

Nie tylko kryminologia...

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The practice of applying the provision of Article 297 of the Polish Penal Code¹.

ABSTRAKT

Celem publikacji jest przedstawienie wyników badań dotyczących problematyki zastosowania przepisu art. 297 k.k. w praktyce oraz podjęcie próby ich oceny i sformułowania wniosków. Opisano znamiona charakteryzujące przestępstwo z art. 297 § 1 k.k., który brzmi następująco: kto, w celu uzyskania dla siebie lub kogo innego, od banku lub jednostki organizacyjnej prowadzącej podobną działalność gospodarczą na podstawie ustawy albo od organu lub instytucji dysponujących środkami publicznymi – kredytu, pożyczki pieniężnej, poręczenia, gwarancji, akredytywy, dotacji, subwencji, potwierdzenia przez bank zobowiązania wynikającego z poręczenia lub z gwarancji lub podobnego świadczenia pieniężnego na określony cel gospodarczy, instrumentu płatniczego lub zamówienia publicznego, przedkłada podrobiony, przerobiony, poświadczający nieprawdę albo nierzetelny dokument albo nierzetelne, pisemne oświadczenie dotyczące okoliczności o istotnym znaczeniu dla uzyskania wymienionego wsparcia finansowego, instrumentu płatniczego lub zamówienia, podlega karze pozbawienia wolności od 3 miesięcy do lat 5.

Omówiono także znamiona popełnienia czynu polegającego na zaniechaniu powiadomienia z art. 297 § 2 k.k., o następującym brzmieniu: kto wbrew ciążącemu obowiązkowi, nie powiadamia właściwego podmiotu o powstaniu sytuacji mogącej mieć wpływ na wstrzymanie albo ograniczenie wysokości udzielonego wsparcia finansowego, określonego w § 1, lub zamówienia publicznego albo na możliwość dalszego korzystania z instrumentu płatniczego.

Następnie została dokładnie opisana metodologia przeprowadzonych badań. Badania miały charakter aktowy i dotyczyły prawomocnych orzeczeń wydanych przez sądy drugiej instancji. Cezurą czasową objęto okres od 2012 do 2016. Dokonano także wyboru celowego ze względu na kwalifikację prawną czynu na podstawie, którego dokonano skazania w pierwszej instancji, tj. przestępstwa z art. 297 k.k. Następnie przedstawiono wyniki badań oraz podjęto próbę skomentowania otrzymanych rezultatów. Wnioski z badań wskazały, między innymi, na przypadki występowania braku prawidłowego zrozumienia przepisu, mylenie pojęć, niepotrzebnej automatycznej kumulatywnej kwalifikacji czynu, zawężenie stosowania instrumentów wymienionych w przepisie do kredytu, pożyczki oraz dotacji oraz a wiele innych.

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Introduction

Issues related to the circumstances of committing credit crimes crime as stipulated in Article 297 of the Polish Penal Code they combine not only the legal aspect but also the economic aspect. This issue is not purely theoretical but definitely practical and concerning the sphere of financial life, which every one of us has to deal with on a daily basis. This refers to the banking sector and the sector of managing public funds, including EU funds.

The purpose of this article is to present the results of examinations on the subject of the application of the provision of Article 297 of the Polish Penal Code in practice. For this purpose, a brief description of the rule described in Article 297 of the Polish Penal Code will be made. Next, the methodology of the research will be discussed and the results will be described at the end.

Credit fraud (Article 297 of Polish Penal Code) - short characteristics

As a reminder, the wording of the provision of Article 297 § 1 and § 2 of Polish Penal Code is as follows:

§ 1. Who, in order to obtain for himself or someone else, from a bank or organizational unit conducting similar economic activity under the Act or from an authority or institution with public funds - credit, monetary loan, surety, guarantee, letter of credit, subsidy, subsidy, confirmation by the bank of a liability arising from a surety or a guarantee or similar cash payment for a specific business purpose, payment instrument or public contract, submit counterfeit, converted, attesting untruth or unreliable document or unreliable written statement regarding circumstances of significant importance in order to obtain the mentioned financial support, payment instrument or order,

- *it is punishable by imprisonment up from 3 months to 5 years.*

§ 2. The same penalty shall be imposed on anyone who, in breach of a binding obligation, does not notify the relevant entity of the situation that may affect the cessation or limitation of the financial support referred to in § 1 or the public order or the possibility of further use of the electronic payment instrument.

The generic subject of protection is honest and reliable economic turnover². In particular, it is about turnover within professional financial institutions³. In other words, the subject of the protection of Article 297 of Polish Penal Code is to ensure the correct operation of a bank or an entity conducting similar economic activity on the basis of an act or body or institution that has public funds. It is considered that goods legally protected by Article 297 § 1 and § 2 of Polish Penal Code are primarily indicated in this provision financial instruments: loan, cash

² Wyrok Sądu Najwyższego z dnia 2 kwietnia 2008 roku, sygn. akt III KK 473/07, Prokuratura i Prawo, 2008, nr 10, s.10.

³ J. Potulski, *Przestępstwa przeciwko obrotowi gospodarczemu*, [w:] R. Stefański (red.), *Kodeks karny. Komentarz*, C.H. Beck, Warszawa 2015, s. 1766.

loan, guarantee, letter of credit, monetary loan, surety, guarantee, letter of credit, subsidy, confirmation by the bank of a liability arising from a surety or a guarantee or similar cash payment for a specific business purpose, electronic payment instrument or public contract⁴.

In the literature, it is believed that the construction of Article 297 § 1 of Polish Penal Code consists of three elements. The first of them is the so-called modal circumstance, that is, the perpetrator acting on his own behalf or on behalf of another person. The second element is the so-called subject modal circumstance. This is specifically about acting before the financial institution specified in the provision in order to obtain the financial instrument specified in the provision. The third element concerns the proper causative action, i.e. the submission of specific documents or statements indicated in the discussed provision. It is believed that the term “submit” should be understood quite broadly. There will be all actions taken by the perpetrator to submit documents or statements to a specific institution often represented by a natural person, such as an employee. It needs to be emphasized that all three elements must appear together, but it does not have to be at the same place and at the same time⁵.

Circumstances of material importance are, in principle, circumstances that, by occurrence or non-occurrence, determine a positive decision by the aggrieved party regarding the granting of financial support to the perpetrator or other benefit indicated in the provision of Article 297 § 1 of Polish Penal Code⁶.

For the existence of this crime, the result is irrelevant. The performance takes place irrespective of whether or not a claimed benefit was obtained. Also, it is not affected by the fact whether the person providing the service was misled or not, and whether the person providing the service got acquainted with the submitted document or statement⁷. The crime is committed at the time of submitting a document or a written statement⁸. Therefore, in order to fulfil conditions set out in Article 297 of Polish Penal Code, no change in the outside world is required.

Offense under Article 297 § 1 of Polish Penal Code is a type of common offense (*delictum commune*) and can be committed by any person who is capable of criminal liability⁹.

An offense of financial fraud can only be committed through intentional guilt. This is a directional offense, as its purpose is to obtain any of the financial instruments listed in the criminal provision.

⁴ A. Zoll (red.), *Kodeks karny. Część szczególna. Komentarz do Article 117-363. Tom II i III*, Zakamycze 1999, LEX/el 2016, komentarz do Article 297 of Polish Penal Code, teza 1-61.

