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Abstract:
The author in this research paper presents the description of restorative concept of justice. Specifically, it focuses on the description of alternative sentencing of monetary character, its role and characterization in the system of criminal law in the Slovak republic. The objective of forfeiture of property is to reach for the property of an offender, as well as, last but not the least, it aims to recondition the offender. The objective of forfeiture of an object is to eliminate the thing, which could be used for criminal offence. The basis is to obstruct the conditions of an offender for further criminal activity, or to deprive the benefit acquired by committing a crime.

Keywords: sentencing, forfeiture of property sentencing, forfeiture of a thing sentencing, thing, restorative concept

Streszczenie:
Autor studium naukowego bada opis rekonstruującej koncepcji kary. W szczególności, alternatywna kara charakteru nieruchomości, ich statusu i definicji w systemie prawa karnego w Republice Słowackiej. Rolą kary za przepadek mienia jest dotarcie do własności sprawcy, a na koniec - do odbudowy sprawcy. Celem ukarania przepadku jest wyeliminowanie rzeczy, która może służyć popełnieniu przestępstwa. Istotą jest pogorszenie warunków sprawcy za

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Statement of the problem in general outlook and its connection with important scientific and practical tasks

The problems of alternative sentencing represents one of the key topics from criminal policy point of view, but also from the point of newly-formed community programs with criminal offenders. The implementation of alternative sentencing is a long-term process even after its legal establishment and it does not bring visible and measurable results immediately. This process is not by far completed even in the traditional democracies in Europe. Despite this fact, alternative sentencing is considered for necessary standard of legislation and of social operation in democratic countries.

Analysis of latest research where the solution of the problem was initiated

The Slovak republic was forced to deal with the fact, how the criminal law operates and to adapt to modern trends in the specified area. Nowadays, as an alternative to imprisonment a suspended sentence, restitution and fines, prohibition to undertake certain activities, expulsion, prohibition of residence, forfeiture of property, forfeiture of an object are implemented in our criminal law (Baláž P., 2004, p. 401-406). In the subject specific publication I give consideration to forfeiture of property and forfeiture of an object.

Aims of paper. Methods

When writing scientific studies, we used content analysis as a research method; it is the procedure for an objective, systematic and quantitative description of the obvious content of text communication. In our case, text documents of a predominantly official nature: legislative and administrative. This method is an important methodological tool.

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Exposition of main material of research with complete substantiation of obtained scientific results. Discussion

Forfeiture of property

The principal issue in a general view on the problem is the necessity to implement equal legal status of the crime committed in reality and the cyberspace (Ćmiel S., 2014, p. 32). Forfeiture of property is one of the punishments of restorative justice, by which it comes to intervention to property law. Forfeiture of property punishment itself represents relatively strict sanction and its imposition is bound by accurate determined conditions by the fact. Its fundamental is, that a court by its judgement withholds property law of a criminal offender to objects and property, which are in some connection to the committed crime. The objective of a punishment itself is forfeit the criminal offender’s property, to obstruct the conditions of a criminal offender for further criminal activity and finally to recondition the criminal. Forfeiture of property punishment can be imposed obligatory and facultatively. The conditions of imposing forfeiture of property punishment are amended in Criminal Code in section 58 (1). Statutory requirements for the court judgement for this type of sentence assume that:

• it is an offender whom the court sentences to life imprisonment or to unconditional imprisonment for a particularly serious felony, through which the offender gained or tried to gain large-scale property benefits or caused large-scale damage.“ (Burda E., Čentéš J., Kolesár J., Záhora J., 2010, p.437).

• „this punishment will be reasonable by taking account of the circumstances, under which the criminal offence was committed and the personal situation of the offender. The imposition of this punishment is an exemption from constitutional protection of legal ownership imposed by the article 20 of the Constitution of Slovak republic, as well as, from article 1 of Protocol of European Convention. According to article 20 of the Constitution of Slovak republic: „everyone has the right to own property. The ownership right of all owners has the same legal content and protection. Any property acquired inconsistently with the legal system, does not enjoy protection. Other interference with ownership rights may be permitted only if the property was acquired in an unlawful manner or from means acquired illegally and if such measure is necessary in a democratic society to protect national security, public order, morals or the rights and freedoms of others.“(Article 20 Constitution of Slovak Republic).

