

Summary of Jakub Znamierowski's doctoral thesis

Procedural status of a collective entity and quasi-accused in criminal proceedings, criminal fiscal proceedings and proceedings concerning liability of collective entities

supervised by Professor Maria Rogacka-Rzewnicka PhD, Warsaw University

This thesis analyses the procedural status of a collective entity and *quasi*-accused in criminal proceedings, criminal fiscal proceedings and proceedings concerning liability of collective entities. In this thesis, the procedural status of the above-mentioned entities is understood as meaning all of their procedural guarantees and obligations as well as the coercive measures they may be subject to in proceedings. The *quasi*-accused category includes persons subject to ancillary liability, third parties obliged to return the proceeds of crime under Article 91a § 1 CCP (Code of Criminal Procedure), third parties obliged to return the proceeds of fiscal crime under Article 24 § 5 CFC (Criminal Fiscal Code; with the second and third jointly referred to as “third parties obliged to return the proceeds of the offence”) and a person whose enterprise is subject to forfeiture. The thesis considers the features of a collective entity and *quasi*-accused that distinguish them from other participants in proceedings, analyses their procedural guarantees under the Polish Constitution and the most important acts of international and EU law, and also reviews particular procedural institutions that affect their procedural status at the statutory level.

The basic assumption at the heart of this thesis is that a collective entity and *quasi*-accused belong to separate categories of participants in proceedings with respect to those already distinguished that are on the side of the defendant. They both require a proper standard of procedural guarantees that are adequate for the type, character and degree of severity of their liability. This standard should be construed in accordance with the norms that apply to them that are rooted in the Polish Constitution as well as international and EU law. However, the procedural standards that should be binding for them differ between a collective entity and specific members of a *quasi*-accused group. Nonetheless, the starting point for all of these is the procedural status of an accused person.

The distinction between the subject entities arises on substantive and procedural grounds. The first relates to the nature and type of their liability which is associated with an offence committed by a person accused and imposed on a third party that was not the perpetrator. The second concerns the introduction of participants other than

the accused individual into the criminal proceedings in their broadest term, who then take their stand on the defendant's side and may be subject to liability for a criminal offence or criminal fiscal offence (collective entity) or in connection with such an offence (*quasi*-accused).

The above assumptions have determined the division of the thesis into three parts, preceded by an introduction and followed by final remarks.

The first part of the thesis is devoted to depicting a collective entity and *quasi*-accused against other participants to criminal proceedings, criminal fiscal proceedings and proceedings concerning the liability of collective entities. The opening chapter refers to the origins of these entities – the circumstances in which they were introduced into Polish law. Further chapters attempt to characterise a collective entity (chapter two) and *quasi*-accused (chapter three) through an analysis of the nature of the liability threatening each and outlining their procedural rights and duties, as well as the coercive measures they may be subject to in proceedings. These considerations lead to the conclusion that a collective entity's liability has repressive nature, while its procedural status is tantamount to that of the accused person. On the other hand, the procedural status of *quasi*-accused is similar to that of the accused. However, entities in this group are also subject to liabilities of varying nature. Those that threaten a person subject to ancillary liability and a person whose enterprise is subject to forfeiture are repressive, while those which may be imposed on third parties obliged to return the proceeds of the offence are not. Based on this factor, a division has been made into first degree and second degree *quasi*-accused. With reference to the above considerations, this thesis also attempts to formulate propositions for conceptual definitions of a collective entity and *quasi*-accused, which are missing from doctrine. Chapter four refers to features that distinguish the subject entities from other participants to proceedings that have been identified so far: the type of liability they are subject to; the nature of such liability; the way in which proceedings are initiated against them; their procedural status. This chapter also presents the correlations between a collective entity, *quasi*-accused and other selected participants to proceedings, and explains why the latter do not fall within the subject categories.

The second part analyses the issue of constitutional (chapter five) and international and EU law (chapter six) standards of procedural guarantees for a collective entity and for *quasi*-accused. As regards international and EU standards, this has been done on the grounds of the fundamental legal acts in these areas: Convention for the Protection of Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights and Charter of Fundamental Rights of the European Union. The broader discussion has

been devoted to procedural guarantees that are deemed as the most vital from the subject entities' perspective, namely the right to a fair trial, the right to defence, the presumption of innocence and the right of appeal. Due to the fact that on the constitutional level the personal scope of guarantees enjoyed by the subject entities depends on whether their liability falls within the notion of "criminal liability" under Article 42 section 1 of the Polish Constitution and whether they stand under a "criminal charge" under international and EU law, the analysis also includes these issues. These considerations lead to the conclusion that these criteria are met by the liability and matters of a collective entity and *quasi*-accused in the form of a person subject to ancillary liability and a person whose enterprise is subject to forfeiture. However, liability and matters of third parties obliged to return proceeds of the offence do not fall into the "criminal" category. This in turn determines that the latter, contrary to the former, do not benefit from the right of defence and the presumption of innocence. All of the subject entities, however, have to be assured of the right to a fair trial. In addition, based on the Polish Constitution, a collective entity and all *quasi*-accused also enjoy the right of appeal, while on the grounds of international law this is restricted only to those who stand under a criminal charge.

The third part of the thesis analyses in detail the particular elements that comprise the procedural status of the subject entities at a statutory level: the procedural guarantees of these entities provided in regulations of that level (including their rights) and their obligations (chapter seven) as well as any applicable coercive measures (chapter eight). Procedural guarantees and obligations of a collective entity and *quasi*-accused are explored through the prism of the most important issues associated with their participation in the proceedings, which include: the right of defence; representation in proceedings; right to be informed about charges; participation in procedural actions; right to present own position and all the aspects of a hearing; access to the case files; right to request evidence and to present it; right not to self-incriminate (*nemo se ipsum accusare tenetur* principle); issues related to consensual modes of the proceedings; right to challenge procedural decisions; presumption of innocence and the *in dubio pro reo* principle; rules governing the costs of proceedings; issues to do with procedural standards if procedural roles accumulate on one entity. The above considerations lead to the conclusion that, in particular Article 6 CCP governing the right of defence and Article 5 § 1 CCP regulating the presumption of innocence, need to apply to an accused collective entity and, similarly, to *quasi*-accused in the form of a person subject to ancillary liability and a person whose enterprise is subject to forfeiture. The analysis also reveals several

cases of incompatibility of substantive law with procedural law, meaning a state in which the procedural guarantees of a given participant to proceedings do not correspond to the nature and degree of severity of its liability. These instances relate principally to a person whose enterprise is subject to forfeiture. An examination of statutory regulations also shows that while a collective entity, similarly to an accused person, may be subject to preventive measures, the coercive measures that may apply to *quasi*-accused have a much narrower scope. The coercive measure with the main role as regards these entities is security over property. As a result of the legislature's oversight, this, however, does not apply to a third party obliged to return the proceeds of fiscal crime under Article 24 § 5 CFC.