⁵ R. Zawłocki, *Oszustwa gospodarcze. Analiza przepisów Article 297 i 298 of Polish Penal Code*, Monitor Prawniczy, nr 3, C. H. Beck, Warszawa 2006, Legalis el/2015.

⁶ T. Bojarski (red.), A. Michalska-Warias, J. Piórkowska-Fliger, M. Szwarczyk, *Kodeks karny. Komentarz*, wyd. VI, LexisNexis, Warszawa 2013, LEX/el 2016, komentarz do Article 297 of Polish Penal Code, teza 1-8.

⁷ M. Gałązka, *Przestępstwa przeciwko obrotowi gospodarczemu* [w:] A. Grześkowiak (red.), K. Wiak (red.), *Kodeks Karny. Komentarz*, Wydanie 3, C.H.Beck, Warszawa 2015, s. 1335.

⁸ J. Potulski, *Przestępstwa przeciwko obrotowi gospodarczemu* [w:] R. Stefański (red.), *Kodeks karny. Komentarz*, C.H. Beck, Warszawa 2015, s. 1767.

⁹ M. Gałązka, *Przestępstwa przeciwko obrotowi gospodarczemu* [w:] A. Grześkowiak (red.), K. Wiak (red.), *Kodeks Karny. Komentarz*, Wydanie 2, C.H. Beck, Warszawa 2014, s. 1077.

Crime committed in Article 297 § 2 of Polish Penal Code is called a credit fraud from omission, because it mainly depends not on a particular behaviour but on an omission, failure to perform the expected behaviour¹⁰. The notification obligation resulting from the content of this provision applies to institutions and bodies that have granted powers in the form of a financial instrument, payment instrument, public contract or other financial support. The content of the notification should be circumstances that may affect the stopping or limitation of the possibility of using financial support or public procurement¹¹.

The subject of direct action of a crime entity under Article 297 § 2 of Polish Penal Code are the information about circumstances that may affect the cessation or limitation of the amount of benefits granted. Acting in the scope of this provision consists in abandoning the notification and only in this form the offense can be committed¹². This is both a total abandonment and selective non-disclosure of certain circumstances¹³. In order to fulfil the assumptions it is not necessary to show that the behaviour of the offender created the risk of damage to the property of a given institution or body¹⁴. It is sufficient that failure to submit a notification would create a threat of non-compliance by the beneficiary of this obligations.

Offense under Article 297 § 2 of Polish Penal Code is of individual nature¹⁵. It can be committed only by the one who is obliged to notify the relevant entity about the situation that may affect the suspension or limitation of the amount of financial support or public procurement granted or the possibility of further use of the payment instrument¹⁶.

Crime committed in Article 297 § 2 of Polish Penal Code is an intentional crime. It can be committed both in direct intention and possible intention¹⁷.

Methodology of the conducted research

The research is aimed at assessing the functioning of the provision in Article 297 § 1 and 2 of Polish Penal Code from the point of view of its individual application in practice in a specific case. In empirical research, the method of analysis of acts in the form of an examination of the jurisprudence line was used, i.e. analysis of issued judgments in the scope of Article 297

¹⁰ J. Giezek (red.), *Kodeks karny. Część szczególna. Komentarz*, wydanie I, Wolters Kluwer, Warszawa 2014, LEX/el 2016, komentarz do Article 297 of Polish Penal Code, teza 1-42.

¹¹ O. Górniok (red.), *Kodeks karny. Komentarz*, wyd. II, LexisNexis, Warszawa 2006, LEX/el 2016, komentarz do Article 297 of Polish Penal Code, teza 1-21.

¹² A. Zoll (red.), *Kodeks karny. Część szczególna. Komentarz do Article 117-363. Tom II i III*, Zakamycze 1999, LEX/el 2016, komentarz do Article 297 of Polish Penal Code, teza 1-61.

¹³ M. Mozgawa (red.), M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, *Kodeks karny. Komentarz*, wyd. VI, Wolters Kluwer, Warszawa 2014, LEX/el 2016, komentarz do Article 297 of Polish Penal Code, teza 1-25.

¹⁴ A. Zoll (red.), *Kodeks karny. Część szczególna. Komentarz do Article 117-363. Tom II i III*, Zakamycze 1999, LEX/el 2016, komentarz do Article 297 of Polish Penal Code, teza 1-61.

¹⁵ M. Mozgawa (red.), M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, *Kodeks karny. Komentarz*, wyd. VI, Wolters Kluwer, Warszawa 2014, LEX/el 2016, komentarz do Article 297 of Polish Penal Code, teza 1-25.

¹⁶ J. Giezek (red.), *Kodeks ...op.cit.*

¹⁷ A. Zoll (red.), *Kodeks karny. Część szczególna. Komentarz do Article 117-363. Tom II i III*, Zakamycze 1999, LEX/el 2016, komentarz do Article 297 of Polish Penal Code, teza 1-61. także J. Giezek (red.), *Kodeks karny. Część szczególna. Komentarz*, wydanie I, Wolters Kluwer, Warszawa 2014, LEX/el 2016, komentarz do Article 297 of Polish Penal Code, teza 1-42.

of Polish Penal Code. For this purpose, the resources of the portal of published judgments of common courts were used, which were available on the website <https://orzeczenia.ms.gov.pl/>. The judgments were selected according to the key described below. First of all, the time period was from 2012 to 2016. Only the final court judgments of the second instance were qualified for the research. Additionally, it was made more specific by making a targeted choice due to the legal qualification of the deed on the basis of which the conviction was handed down in the first instance, i.e. the offense under Article 297 of Polish Penal Code. Justifying the reasons for such selection, it should be said that the years 2012 to 2016 cover a period of 5 years, which seems to be sufficient to be able to answer research questions. And in addition, the last significant change in the provision of Article 297 of Polish Penal Code took place in 2004. In the selected period, one modification was made, which entered into force on October 7, 2013, having only a technical nature. Namely, the term “electronic payment instrument” was replaced in the repealed act on electronic payment instruments¹⁸ with the term “payment instrument”. However, this is not a substantive change, as the modified phrase has the same conceptual scope. Therefore, selected years, ie 2012 to 2016, should give the opportunity to capture changes in the judicial line and trends in the subject of research questions with the content of the provision of Article 297 of Polish Penal Code. Only final judgments of courts of second instance, which give complete information as to how to complete the proceedings in a given case, were selected for conducting empirical research.

The resignation from the first-instance judgments was dictated by the will to obtain broad information regarding adjudication regarding the accusation under Article 297 of Polish Penal Code. The court of appeal is a substantive court. In connection with this, judgments of the Court of Appeal together with the justification show both information on the scope of the accusation, the decision on the guilt of the accused, indicate punishment, punitive measures, compensatory measures or safeguards as well as appeals and case law, as well as the facts, arguments of the court of first instance and motivations of the court of appeal. Therefore, only the analysis of second-instance judgments gives the opportunity to show the problems appearing at the stage of judgment in the first instance and the decisions of the so-called corrective: repealing or changing.

Using the described methodology, 110 court judgments were selected for the study. Using the other determinants described above, all judgments that were not final sentences, going beyond the years 2012 to 2016, i.e. ordered in another time period and not issued by the courts of second instance were rejected,. The result was obtained in the form of 70 judgments of courts of second instance.

