt to answer this question may not be restricted to testing the justice of the criminal sanction only regarding the given criminal offence. It is necessary to reference to reference to justice in general, but also due to the specificity of the regulation of the penal fiscal law and the subject of this paper it is also essential to consider the fiscal justice.

The common view is that generally justice means equity, equal treatment of different people. Some scientists see the essence of justice in relating the fundamental rule of justice to some other rules: for some of them it is kindness, for others – freedom etc. Indeed, in numerous cases what is equal seems just and an unequal treatment of people is unjust. However, in many other situations there is exactly the opposite attitude required - unequal, e.g. taking into consideration a different extent of guilt, merits etc.<sup>15</sup>

The starting point for further deliberation must be several fundamental theses characteristic for this field of law. First of all, the penal fiscal law, in contrast to the penal law, does not have strong ethical and moral roots. Small-scale fraud is judged in a different way than petty theft or acts of vandalism. Moreover, there is no (at least in the common perception) an individualized victim. There is no beaten, robbed person, but there is a public institution instead, which for many people is impersonal, anonymous, and equally the consequences of the fraud are not noticed. After all, the penal fiscal law penalizes the deeds which infringe the financial law, which makes both groups of provisions strongly connected. Therefore, the question is how justice may be "attained" and whether it is possible at all since the fiscal law, which is protected by this area of penal law, is commonly considered as unjust?

It seems that in the context of the penal fiscal law justice may be discussed in terms of two connected aspects: the fiscal justice and the justice of the penal fiscal law.

Nowadays, in the fiscal doctrine there is a clearly formulated view that justice is the foundation for building the fiscal system; a resignation from the idea of justice is equally a resignation from the success of fiscal reforms<sup>16</sup>.

What is the fiscal justice then and how should it be considered? It should be noted that taxation is a kind of conflict between the people

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<sup>15</sup>L. Petrażycki, *O nauce, prawie i moralności: Pisma wybrane*, Warszawa 1985, p. 286.

<sup>16</sup>A. Gomułowicz, J. Małecki, *Podatki i prawo podatkowe*, Poznań 1998, p. 127.

obliged to pay the taxes and the country, which has to perform some tasks and gain adequate means to realize them. Therefore, somewhat it is the reason why a perfect, absolute approach to the idea of justice is impossible, because three different postulates and demands need to be considered which reflect economic, social and often political interests of those who formulate the fiscal rules<sup>17</sup>.

Certainly, the way of comprehending the fiscal justice has changed over the course of time. Currently, it is inextricably bound up with the rules like: equality, pervasiveness of taxation or stability of legal regulations. Moreover, in 1919 L. Caro claimed that there are two aspects of the fiscal justice which are complementary. The first one stands for not burdening the poor, the other is calling for taxation of the mighty proportionally to their income. Neither pervasiveness and nor reciprocity for the services supplied by the country did not constitute the aspects of justice. L. Caro said: “there is no rule of pervasiveness in modern fiscal systems (i.e. in 1919), and if there was any, it would be a denial of the idea of justice”<sup>18</sup>.

Currently, it is stated that fiscal justice, considered in the context of a conflict of the interests indicates expressly that taxation means shifting economic goods from the private area to the public space. Therefore, in a wider perspective justice refers not only to proper allocation of fiscal burdens, but also the profits obtained from the state benefits. If the expenditures and the taxpayer’s participation in them are accepted, the tax burden may be considered just. Otherwise, it may be claimed unjust<sup>19</sup>.

R. Sowiński distinguishes several models of justice: replaceable, horizontal, procedural, reconstructive and retributive. The assessment of justice has three levels – individual, corporate and social. When assessing the fiscal system, the taxpayer compares the amount of their individual fiscal burden, as well as of the social group they belong to and the general amount of the social fiscal burden with the individual and corporate profits of the group they belong to, and the general amount and structure of the public expenditures<sup>20</sup>.

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<sup>17</sup> P. Karwat, *Obejście prawa podatkowego*, Warszawa 2002, p. 31.

<sup>18</sup> L. Caro, *Problemy skarbowe państwa polskiego*, Kraków 1919, p. 41-42.

<sup>19</sup> P. Karwat, *Obejście...*, p. 19.