Forfeiture of property punishment must be reasoned not only by circumstances of the criminal offence, but also by the personal situation of the offender. By circumstances of the criminal offence we comprehend circumstances, that are appertained to
committed crime, especially the mode of its commission, the degree of causation, the motivation of the offender, situation and the habitat, under which the criminal offence was committed, as well as, social conditions at the time and location of the criminal offence. In the examination of the punishment objective the circumstances that influence the intensity of society protection against offenders and the punishment educational influence for other society members are examined mainly. Offender’s social conditions shall be the facts, that are related to the offender, but are not related to the criminal offence. The court will consider family and personal condition existing at the time to when imposing forfeiture of property. The forfeiture of property shall be imposed concurrently:

- to unconditional imprisonment for a particularly serious felony, through which the offender gained or tried to gain large-scale property benefits or caused large-scale damage,“ (Burda E., Čentěš J., Kolesár J., Záhora J., 2010, p.437) or
- „ to life imprisonment “

The law strictly conditions under which circumstances the forfeiture of property and life imprisonment can be imposed concurrently. Alternative sentence of forfeiture of property can be imposed only to a small group of bodies of criminal offences by the means of Criminal Code Act 300/2005 Coll. The imposition of this punishment results in the fact, as a complementary punishment to unconditional imprisonment only serious felony offence is abided by the law. Only particularly serious felony, through which the offender gained or tried to gain large-scale property benefits or caused large-scale damage can be imposed concurrently to forfeiture of property (Ivor J., Polák P., Záhora J., 2016, p. 400).

Forfeiture of property can be imposed obligatory as well. Conditions under which forfeiture of property can be imposed are following:

- Criminal offence must be listed enumerative and
- the offender has acquired his property or part thereof from the proceeds of crime at least in the substantial extent (at least 26 600 Euros)

The difference between section 58 (1) and 58 (2) is that, in section 58 (2) the imposing of forfeiture of property punishment is bound only to one condition, which is, that the offender has acquired his property in the substantial extent. The fact, that the offender acquired property by criminal offence or by income from criminal offence must be proofed in the criminal proceeding and the offender must this property or its part acquire in the real sense. In this case, the ambition to acquire the property or its part is not sufficient, because the property can be acquired also by different criminal offence, on which the property forfeiture is already imposed: The standard will be,
that forfeiture of property punishment shall be imposed right because of criminal offense property acquiring, because this fact shall be proofed by criminal proceeding." (Burda E., Čentěš J., Kolesár J., Záhora J., 2010, p.439).

The penalty of the forfeiture of property shall recover in the extent that belongs to the sentenced person in the execution of the penalty of the forfeiture of property after the end of bankruptcy proceedings (Korgo D., a kol., 2012, p. 178):

• proceeds of encashment of property, if the property was not encased by so far,
• the property that is excluded from the particulars of sale,
• proceeds of encashment of property

The final decision on the forfeiture of property shall result in the dissolution of community property of spouses. Inherent consequence of imposing forfeiture of property punishment is bankruptcy proceeding order on a natural person, who the mentioned punishment was imposed on. It results from section 423 of Code of Criminal Procedure according to which: “Right after the imposing forfeiture of property punishment becomes enforceable, sends the presiding judge of bankruptcy court, in which the court that decided at first instance, is based, copy of judgement without reasoning on the procedure according to special law.” (Section 423 Act 301/2005 Coll. Criminal Procedure Code).

In reference to section 432 Code of Criminal Procedure section 107(a) (1) Bankruptcy Act it states: „If the court with jurisdiction serves a final judgement about forfeiture of property or protective measure of confiscation of property, bankruptcy court decides forthwith without motion about forfeiture of property of a person, who the punishment or protective measure was imposed on. Bankruptcy court decides by order, against which suspension is not granted.“(Section 107(a) (1) Act 224/2010 Coll. Bankruptcy Act).

Bankruptcy court based on the order, orders bankruptcy proceeding without the duty to deliver special order about the beginning of bankruptcy proceeding, which is a common procedure in the terms of bankruptcy proceedings. According to section 59 (2) of Criminal Code, by the court statement, the forfeited property shall, based on legal ownership acquisition become a property of the State. When the legal ownership is acquired by the State, it does not become an owner of the liabilities of the previous owner, because these shall be settled down in the bankruptcy proceeding. There is an exemption, when the forfeited property does not become a property of the State. In this case the court decides based on a promulgated international treaty binding for the Slovak Republic. “Such a treaty is for example article 13 and further of Council of Europe Convention on Laundering, Search, Seize and Confiscation of...

According to section 34 (7) of Criminal Code the forfeiture of property may not be imposed concurrently with pecuniary penalty or forfeiture of a thing.

**Forfeiture of thing**

The current Criminal Code Act 300/2005 Coll. adopted this paragraph body from previous version of Criminal Code Act 140/1961 Coll. Forfeiture of a thing belongs to the group of punishments, where ownership rights of an offender are interfered. The advantage compared to the previous legal form is, that the conditions of imposition of sentence of forfeiture of a thing were rectified. The ownership rights of an offender are transferred to state by official verdict. The basis of forfeiture of a thing is the deprivation of the ownership by the final judgement of conviction. The objective of forfeiture of a thing is as well as, in the case of forfeiture of property, to eliminate the object, which could be used for further criminal activity, to obstruct the conditions of an offender for further committing of a crime, or also to deprive the benefit obtained by committing a crime.