Among selected judgments 30 were issued by the courts of appeal and 40 by district courts. Selected judgments were issued by courts throughout the country. Thus, in the area of

¹⁸ Ustawa z dnia 12 lipca 2013 r. o zmianie ustawy o usługach płatniczych oraz niektórych innych ustaw (Dz. U. 2013 poz. 1036).

appeal courts, the following entities appeared: the Appeal Court in Białystok, the Court of Appeal in Gdańsk, the Appeal Court in Katowice, the Appeal Court in Poznań, the Appeal Court in Szczecin, the Court of Appeal in Warsaw, the Court of Appeal in Wrocław. As regards circuit courts, these were: Circuit Court in Gliwice, Circuit Court in Koszalin, Circuit Court in Łódź, Circuit Court in Piotrków Trybunalski, Circuit Court in Świdnica, Circuit Court in Toruń, Circuit Court in Warsaw, Circuit Court in Warsaw - Prague in Warsaw.

Then a qualitative analysis of the content of judgments was carried out. A complementary quantitative analysis was carried out to the extent necessary to facilitate the capture of trends and inference.

The results of investigations of selected court judgments

First of all, some trends should be pointed out, which were not directly related to the questions asked, but it is worth to say about them because they give a more complete picture of the research carried out.

The most frequently occurring financial institution, in which the documents defined in Article 297 of Polish Penal Code were submitted, was a bank. Of course, at the time of submitting the application, the bank was most often represented by a designated employee or documents were submitted via the ICT system or the Internet directly to the banking system. The bank appeared in 57 cases out of 70. In one of the judgments¹⁹, the Agricultural Market Agency appeared, acting as a representative of the State Treasury in the purchase of intervention purchases of rye and wheat. In one situation²⁰, SKOK - Spółdzielcza Kasa Oszczędnościowo-Kredytowa. In two cases, the institution was a commune, however, in the first of them, it acted as a body authorized to dispose of funds from the European Social Fund, in the second it dealt with the issue of awarding budgetary subsidies for non-public educational institution. In four judgments, the defendants submitted documents to the Agency for Restructuring and Modernization of Agriculture. The five judgments did not contain information about the institution.

In all the judgments examined, the criminal trial was researched, regarding from charges of accusation, by conviction up to appeal. In the vast majority of cases, the charges were formulated in such a way that Article 297 § 1 of Polish Penal Code was in a relationship or coincidence with other provisions of substantive criminal law. In only a few cases, the charge of accusation was a single provision of Article 297 § 1 k of Polish Penal Code Only in two cases²¹ the accusation concerned deeds of Article 297 § 2 of Polish Penal Code, ie failure to notify the

¹⁹ Wyrok Sądu Apelacyjnego w Szczecinie z dnia 4 października 2012 roku, sygn. akt II AKa 64/12, [http://orzeczenia.ms.gov.pl/content/\\$N/15550000001006_II_AKa_000064_2012_Uz_2012-10-04_001](http://orzeczenia.ms.gov.pl/content/$N/15550000001006_II_AKa_000064_2012_Uz_2012-10-04_001) (dostęp: 15.1.2018).

²⁰ Wyrok Sądu Okręgowego w Koszalinie z dnia 9 września 2013 roku, sygn. akt V Ka 395/13, [http://orzeczenia.ms.gov.pl/content/\\$N/155510000002506_V_Ka_000395_2013_Uz_2013-09-09_001](http://orzeczenia.ms.gov.pl/content/$N/155510000002506_V_Ka_000395_2013_Uz_2013-09-09_001) (dostęp: 15.1.2018).

²¹ Wyrok Sądu Okręgowego w Gliwicach z dnia 2 października 2015 roku, sygn. akt VI Ka 471/15, [http://orzeczenia.ms.gov.pl/content/\\$N/151515000003006_VI_Ka_000471_2015_Uz_2015-10-02_001](http://orzeczenia.ms.gov.pl/content/$N/151515000003006_VI_Ka_000471_2015_Uz_2015-10-02_001) (dostęp: 15.1.2018) oraz wyrok Sądu Apelacyjnego w Gdańsku z dnia 6 października 2015 roku, sygn. akt II AKa 212/15, [http://orzeczenia.ms.gov.pl/details/\\$N/151000000001006_II_AKa_000212_2015_Uz_2015-10-06_003](http://orzeczenia.ms.gov.pl/details/$N/151000000001006_II_AKa_000212_2015_Uz_2015-10-06_003) (dostęp: 15.1.2018).

relevant entity about the situation that may affect the suspension or limitation of the amount of financial support or public procurement granted or the possibility of further use of the payment instrument, despite the obligation imposed on it.

When comparing the content of the conviction, in the scope of committed acts, many changes were observed to the accusations made in the indictment act. Only in a few cases (nine defendants) an acquittal was pronounced. In the remaining sentences of the first instance, the accused were convicted. Numerous changes in the legal classification of the committed deeds have been encountered, mainly extending the catalog of substantive criminal law provisions defining committed acts prohibited by adding articles “in a relationship” or “at the confluence”, but not only. There were also cases of narrowing the description of the legal qualification of committed acts. One of the convictions took place in the mode of Article 387 the Code of Criminal Procedure, i.e. a conviction without hearing at the request of the accused²².

In more than half of the judgments examined, after the conviction of the accused, the execution of the penalty of deprivation of liberty under condition of Article 69 § 1 of Polish Penal Code. The situation is similar with a fine ruling pursuant to Article 33 § 2 of Polish Penal Code. In some of the verdicts examined, at the level of the first instance, the obligation to repair the damage was ordered.

As regards the decisions of the courts of second instance, only 28 cases were upheld in the contested judgment of the first instance, considering that the appeals lodged were not reasonable. In other cases, the following occurred:

- partial set aside of the judgment and a change in this part,
- partial set aside of the judgment and refer the case back for re-examination to this part,
- repeal the judgment in its entirety and refer the case back for re-examination.

In two of the cases examined, the second instance court changed the contested judgment and acquitted the accused from committing the alleged acts. In the first²³ it was about the deed of Article 297 § 1 of Polish Penal Code and the second²⁴ was about the deed of Article 297 § 1 of Polish Penal Code in the confluence with Article 270 § 1 of Polish Penal Code and in connection with Article 286 § 1 of Polish Penal Code.

As can be seen from the above data, it seems to be very worrying that in more than half of the cases examined, the verdict of the court of first instance turned out to be incorrect in whole or in part and only the second instance control made an appropriate adjustment.

²² Wyrok Sądu Okręgowego w Toruniu z dnia 29 października 2013 roku, sygn. akt IX Ka 465/13, [http://orzeczenia.ms.gov.pl/content/\\$N/151025000004506_IX_Ka_000465_2013_Uz_2013-10-29_001](http://orzeczenia.ms.gov.pl/content/$N/151025000004506_IX_Ka_000465_2013_Uz_2013-10-29_001) (dostęp: 15.1.2018).

²³ Wyrok Sądu Okręgowego w Warszawie z dnia 9 września 2014 roku, sygn. akt X Ka 626/14, [http://orzeczenia.ms.gov.pl/content/\\$N/154505000003006_X_Ka_000626_2014_Uz_2014-09-11_002](http://orzeczenia.ms.gov.pl/content/$N/154505000003006_X_Ka_000626_2014_Uz_2014-09-11_002) (dostęp: 15.1.2018).