<sup>20</sup> M. Wenzel, *Tax Compliance and the Psychology of Justice: Mapping the Field, Taxing Democracy – Understanding Tax Avoidance and Evasion*, Burlington 2003,

The horizontal justice is connected with the taxpayer's comparison of the amount of their burden with the burden of the others who are in a similar economic situation<sup>21</sup>.

The procedural justice is connected with treating the taxpayer by the tax officials subjectively, with the due respect. The taxpayer has also a sense of influence on the officials' performance and the decisions on the destination of the tax revenues, and the taxpayer's rights are respected by the tax authorities. There are opinions that relations based on fear bring an increase of the fiscal discipline. Meanwhile, one of the reasons for a negative attitude of the taxpayers towards the fiscal system is a negative image of a tax official as a unfriendly person, who is not focused on support but searching for mistakes of the taxpayers who try to perform their duties. Media play an essential role in shaping the image of the authorities and officials<sup>22</sup>.

There has to be mentioned a very loud affair of Roman Kluska, who set up his company almost without any financial contribution and after years he became one of the richest Poles, and then he was arrested on charges of VAT fraud conducted by his company named "Optimus". After publicising this affair, press started to analyse other cases of Polish businessmen who – as they claim – have been deprived by one decision of the Tax Office of their companies and the money for the defence<sup>23</sup>. Moreover, there was also the case of Nina Cholewicka, the founder of the trading and service company "Nina" in Chmielnik. Admittedly, after 12 years from the first control the Tax Office finally discontinued the proceedings. However, the multiannual controls led to a financial ruin of the company. The fact that the Polish law does not provide a compensation for moral suffering caused by a wrong decision of an official but only for a material damage, and the fact that Roman Kluska mentioned above received only a symbolic compensation of 5.000 zlotys for an unfair arrest does not strengthen the respect towards law<sup>24</sup>. One of

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p. 45; as cited in R. Sowiński, *Uchylenie się od opodatkowania. Przyczyny, skutki i sposoby zapobiegania zjawisku*, Poznań 2009, p. 105.

<sup>21</sup> R. Sowiński *Uchylenie....*, p. 110.

<sup>22</sup> R. Sowiński, *Uchylenie....*, p. 123-124.

<sup>23</sup> See e.g.: the article „*Terrorysty skarbowi*” published in *Wprost* March 2004, available at <http://www.iszgora.mf.gov.pl/dok/wprost.pdf>

<sup>24</sup> On 28 June 2010 in the online issue of *Gazeta Wyborcza* there was published the article „*Tak skarbówka wykończyła milionera. Będzie proces o 16 mln zł*” describing another case of withdrawing by the tax office the allegations after the bankruptcy of the company.

the latest examples may be the case of JTT Computer. In April 2011 the Court of Appeals in Wrocław ordered the State Treasury to pay 29 million zlotys (plus the interest, which gives over 46 million zlotys in total) in favour of MCI Management for leading JTT Computer to bankruptcy, one of the biggest producers of the computer hardware in the past. This IT company crashed in 2004, because the Tax Office ordered the company to pay 20 million zlotys of the overdue VAT, which was unfair as it turned out later. Finally, the money was returned, however the company lost the suppliers and customers in the meantime, and could not operate any longer. At the occasion media paid much attention to similar cases of mistakes made by the tax administration<sup>25</sup>.

Another example may be a special document prepared by the Minister of Finance, which determined the selection criteria of the taxpayers, who were subject to the control. The problem was that the document was meant to be only internal, therefore its content was intended only for officials. According to some experts such a performance may arouse suspicion of the taxpayers. Assuming that the tax administration acts in an implicit manner, following the internal instructions, there arises a conclusion that the taxpayers are potentially suspected by definition<sup>26</sup>.

However, it cannot be said that the above issues are not changing at all. Since 2002, when the Council of Ministers approved the Strategy of Modernisation of the Polish Tax Administration, in the tax offices there are certain steps taken for changes, which results in creating a modern administration serving the citizens. There was implemented the Quality Management System (CAF), which is intended to break the existing barriers and increase the satisfaction of the taxpayers from the quality of the tax administration's performance<sup>27</sup>.