For things are considered only the things that are exclusively stated in section 60 (1) of the Criminal Code. The only exemption that is based on the purpose and intention of the punishment occurs in the case, when the offender uses the thing, that is common and easily available for committing a crime, for example in the household of the offender, accompanied by the fact, that this object was an instrument for committing a crime only coincidently (for example, a kitchen knife in the case of murder).“ (Burda E., Čentěš J., Kolesár J., Záhora J., 2010, p.446).

For the purposes of section 130 (1, 2) of Criminal Code a thing shall mean (Section 130 (1,2) Trestnéhozákona):

- a controllable force of nature or energy, or
- a security paper irrespective of its form, as well as,
- a movable or immovable thing, dwelling or non-residential premises, or animal, unless the relevant provisions of this Act provide otherwise,
- intangible information, computer data or video recording on a technical medium.

A thing, that was used to commit a crime is considered also a thing, by the means of which the offender accomplished the action. In terms of forfeiture of a thing, a thing shall mean A thing in the means of a punishment is considered income, interest, gains from the criminal offence and other rewards from these gains. It results from the Criminal Code, that it shall be a thing, that was physically used for committing a crime. A passkey, burglary tools, or a thing of everyday consumption used to com-
mit crime can be considered as such a thing. A thing, that was used for committing a crime, does not have to be the sign of a criminal offence and can be only a coincidental instrument. The fact, that the offender has a thing by himself, does not necessarily mean, that it is a thing used for a criminal offence. The relevance of a thing shall be considered also in the relation of the offender`s intention. For the thing, that was meant to commit a criminal offence is valid the commentary for the thing, that was used for criminal offence. „This situation could occur in the case of the offenders, to whom the equipment for the manufacturing of narcotic substances was secured.“ (Čentěš J., Kolcunová M., 2009, p. 811).

A thing, that the offender acquired by criminal offence, or a reward for that is a thing, that the offender manufactured or gained. If it is a thing, that the offender gained as a reward for the criminal offence, it does not matter, if the thing was acquired before or after committing a crime. Also, it is not critical, whether the offender requested for the thing or not. A thing, that the offender acquired for the thing gained by the criminal offence of for a reward from a crime shall be considered for example a house, a car, that was bought for the accepted reward. Forfeiture of property punishment can be imposed only when the offender acquired the whole thing for the thing gained by the criminal offence or for the reward from it. If the offender acquired the thing partly legally and partly according to section 60 (1) c) of Criminal Code, forfeiture cannot be imposed. (Ivor J., Polák P., Záhora J., 2016, p. 402; Burda E., Čentěš J., Kolesár J., Záhora J., 2010, p.448).

According to section 60 (2) of Criminal Code: „If the thing referred to in paragraph 1 is inaccessible or unidentifiable, or is merged with the property of the offender, or with the property of another person obtained by lawful means, the court may impose the forfeiture of a thing whose value corresponds to the value of this thing.“( Section 60 (2) Criminal Code).

In this clause the operation of the court is regulated, if a thing that shall be an object of forfeiture of a thing is:
- inaccessible,
- unidentifiable, or
- merged with the property of the offender, or
- merged with the property of another person obtained by lawful means.

An inaccessible thing shall mean a thing that has been destroyed, damaged, lost, transferred to another person for the purpose of excluding it from the competence of criminal procedure authorities. Unidentifiable thing is formulated as a thing than cannot be determined. It is the case, when it is not possible to determine unambigu-
ously, which thing was used by the offender. A thing merged with the property of the offender or another person will be specifically assigned things or money most of the time. The State becomes an owner of the forfeited thing. The state does not become the owner of the property is the case, when the court decides otherwise based on a promulgated international treaty binding for the Slovak Republic. The court shall not impose forfeiture if:

• „the victim is entitled to a compensation for damage caused by the offence, which the forfeiture of a thing would make impossible,
• the value of the thing is prima facie disproportionate to the gravity of the minor offence, or
• the court waives the punishment of the offender.“ (Ivor J., Polák P., Záhora J., 2016, p. 403).

Conclusions

The author describes, that the philosophy of alternative sentencing is simple: to let the sentenced unapprehend and impose them with such a type of charges or restrictions, that will act preventively against further criminal activity, protect the society, accommodate the interests of the victims of the criminal offense and strengthen the habits and attitudes essential for living proper life. Compared to traditional forms of punishment, alternative forms of legal disputes resolution are not aimed exclusively on the field of repression and the statement of verdict, but they emphasize individual approach to criminal activity solution and they point out to precautionary element of work with the accused (sentenced).

References:


**Sources of law:**