²⁴ Wyrok Sądu Okręgowego Warszawa-Praga w Warszawie z dnia 11 października 2016 roku, sygn. akt VI Ka 492/16, [http://orzeczenia.ms.gov.pl/content/\\$N/154510000003006_VI_Ka_000492_2016_Uz_2016-10-27_001](http://orzeczenia.ms.gov.pl/content/$N/154510000003006_VI_Ka_000492_2016_Uz_2016-10-27_001) (dostęp: 15.1.2018).

A few cases from among the judgments examined were particularly noteworthy because the errors observed in the judgments of the first instance courts, by appellate judges, often seemed to be so little complicated that they could be avoided. Here are some examples.

In one of the appellate judgments²⁵, the district court quashed the first-instance judgment, *inter alia*, because the court violated Article 4 § 1 of the Polish Penal Code. At the time of committing the offense, a version of the penal code was in force, according to which the accused's behavior was not penalized. The action concerned a non-bank loan. Only later came into force an amendment extending the generic concept of a loan. The court of first instance ignored the very important principle that if a law other than at the time of committing a crime is in force at the time of pronouncing, a new act applies, however, a law that was previously in force should apply, if it is more relative to the perpetrator. In the present case, it was absolutely necessary that the law applicable earlier was more favorable to the perpetrator, as the behavior of the accused was indifferent from the point of view of the then binding provisions of Article 297 § 1 of Polish Penal Code and did not fulfill the statutory features of this crime.

In another judgment²⁶, the second instance court completely quashed the judgment under appeal and remitted the case to the district court by applying the provisions of the Code of Criminal Procedure, *i.e.* the absolute ground of appeal, in the form of a case being examined during the absence of the accused whose presence was compulsory. The accused was not present at the hearing, during which the court closed the proceedings and imposed a penalty. He justified his absence with medical exemption confirmed by a court expert. Despite this, the first instance court sentenced him, *inter alia*, based on Article 297 § 1 of Polish Penal Code.

Another example of gross error of the court of first instance corrected as a result of the appeal concerned the unreasonable discontinuance of the proceedings²⁷. The first instance court conditionally discontinued the proceedings against the accused, although the act he committed exhausted the features of the offense on the basis of Article 286 § 3 of Polish Penal Code in conjunction with Article 297 § 1 of Polish Penal Code in conjunction with Article 11 § 2 of Polish Penal Code. In this situation, there was a penalty of more than 3 years imprisonment. Therefore, the conditional discontinuance of the proceedings was precluded, in accordance with the wording of the provision. Article 66 § 2 of Polish Penal Code. At the same time, there were no special circumstances on the basis of Article 66 § 3 of the Polish Penal Code, allowing for conditional discontinuance of proceedings against a perpetrator of a crime threatened with a penalty not exceeding 5 years imprisonment. Therefore, conditional discontinuance of proceedings in this case could not be applied. Despite the lack of compliance with the basic condition of admissibility in this procedure, the court of first instance applied this institution. Consequently,

²⁵ Wyrok Sądu Okręgowego w Koszalinie z dnia 9 września 2013 roku, sygn. akt V Ka 395/13, [http://orzeczenia.ms.gov.pl/content/\\$N/155510000002506_V_Ka_000395_2013_Uz_2013-09-09_001](http://orzeczenia.ms.gov.pl/content/$N/155510000002506_V_Ka_000395_2013_Uz_2013-09-09_001) (dostęp: 15.1.2018).

²⁶ Wyrok Sądu Okręgowego w Koszalinie z dnia 9 września 2013 roku, sygn. akt V Ka 395/13, [http://orzeczenia.ms.gov.pl/content/\\$N/155510000002506_V_Ka_000395_2013_Uz_2013-09-09_001](http://orzeczenia.ms.gov.pl/content/$N/155510000002506_V_Ka_000395_2013_Uz_2013-09-09_001) (dostęp: 15.1.2018).

²⁷ Wyrok Sądu Okręgowego w Toruniu z dnia 14 sierpnia 2014 roku, sygn. akt IX Ka 282/14, [http://orzeczenia.ms.gov.pl/content/\\$N/151025000004506_IX_Ka_000282_2014_Uz_2014-08-14_001](http://orzeczenia.ms.gov.pl/content/$N/151025000004506_IX_Ka_000282_2014_Uz_2014-08-14_001) (dostęp: 15.1.2018).

the appellate court quashed the impugned judgment in its entirety and remitted the case for re-consideration.

Finally, it should be mentioned that in the analyzed material there was also a situation²⁸ in which the court of first instance incorrectly indicated the amounts swindled from the bank for purchases in the installment system. These amounts clearly arose from the evidence collected in the case, hence it seems that this error could have been avoided. The court of appeal revised the *merit* judgment in this regard.

In the judgments under consideration, there were problems with the correct classification of acts on the basis of Article 297 § 1 and 2 of Polish Penal Code.

One interesting case occurred in the scope of not punishable with Article 297 § 3 of Polish Penal Code²⁹. According to its wording, it is not punishable by anyone who, prior to initiating criminal proceedings, voluntarily prevented the use of financial support or payment instrument specified in Article 297 § 1 of Polish Penal Code, gave up subsidy or public order or satisfied the claim of the aggrieved party. At the stage of prosecution, for both deeds, court adopted the following classification: Article 297 § 1 of Polish Penal Code and Article 270 § 1 of Polish Penal Code in conjunction with Article 11 § 2 of Polish Penal Code. The action consisted in submitting untrustworthy, untrue statements of employment and earnings in order to obtain credits. Subsequently, the meriti court sentenced the accused for the first of the acts committed with Article 297 § 1 of the Polish Penal Code despite the fact that the accused, before commencing criminal proceedings regarding this offense, fully satisfied the claim of the aggrieved party.

Appeals were brought both by the prosecutor and the accused and after their examination, the appellate court discontinued, pursuant to Article 437 § 2 of Code of Criminal Procedure in conjunction with Article 414 § 1 of the Code of Penal Proceedings in conjunction with 17 § 1 item 4 of Code of Penal Procedure in conjunction with Article 297 § 3 of Polish Penal Code proceedings for action based on Article 297 § 1 of Polish Penal Code. This is another example of how important secondary-instance control is. Despite the clear indication of the grounds for not being subject to penalty in the provision of Article 297 § 3 of the Polish Penal Code and for the defendant to comply with them, both the indictment and the first instance court did not apply the above-mentioned regulation. It was only the appeal court that rectified this erroneous legal classification.

In the analyzed material there were several cases of serious problems with understanding the essence of credit fraud, which resulted in either failure to indicate all the features of the prohibited act or difficulties in distinguishing features. Below are examples of such situations.

²⁸ Wyrok Sądu Okręgowego w Gliwicach z dnia 8 lipca 2014 roku, sygn. akt VI Ka 294/14, [http://orzeczenia.ms.gov.pl/content/\\$N/151515000003006_VI_Ka_000294_2014_Uz_2014-07-08_001](http://orzeczenia.ms.gov.pl/content/$N/151515000003006_VI_Ka_000294_2014_Uz_2014-07-08_001) (dostęp: 15.1.2018).

²⁹ Wyrok Sądu Apelacyjnego we Wrocławiu z dnia 11 maja 2016 roku, sygn. akt II AKa 98/16, [http://orzeczenia.ms.gov.pl/content/\\$N/155000000001006_II_AKa_000098_2016_Uz_2016-05-11_001](http://orzeczenia.ms.gov.pl/content/$N/155000000001006_II_AKa_000098_2016_Uz_2016-05-11_001) (dostęp: 15.1.2018).