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<sup>25</sup> The article *Firma wygrywa z państwem* from 13 April 2011 published in Rzeczpospolita, available at <http://www.rp.pl/artykul/19417,642202-Firma-wygrywa-z-panstwem.html>

<sup>26</sup> The article *Tajna instrukcja fiskusa* from 1 August 2011 published in Gazeta Prawna, available at [http://gospodarka.gazeta.pl/gospodarka/1,33181,10039861,\\_DGP\\_\\_\\_Tajna\\_instrukcja\\_fiskusa.html](http://gospodarka.gazeta.pl/gospodarka/1,33181,10039861,_DGP___Tajna_instrukcja_fiskusa.html)

<sup>27</sup> An example may be *Przewodnik Jakości* published on the official website of the Tax Office in Chełmno, effective since 1 June 2010, available at <http://www.izba-skarbowa.bydgoszcz.pl/files/US0407/PrzewodnikJakosci.pdf>

The office indicates clearly that the Strategy of Relationship with Taxpayers developed in 2003 in the Ministry of Finance assumes achieving a high level of voluntary

The steps taken undoubtedly improve the image of the offices and officials themselves, but every affair publicised by media referring to the mistakes made by them (which result not only in financial problems but also social ones, like job shedding) strengthen the negative stereotype of an office.

Denying by the scientists the effectiveness of the tax discipline based on a fear of sanctions is the cause of more frequent postulates of a democratic management of the state which would take place on the same terms like a management of a company, and the taxpayer should be treated like a valuable customer. Therefore, it becomes very important to manage the marketing which improves the image of the tax administration, encourages taxpayers to pay the taxes and informs on the way of spending this money, or the benefits from the duties imposed on the taxpayer by the tax administration. Such campaigns should be conducted not only in schools (where the education of social attitudes begins), but also in form of big social campaigns addressed to the entrepreneurs, employees or pensioners.

Meanwhile, it is often limited to a laconic statement that paying taxes is every citizen's duty. On the other hand, a participation in an election is every citizen's right, yet there are big campaigns encouraging people to going to the polls. There are politicians and famous artists involved. However, in terms of fiscal duties there are no similar actions organised (an exception may be the action on an obligatory submission of the annual tax declaration regarding the personal income tax).

Another commonly discerned feature of the fiscal law is also a constant growth of its provisions' volume<sup>28</sup>. Consequently, the readability of the duties arising from them decreases. Ignoring all the ambiguity and legislative errors, it frequently happens that various tax offices and administrative courts interpret the same provisions differently<sup>29</sup>.

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fulfilment of the duties by the citizens, as well as an increase of the satisfaction of the taxpayers with the service in the tax offices at optimal costs.

<sup>28</sup> B. Brzeziński, *Prawo podatkowe pomiędzy Scyllą kazuistyki a Charybdą ogólności przepisów*, [in:] *Doctrina multiplex, veritas una, Księga Jubileuszowa ofiarowana Profesorowi Mariuszowi Kulickiemu*, Toruń 2004, p. 551.

<sup>29</sup> As it arises from the control results of 6 June 2014 „Przestrzeganie praw podatników przez wybrane urzędy skarbowe i izby skarbowe”, in 2012 r. and in the first half of 2013 the regional administrative courts abolished 56,2% of tax interpretations, KBF-4101-06-00/2013, regist. no 26/2014/P/13/039KBF, available at [https://www.nik.gov.pl/plik/id,6783,v,artykul\\_9994.pdf](https://www.nik.gov.pl/plik/id,6783,v,artykul_9994.pdf)



When the fiscal system is considered unfair, it results in an increase of tax evasion, which brings serious trouble due to at least two reasons. Firstly – in terms of justice it leads to distorting the balance of the fiscal system, because some taxpayers do not bear the fiscal burden, and others fully do. Secondly, it hinders the effectiveness of taxation, decreasing the budget revenue, which is particularly dangerous in terms of the budget deficit and a connected to it dramatic decrease of spending on health, education or justice<sup>30</sup>.

The second problem may be highlighted with an example of the access to medical services. As the research done by the Council of Social Monitoring in 2011 shows, the biggest group of households was forced to resign from the medicines and teeth treatment due to the lack of funds (18,1 %). In case of 0,8% of the households the stay in hospital was refused due to the lack of funds. Considerably more households were forced to resign from the doctor's services (14%) and medical examination (7,5%). In the research the respondents were not asked if they generally resigned from the medical services or only those which required paying "out of pocket" (some patients from this group may have received services paid from public funds). The important aspect was the range of barriers which the households come across being in need of health care and which could be satisfied if they had private funds in the private sector<sup>31</sup>. There was no detailed research on the level of satisfaction from e.g. the state of the public roads or the correlation between the quality of the received services and the level of tax discipline (or in detail – what is the influence on the level of respect to the public order in Poland).