Thus, in one of the judgments³⁰, the court of first instance did not include in the description of the act the condition concerning the behavior of the perpetrator. It was not indicated, although it resulted from the evidence collected in the case, that his behavior consisted in submitting a forged, made-up, untruthful document or unreliable written statement regarding circumstances significant for obtaining a credit. In the description of the act, the court of first instance indicated that the accused had made an unreliable statement regarding the circumstances of significant importance for obtaining the kredytu. The court did not state that it was a written statement. To the statutory features of the offense under Article 297 § 1 of Polish Penal Code, the perpetrator must submit a counterfeit, remodeled, attesting untruthful document or unreliable written statement regarding circumstances significant for obtaining financial support. The Court of Appeals ruled that the lack of one of the important statutory characteristics of a prohibited act, indicated in the provision of Article 297 § 1 of Polish Penal Code, resulted in the inability to qualify the behavior of the perpetrator from that provision. The appeal court supported its view with the position expressed in the judgment of the Supreme Court of February 9, 2006³¹.

Another example³² concerns an incorrectly formulated description of an act in the verdict of the court of first instance, to the extent that the description did not contain all the features of the offense under Article 297 § 1 of Polish Penal Code, which determined the legal classification of the act attributed to the accused. The missing mark was the indication that the document submitted by the perpetrator concerned the circumstances of significant importance for obtaining financial support. And this is a condition of bearing responsibility for committing a crime with Article 297 § 1 of Polish Penal Code Submission of documents that are irrelevant to obtain financial support, which are simultaneously counterfeited, remade or certifying untruths is penalized on the basis of other criminal provisions than Article 297 § 1 of Polish Penal Code. In this case, the appellate court's audit function proved to be invaluable.

In the next case³³, there was a problem with the distinction of the characteristics of the deed based on Article 297 § 1 of Polish Penal Code ie: the issue of the necessity of the effect of action from the issue of the occurrence of damage, as a result of the defendant's specific behavior and the obligation to remedy it under Article 46 § 1 of the Polish Penal Code, if a request for its rectification has been filed in due time. The appellate court indicated that the offense under Article 297 § 1 of the Polish Penal Code is of formal nature, which means that there is no obligation to prove the effect of committing this act to indicate the offense. At the same time, if from the court's findings, based on the whole body of evidence, as a result of the perpetrator's

³⁰ Wyrok Sądu Okręgowego w Koszalinie z dnia 13 grudnia 2013 roku, sygn. akt V Ka 753/13, [http://orzeczenia.ms.gov.pl/content/\\$N/155510000002506_V_Ka_000753_2013_Uz_2013-12-13_001](http://orzeczenia.ms.gov.pl/content/$N/155510000002506_V_Ka_000753_2013_Uz_2013-12-13_001) (dostęp: 15.1.2018).

³¹ Wyrok Sądu Najwyższego z dnia 09 lutego 2006 roku, sygn. akt III KK 164/05, Prokuratura i Prawo 9/2006, Wydawnictwo IES, Kraków 2006, s.12.

³² Wyrok Sądu Okręgowego w Gliwicach z dnia 18 lutego 2014 roku, sygn. akt VI Ka 1189/13, [http://orzeczenia.ms.gov.pl/content/\\$N/151515000003006_VI_Ka_001189_2013_Uz_2014-02-18_001](http://orzeczenia.ms.gov.pl/content/$N/151515000003006_VI_Ka_001189_2013_Uz_2014-02-18_001) (dostęp: 15.1.2018).

³³ Wyrok Sądu Okręgowego Warszawa-Praga w Warszawie z dnia 11 października 2016 roku, sygn. akt VI Ka 492/16, [http://orzeczenia.ms.gov.pl/content/\\$N/154510000003006_VI_Ka_000492_2016_Uz_2016-10-27_001](http://orzeczenia.ms.gov.pl/content/$N/154510000003006_VI_Ka_000492_2016_Uz_2016-10-27_001) (dostęp: 15.1.2018).

behavior, the injured financial institution, in this case the bank, suffered a specific damage and filed, within the time specified in Article 49a of the Code of Criminal Procedure, a claim for damages, it is perfectly reasonable to impose an obligation on the perpetrator to repair the damage.

The next problem that was noticed in the analyzed material were serious difficulties with the correct classification of attempt to commit a crime and distinguish it from preparing to commit a crime.

In the case³⁴ in question, the accused sent applications with attached employment's certificates to banks, but did not take any additional steps. Neither the accused contacted banks nor attached other documents. Thus, its operation did not go beyond the preparatory activities and as such could not be considered an attempt to extort. In this case, the exposure of a legal good, according to the court of a long instance, seemed to be quite distant and even purely theoretical. On the other hand, it was possible to consider the accused's act of sending a loan application and appearing in a bank in order to sign the contract. The appellate court pointed out that the difference between the preparation and the attempt was mainly to determine whether the behavior of the perpetrator was an abstract or a specific threat. According to the court, attempting is definitely a more concrete action than preparation. As a result of attempting, the threat to the protected good becomes real.

The next examples concern unnecessary cumulative qualification. In the first of them, the court of first instance, the accused's behavior consisting in submitting a false or stating false document for the purpose of obtaining a loan based on Article 297 § 1 of Polish Penal Code in relation to Article 270 § 1 of Polish Penal Code (counterfeiting of the document)³⁵. The court of second instance pointed out that in this case it is unnecessary to qualify such behavior in addition on the basis of Article 270 § 1 of Polish Penal Code. In the second example, the court of first instance showed a problem understanding when to apply cumulative qualification Article 297 § 1 of Polish Penal Code together with Article 286 § 1 of Polish Penal Code (fraud)³⁶. The appellate court indicated that if the perpetrator at the time of signing the contract intends to repay the loan, which then was consistently implemented, then such action precludes the attribution of a crime under Article 286 § 1 of the Polish Penal Code, even if for the purpose of obtaining credit he used falsified, converted, certifying untruths or unreliable documents, or unreliable written statements regarding circumstances of material importance for obtaining this financial support. The court of second instance argued that if the perpetrator of an offense under Article 297 § 1 of Polish Penal Code would automatically responsible for an act under Article 286 § 1 of the Polish Penal Code, then the introduction of a criminal offense as stipulated in the provision of Article 297 § 1 of Polish Penal Code was a completely irrational action of the legislator.

³⁴ Wyrok Sądu Okręgowego w Warszawie z dnia 16 grudnia 2013 roku, sygn. akt X Ka 1069/13, [http://orzeczenia.ms.gov.pl/content/\\$N/154505000003006_X_Ka_001069_2013_Uz_2014-01-09_001](http://orzeczenia.ms.gov.pl/content/$N/154505000003006_X_Ka_001069_2013_Uz_2014-01-09_001) (dostęp: 15.1.2018).

³⁵ Wyrok Sądu Apelacyjnego we Wrocławiu z dnia 1 sierpnia 2014 roku, sygn. akt II AKa 192/14, [http://orzeczenia.ms.gov.pl/content/\\$N/155000000001006_II_AKa_000192_2014_Uz_2014-08-01_001](http://orzeczenia.ms.gov.pl/content/$N/155000000001006_II_AKa_000192_2014_Uz_2014-08-01_001) (dostęp: 15.1.2018).

³⁶ Wyrok Sądu Apelacyjnego w Gdańsku z dnia 26 listopada 2013 roku, sygn. akt II AKa 289/13, [http://orzeczenia.ms.gov.pl/content/\\$N/151000000001006_II_AKa_000289_2013_Uz_2013-11-26_002](http://orzeczenia.ms.gov.pl/content/$N/151000000001006_II_AKa_000289_2013_Uz_2013-11-26_002) (dostęp: 15.1.2018).

In the judgments under consideration, there were several situations in which there were evident difficulties with the correct interpretation of the concepts and problems problem with their distinction.

In one of the judgments there was a clear misunderstanding of the terms: credit and monetary loans, and above all, the differences that exist between them³⁷. As a reminder: a credit under Article 69 (1) of the Banking Law³⁸ is considered a contract by which the bank undertakes to make available to the borrower for a fixed period of time the amount of cash intended for the purpose specified in the contract, and the borrower undertakes to use this amount of money under the terms of the contract, return the amount of credit used along with interest on specified repayment dates and payment of commission on the credit granted. On the other hand, pursuant to Article 720³⁹ of Polish Civil Code, a loan agreement is made when the borrower undertakes to transfer ownership of a given amount of money or goods marked only to the species, and the buyer undertakes to return the same amount of money or the same amount of items of the same species and the same quality. In the example in question, the court used both terms interchangeably as if they were synonyms.

In another judgment, the defendant's lawyer claimed that sending an electronic file to the bank can not be treated as submitting a document⁴⁰. The court, however, took the view that the form of submitting false documents or statements is indifferent to the issue of criminal liability for an act under Article 297 § 1 of Polish Penal Code. The form certifying the untruth of the document is irrelevant, only the fact of submitting it. The court emphasized that all forms of action consisting in submitting, reviewing or evaluating should be considered as submitting.

There was also a case where the court of first instance considered that the statements of the accused submitted orally and then written down can not be treated as being in writing⁴¹. The court of second instance corrected this view and pointed out that a written declaration is any statement made in writing, made by the perpetrator himself or by another person. In the case in question, the accused submitted an oral statement of employment and on the basis of that the bank employee filled out loan applications. The accused submitted the application with his own signature. According to the court, a written statement was made at the time the accused made the person's signatures on the loan applications.

The next example shows the difficulty of distinguishing subsidies from similar cash benefits for a specific economic purpose⁴². Both the accused himself and the public prosecutor as

³⁷ Wyrok Sądu Apelacyjnego w Gdańsku z dnia 26 listopada 2013 r., sygn. akt II AKa 289/13, [http://orzeczenia.ms.gov.pl/content/\\$N/15100000001006_II_AKa_000289_2013_Uz_2013-11-26_002](http://orzeczenia.ms.gov.pl/content/$N/15100000001006_II_AKa_000289_2013_Uz_2013-11-26_002) (dostęp: 15.1.2018).

³⁸ Ustawa z dnia 29 sierpnia 1997 r. - Prawo bankowe (Dz.U. 2016 poz. 1988 - t.j. ze zm.).

³⁹ Article 720 ustawy z dnia 23 kwietnia 1964 r. Kodeks cywilny (Dz. U. 2017 poz. 459 – t.j. ze zm.).

⁴⁰ Wyrok Sądu Okręgowego w Warszawie z dnia 16 grudnia 2013 r., sygn. akt X Ka 1069/13, [http://orzeczenia.ms.gov.pl/content/\\$N/154505000003006_X_Ka_001069_2013_Uz_2014-01-09_001](http://orzeczenia.ms.gov.pl/content/$N/154505000003006_X_Ka_001069_2013_Uz_2014-01-09_001) (dostęp: 15.1.2018).

⁴¹ Wyrok Sądu Okręgowego Warszawa-Praga w Warszawie z dnia 19 grudnia 2013 r., sygn. akt VI Ka 548/13, [http://orzeczenia.ms.gov.pl/content/\\$N/154510000003006_VI_Ka_000548_2013_Uz_2013-12-19_002](http://orzeczenia.ms.gov.pl/content/$N/154510000003006_VI_Ka_000548_2013_Uz_2013-12-19_002) (dostęp: 15.1.2018).

⁴² Wyrok Sądu Okręgowego w Gliwicach z dnia 6 czerwca 2014 r., sygn. akt VI Ka 189/14, [http://orzeczenia.ms.gov.pl/content/\\$N/151515000003006_VI_Ka_000189_2014_Uz_2014-06-06_001](http://orzeczenia.ms.gov.pl/content/$N/151515000003006_VI_Ka_000189_2014_Uz_2014-06-06_001) (dostęp: 15.1.2018).

well as the first instance court found that direct payments to agricultural land, within the meaning of the Act of 26 January 2007 on payments under direct support schemes⁴³, constitute a subsidy. The court of second instance pointed out that, according to the Supreme Court's position⁴⁴, direct payments to agricultural land are not subsidies, they constitute a similar cash benefit for a specific economic purpose within the meaning of Article 297 § 1 of Polish Penal Code.

In practice, there are restrictions on the application of Article 297 of Polish Penal Code because it is only referred to credit, loans and subsidies.

In two rulings of appeal, no data regarding the financial instrument was provided at all. In addition, in many judgments there was more than one financial instrument, which was due to the fact that one person was accused of several acts or several defendants were simultaneously involved in the same case, who were often accused of committing several deeds. As a result, it was not possible to carry out a thorough quantitative analysis.

Certainly, however, it can be said that the most part of cases were credits (49 judgments). There were various types of credits: mortgage credit, revolving credit also in the form of a non-renewable credit line, investment credit, overdraft, credit in the form of credit card debt, consumer credit in cash or in the form of a purchase in the installment system to finance various types of goods. Interestingly, only in one⁴⁵ of the judgments examined the accusation concerned a commission obtained for mediating the granting of a credit.

The second place was a cash loan. In various forms it was included in the contents of 17 analysed judgments. The types of loans requested by the accused from the judgments under examination are as follows: ordinary cash loan, express loan, revolving loan (otherwise renewable), a mortgage loan. It should be emphasized once again that often a credit and a loan occurred simultaneously in a given judgment.

The third place was subsidy. In four judgments⁴⁶, the aim of the accuseds was to receive subsidies for agricultural production in the form of a single area payment or supplementary area payment or compensatory payment in the form of financial aid for supporting management in mountainous areas and other less-favored areas, all paid from public funds with co-financing

⁴³ Ustawa z dnia 26 stycznia 2007 r. o płatnościach w ramach systemów wsparcia bezpośredniego (Dz.U. 2007 nr 35 poz. 217), która została uchylona z dniem 15 marca 2015 roku, obecnie obowiązującym aktem w tym zakresie jest ustawa z dnia 5 lutego 2015 r. o płatnościach w ramach systemów wsparcia bezpośredniego (Dz.U. 2015 poz. 308 ze zm.).

⁴⁴ Postanowienie Sądu Najwyższego z dnia 19 maja 2011 r., sygn. akt I KZP 3/11, <http://www.sn.pl/sites/orzecznictwo/Orzeczenia1/I%20KZP%203-11.pdf> (dostęp: 15.1.2018).

⁴⁵ Wyrok Sądu Apelacyjnego w Warszawie z dnia 9 września 2016 roku, sygn. akt II Aka 225/16, [http://orzeczenia.ms.gov.pl/content/\\$N/15450000001006_II_AKa_000225_2016_Uz_2016-09-09_003](http://orzeczenia.ms.gov.pl/content/$N/15450000001006_II_AKa_000225_2016_Uz_2016-09-09_003) (dostęp: 15.1.2018).