An access to the public services and their quality are the factors which may cause a social conflict. This conflict will not bring only an increase of the social dissatisfaction. It may influence the ability to decrease the fiscal burden, cause an increase of the resistance to the public authorities, withdrawing from the civic duties (a refusal to take part in the election), and also criminal offences in extreme cases.

The research conducted in other countries indicates that the taxpayers who are more satisfied with the quality of the public services are less

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<sup>30</sup> L. Kleczkowski, *Unikanie opodatkowania a obejście prawa*, „Monitor Podatkowy” no 7/2000, p. 5.

<sup>31</sup> DIAGNOZA SPOŁECZNA, reports: Czapiński J., Panek T. (ed.) *Diagnoza społeczna* ([2011]), p. 122 – 123, available at [http://www.diagnoza.com/pliki/raporty/Diagnoza\\_raport\\_2011.pdf](http://www.diagnoza.com/pliki/raporty/Diagnoza_raport_2011.pdf) [downloaded 10.10.2011].

prone to tax evasion<sup>32</sup>. The authors of the research suggest that 20% of the improvement in the evaluation of the public goods quality brings 5% of the decrease in the group of people who often evade taxation and 12% of increase in the group that never does it. Equally, the authors indicate a constant need of pointing the taxpayers the allocation of their funds<sup>33</sup>.

With regard to the fairness of punishing, in the provision of Article 12 Section 2 of the Penal Fiscal Code<sup>34</sup> there are two criteria which are significant in terms of justice, and that constitute its measurement, i.e. the level of the social harmfulness of the deed (which should be taken into consideration) and the level of guilt (which cannot be exceeded), therefore in this provision there were *de facto* included two directives of justice<sup>35</sup>. According to the Constitutional Tribunal an inalienable human dignity requires that every person is treated fairly by the law, i.e. equally and impartially. It refers to the dignity of those who committed a criminal offence and have a right to a fair judgement, as well as those who did not commit any crime, but in this situation consider the respond of the law as fair, which means the one that would apply to them in a similar situation. This is also about justice, as a part of abolishing the illegality, being free from subjective interests and accidental strength, and thereby justice which does not take revenge but punishes. In this approach justice is even stronger than law<sup>36</sup>.

It should be also stated that in case of fiscal offences and transgressions, where there was no decrease of public receivables (e.g. defective accounting), punishing often raises in taxpayers a sense of unfair and harmful attempt to seek for funds by the tax authorities. This point of view may be justified because the fines are an additional source of funds, which supply the public revenues. Moreover, very high fines cannot be treated as a solution effective against the person, who does not pay huge amounts due to taxation.

At the same time the disproportions in terms of custodial penalties should be noted: in case of e.g. a fiscal offence<sup>37</sup> it is maximum of

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<sup>32</sup> In the research there was confirmed a negative correlation between the satisfaction with the public goods and the willingness of purchasing the goods and services manufactured in the grey economy.

<sup>33</sup> R. Sowiński, *Uchylanie...*, p. 107-108.

<sup>34</sup> The act of 10 September 1999 of the Penal Fiscal Code (Journal of Laws No 83, item 930).

<sup>35</sup> L. Wilk, J. Zagrodnik, *Prawo karne skarbowe*, Warszawa 2009, p. 117.

<sup>36</sup> The sentence of the Constitutional Tribunal of 6 July 1999, P 2/99, OTK 1999/5/103.

<sup>37</sup> Article 56 of the Penal Fiscal Code.

5 years of deprivation of liberty<sup>38 39</sup>, and the criminal offence defined in Article 286 of the Criminal Code<sup>40</sup> is punishable by up to 8 years<sup>41</sup> of deprivation of liberty<sup>42</sup>.