⁴⁶ Wyrok Sądu Okręgowego w Gliwicach z dnia 6 czerwca 2014 roku, sygn. akt VI Ka 189/14, [http://orzeczenia.ms.gov.pl/content/\\$N/151515000003006_VI_Ka_000189_2014_Uz_2014-06-06_001](http://orzeczenia.ms.gov.pl/content/$N/151515000003006_VI_Ka_000189_2014_Uz_2014-06-06_001) (dostęp: 15.1.2018) oraz wyrok Sądu Okręgowego w Gliwicach z dnia 6 czerwca 2014 roku, sygn. akt VI Ka 229/14, [http://orzeczenia.ms.gov.pl/content/\\$N/151515000003006_VI_Ka_000229_2014_Uz_2014-06-06_001](http://orzeczenia.ms.gov.pl/content/$N/151515000003006_VI_Ka_000229_2014_Uz_2014-06-06_001) (dostęp: 15.1.2018) oraz wyrok Sądu Okręgowego w Toruniu z dnia 14 sierpnia 2014 roku, sygn. akt IX Ka 282/14, [http://orzeczenia.ms.gov.pl/content/\\$N/151025000004506_IX_Ka_000282_2014_Uz_2014-08-14_001](http://orzeczenia.ms.gov.pl/content/$N/151025000004506_IX_Ka_000282_2014_Uz_2014-08-14_001) (dostęp: 15.1.2018) oraz wyrok Sądu Apelacyjnego w Białymstoku z dnia 30 października 2014 roku, sygn. akt II Aka 214/14, [http://orzeczenia.ms.gov.pl/content/\\$N/15050000001006_II_AKa_000214_2014_Uz_2014-10-30_001](http://orzeczenia.ms.gov.pl/content/$N/15050000001006_II_AKa_000214_2014_Uz_2014-10-30_001) (dostęp: 15.1.2018).

from EU funds by the Agency for Restructuring and Modernization of Agriculture.

In one of the judgments⁴⁷, the aim of the accused was to obtain a subsidy in the form of subsidies from the State Treasury, ie from the Agricultural Market Agency in respect of the intervention purchase of grain.

In one case⁴⁸, it was about getting a refund of a certain amount based on a VAT invoice by the Commune Office B. from the European Social Fund under the system project “Commune B. for residents and residents”.

Finally, in one of the judgments⁴⁹, the defendants’ goal was to obtain monthly educational subsidies from the city budget allocated for the education of students.

Other instruments mentioned in the provision of Article 297 of Polish Penal Code did not occur at all.

During the analysis of the judgments selected, it was noticed that the most common are the submission of several counterfeit, remade or testifying untruth or unreliable documents or unreliable, written statements. Rarely were these individual documents or statements.

Most often, these documents or statements treated the situation of having permanent employment both for the accused himself and for third parties as well as information on earnings or income. Below are sample forms of submitted documents:

- false and certifying untruth document of employment and earnings,
- counterfeit certificate of employment and income,
- unreliable certificate of employment and income,
- stating untruthful electronic certification of employment
- unreliable written statement of employment
- counterfeit document on income.

In one case⁵⁰, an unreliable statement was made about the position held and the income achieved. There was also the case⁵¹ of submitting an unreliable application for a cash loan but containing untrue information on employment and income. And also a case⁵² of submission stating untruthful employment contract.

⁴⁷ Wyrok Sądu Apelacyjnego w Szczecinie z dnia 4 października 2012 roku, sygn. akt II AKa 64/12, [http://orzeczenia.ms.gov.pl/content/\\$N/15550000001006_II_AKa_000064_2012_Uz_2012-10-04_001](http://orzeczenia.ms.gov.pl/content/$N/15550000001006_II_AKa_000064_2012_Uz_2012-10-04_001) (dostęp: 15.1.2018).

⁴⁸ Wyrok Sądu Okręgowego w Toruniu z dnia 20 lutego 2014 roku, sygn. akt IX Ka 658/13, [http://orzeczenia.ms.gov.pl/content/\\$N/151025000004506_IX_Ka_000658_2013_Uz_2014-02-20_001](http://orzeczenia.ms.gov.pl/content/$N/151025000004506_IX_Ka_000658_2013_Uz_2014-02-20_001) (dostęp: 15.1.2018).

⁴⁹ Wyrok Sądu Apelacyjnego w Gdańsku z dnia 6 października 2015 roku, sygn. akt II AKa 212/15, [http://orzeczenia.ms.gov.pl/details/\\$N/151000000001006_II_AKa_000212_2015_Uz_2015-10-06_003](http://orzeczenia.ms.gov.pl/details/$N/151000000001006_II_AKa_000212_2015_Uz_2015-10-06_003) (dostęp: 15.1.2018).

⁵⁰ Wyrok Sądu Okręgowego w Koszalinie z dnia 13 grudnia 2013 roku, sygn. akt V Ka 753/13, [http://orzeczenia.ms.gov.pl/content/\\$N/155510000002506_V_Ka_000753_2013_Uz_2013-12-13_001](http://orzeczenia.ms.gov.pl/content/$N/155510000002506_V_Ka_000753_2013_Uz_2013-12-13_001) (dostęp: 15.1.2018).

⁵¹ Wyrok Sądu Apelacyjnego w Gdańsku z dnia 11 grudnia 2012 roku, sygn. akt II AKa 332/12, [http://orzeczenia.ms.gov.pl/content/\\$N/151000000001006_II_AKa_000332_2012_Uz_2012-12-11_001](http://orzeczenia.ms.gov.pl/content/$N/151000000001006_II_AKa_000332_2012_Uz_2012-12-11_001) (dostęp: 15.1.2018).

⁵² Wyrok Sądu Apelacyjnego w Białymstoku z dnia 23 czerwca 2016 roku, sygn. akt II AKa 87/16, [http://orzeczenia.ms.gov.pl/content/\\$N/150500000001006_II_AKa_000087_2016_Uz_2016-06-23_001](http://orzeczenia.ms.gov.pl/content/$N/150500000001006_II_AKa_000087_2016_Uz_2016-06-23_001) (dostęp: 15.1.2018).

In two of the judgments examined, the perpetrators were allowed to submit declarations and documents regarding income from the pension. In the first of these⁵³, a false statement was made stating the amount of alleged pension income along with a forged signature. In the second case⁵⁴, it was submitted as a genuine, previously forged by an undetermined person: the decision of the body about the amount of the sickness pension and three confirmations of disability for three settlement periods.

Subsequent documents that have been submitted and which have been included in the collection dealing with employment and income or income are a forged insurance card and a fake insurance booklet⁵⁵. Both were intended to authenticate the employment information contained in counterfeit documents.

The second group consisted of counterfeit, converted or certifying untruthful or unreliable documents or unreliable written statements regarding entrepreneurs, i.e. both natural persons conducting business as well as legal persons. The subject of their content was information certifying the existence of these entities and the history of operation and certifying or illustrating their financial situation.

Documents regarding the existence of entities that occurred in the analyzed judgments as being submitted to a financial institution are:

- counterfeit certificate of entry into the Central Register and Information on Economic Activity (CEIDG),
- counterfeit certificate of entry into the REGON register and the REGON registration number.

The next collection of documents and statements submitted in the institutions mentioned in Article 297 of Polish Penal Code contains documents and statements aimed at presenting and confirming the good and stable financial condition of companies.