The above deliberating does not bring any unambiguous answer. Oppositely – it raises another question – is justice executed when the violator is punished and stigmatized for the deed or when the violator receives a possibility of decreasing the punishability or even its exclusion in exchange for a compensation for the damage. However, in a situation when the fiscal law (in detail – the financial law) is not considered as fair but as a means of unjustifiable repression, does the penal fiscal law, which protects it, may be considered as fair and fulfil its function properly? At the same time it is worth mentioning that the research from 2011 shows that Polish people are the least interested in the fact that somebody does not pay for the public transport or evades taxation. Indifference towards these forms of infringing the common good decreased significantly in comparison with the years 2007 and 2009<sup>43</sup>. There is also a strong common belief that wealthy people do not pay taxes and the whole fiscal burden is borne by the rest of the society.

Implementing the institution of the punishment degression into the penal fiscal code the legislator argued that a general rule is a possibly fast solution of a social conflict by means of equalising entirely or partly the financial loss of the State Treasury or a local government unit caused by a criminal offence. In other words, the penal fiscal code is further emphasised in the draft act, in the proposed system there is a significant

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<sup>38</sup> Article 27 Section 1 of the Penal Fiscal Code.

<sup>39</sup> There should be remembered the regulations of Article 28 Section 2 of the Penal Fiscal Code and Article 39 Section 1 of the Penal Fiscal Code, according to which the penalty exceptionally tightened cannot exceed 10 years of deprivation of liberty and the total penalty – 15 years of deprivation of liberty.

<sup>40</sup> The act of 6 June 1997 of the Criminal Code (Journals of Law 1997 No 88, item 553).

<sup>41</sup> There may arise some opinions that between 5 and 8 years there is no significant difference, particularly if it is considered what is protected by the penal law and what is by the fiscal law. However, the problem of disproportions of the penalties on the basis of both the codes should be perceived through the prism of judicature practice – in 2014 the penalty of deprivation of liberty of 2 - 3 years was imposed on 2 people, and over 3 years – on 1 person (on the basis of a document of the Ministry of Justice of 15 February 2016, signature BM-II-061-124/16).

<sup>42</sup> P. Tyszka, *Zadania prawa karnego skarbowego i praktyczne możliwości ich realizacji* „Prokuratura i Prawo”, no 1/2007, p. 102, 106-107.

<sup>43</sup> DIAGNOZA SPOŁECZNA, reports: Czapiński J., Panek T. (ed.) *Diagnoza społeczna* ([2011]), p. 271, available at [www.diagnoza.com](http://www.diagnoza.com) [downloaded 10.10.2011].

meaning of a pragmatic focus on shifting the centre of gravity of the criminal policy to the solution of the social conflict, all the more the modern attitude does not weaken the protection of the financial order at all. At the same time the priority of an economic difficulty and dominance of fine in terms of the penal fiscal code is clearly stated<sup>44</sup>.

The above words suggest that the legislator realizes that in the general balance resigning from the traditional, severe punishment and an agreement with the violator bring more benefits not only for the state coffers (or other entity), but also for the broadly defined public order.

Implementing the institution of the punishment degeneration does not mean that the violator does not experience any difficulty. They are deprived of any financial benefits, which were the main goal of their action. Additionally, they are burdened with a fine or a flat-rate cost of the proceedings. Even if this is only a symbolic amount, it is equal to depriving the violator of some good. It stays compatible with the propagated opinion that most of the contemporary forms of criminal penalty does not aim at harm, neither physical, nor mental. Their essence is primarily depriving the individual of certain goods, such freedom or property<sup>45</sup>.

The issue of justice in terms of the penal fiscal code cannot be considered unambiguously. For some people who have a negative attitude towards the fiscal law it will never be possible. For others the punishing of the violator is the only fair solution. The still open question is if a person demanding a severe punishment for a violator of a fiscal offence, instead of resigning from the punishment in return of a compensation of the harm, maintained their approach in a situation when due to the lack of funds in the budget this person would have to finance the treatment "out of pocket".

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<sup>44</sup> Governmental explanatory memorandum to the act of the Penal Fiscal Code, the parliamentary document of 17.05.1999 no 1146 p. 23 and 34, available at <http://sipdata.lex.pl/dane/projekty/x31146/2.pdf>, accessed 20 January 2016.

<sup>45</sup> J. D. Mabbott, *Professor Flew on Punishment*, Philosophy 1955, p. 257-258, as cited in: M. Królikowski, *Sprawiedliwość karania w społeczeństwach liberalnych. Zasada proporcjonalności*, Warszawa 2005, p. 1.

## Literature

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