This set includes the following documents and statements:

- false or fake certificates from the tax office about paying taxes,
- false or fake certification from the Social Insurance Institution about paying insurance fees,
- false statement regarding the lack of public law liabilities for tax offices and the Social Insurance Institution,

⁵³ Wyrok Sądu Okręgowego w Toruniu z dnia 21 listopada 2013 roku, sygn. akt IX Ka 527/13, [http://orzeczenia.ms.gov.pl/content/\\$N/151025000004506_IX_Ka_000527_2013_Uz_2013-11-21_001](http://orzeczenia.ms.gov.pl/content/$N/151025000004506_IX_Ka_000527_2013_Uz_2013-11-21_001) (dostęp: 15.1.2018).

⁵⁴ Wyrok Sądu Okręgowego w Gliwicach z dnia 28 marca 2014 r., sygn. akt VI Ka 1171/13, [http://orzeczenia.ms.gov.pl/content/\\$N/151515000003006_VI_Ka_001171_2013_Uz_2014-03-28_001](http://orzeczenia.ms.gov.pl/content/$N/151515000003006_VI_Ka_001171_2013_Uz_2014-03-28_001) (dostęp: 15.1.2018).

⁵⁵ Wyrok Sądu Apelacyjnego w Gdańsku z dnia 5 maja 2014 r., sygn. akt II AKa 254/13, [http://orzeczenia.ms.gov.pl/content/\\$N/151000000001006_II_AKa_000254_2013_Uz_2014-05-05_003](http://orzeczenia.ms.gov.pl/content/$N/151000000001006_II_AKa_000254_2013_Uz_2014-05-05_003) (dostęp: 15.1.2018) oraz wyrok Sądu Okręgowego w Gliwicach z dnia 8 lipca 2014 r., sygn. akt VI Ka 294/14, [http://orzeczenia.ms.gov.pl/content/\\$N/151515000003006_VI_Ka_000294_2014_Uz_2014-07-08_001](http://orzeczenia.ms.gov.pl/content/$N/151515000003006_VI_Ka_000294_2014_Uz_2014-07-08_001) (dostęp: 15.1.2018).

- declaring the untrue transfer order to tax offices,
- counterfeit revenue and expense ledger,
- false PIT-5 tax declarations,
- counterfeit tax return PIT-36,
- counterfeit statement on the amount of income received, PIT 36L together with PIT/B,
- falsely testifying CIT-8 tax declarations in which incorrect information about earned income was indicated,
- certifying untruth about the financial condition and the amount of income earned documents in the form of balances, profit and loss accounts,
- counterfeit opinion from the bank, in which false information about the amount of the company's debt was included,
- unreliable statement as to the monthly liabilities held,
- documents with inaccurate data on business cooperation,
- declaring untruthful lease agreements for premises,
- unreliable written statements confirming the inflated value of your property in the form of a car,
- written, unreliable declarations regarding ownership of property in the form of agricultural machinery and equipment constituting, pursuant to the same contract of transfer of security for the resulting receivables, as concluded on the same day,
- unreliable written statements confirming the undated amount of previously obtained mortgage loan,
- unreliable written statement regarding the concealment of the fact of being a borrower;
- falsified certificate of settlement of previously received credits,
- false and apparent statement on the allocation of funds from the credit.

In the analysed judgments, there were also documents to confirm and authenticate the false identity of persons applying for a credit card and those wishing to make purchases in the installment system. To this end, the following were submitted:

- fake ID,
- photocopies of identity documents certifying untruth.

In one of the judgments⁵⁶, among many other documents, counterfeit documents were submitted certifying the check-out and check-in at certain addresses.

In one of the cases⁵⁷ a certificate of the guarantor with a counterfeit signature of the person authorized to issue it, information about the guarantor and authorization with a forged signature of the person authorized to issue it was submitted.

VAT invoices were also submitted in the judgments under analysis, the content of which was not true. There have been three such cases. The first of them⁵⁸ was the certifying untruth document in the form of a VAT invoice for the purchase of a car, in which the real value of the vehicle was overstated. This document was submitted in order to obtain a loan to finance the purchase of this car. In the second case⁵⁹, a counterfeit VAT invoice was submitted with the counterfeit stamp of the company that allegedly issued the invoice. The aim of the perpetrator's action was to obtain funds from the European Social Fund. The third case⁶⁰ concerned the submission stating the certifying untruth document in the form of a VAT invoice, which was supposed to confirm the purchase by the specified economic entity of the equipment. This document was submitted in order to obtain an investment credit.

Another group of documents were applications submitted in order to obtain a single area payment and a supplementary area payment. In all four cases⁶¹, these applications contained inaccurate data on the area of arable land that authorized them to obtain these payments. Perpetrators overestimated the areas of agricultural plots where the crops were cultivated or they confirmed in the application untruth about the very fact of cultivating agricultural parcels.

In one case⁶², documents were submitted stating the untruth of intervention buying rye and wheat to the detriment of the Treasury represented by the Agricultural Market Agency.

In one of the judgments, a counterfeit document was submitted in the form of a notarial deed⁶³, in which the seller's bank account number was changed, to which it was necessary to

⁵⁶ Wyrok Sądu Apelacyjnego we Wrocławiu z dnia 23 maja 2013 r., sygn. akt II AKa 63/13, [http://orzeczenia.ms.gov.pl/content/\\$N/15500000001006_II_AKa_000063_2013_Uz_2013-05-23_001](http://orzeczenia.ms.gov.pl/content/$N/15500000001006_II_AKa_000063_2013_Uz_2013-05-23_001) (dostęp: 15.1.2018).

⁵⁷ Wyrok Sądu Okręgowego w Koszalinie z dnia 9 września 2013 r., sygn. akt V Ka 395/13, [http://orzeczenia.ms.gov.pl/content/\\$N/155510000002506_V_Ka_000395_2013_Uz_2013-09-09_001](http://orzeczenia.ms.gov.pl/content/$N/155510000002506_V_Ka_000395_2013_Uz_2013-09-09_001) (dostęp: 15.1.2018).

⁵⁸ Wyrok Sądu Okręgowego w Warszawie z dnia 20 września 2013 r., sygn. akt X Ka 789/13, [http://orzeczenia.ms.gov.pl/content/\\$N/154505000003006_X_Ka_000789_2013_Uz_2013-10-03_002](http://orzeczenia.ms.gov.pl/content/$N/154505000003006_X_Ka_000789_2013_Uz_2013-10-03_002) (dostęp: 15.1.2018).

⁵⁹ Wyrok Sądu Okręgowego w Toruniu z dnia 20 lutego 2014 r., sygn. akt IX Ka 658/13, [http://orzeczenia.ms.gov.pl/content/\\$N/151025000004506_IX_Ka_000658_2013_Uz_2014-02-20_001](http://orzeczenia.ms.gov.pl/content/$N/151025000004506_IX_Ka_000658_2013_Uz_2014-02-20_001) (dostęp: 15.1.2018).

⁶⁰ Wyrok Sądu Okręgowego w Toruniu z dnia 8 października 2015 r., sygn. akt IX Ka 378/15, [http://orzeczenia.ms.gov.pl/content/\\$N/151025000004506_IX_Ka_000378_2015_Uz_2015-10-08_001](http://orzeczenia.ms.gov.pl/content/$N/151025000004506_IX_Ka_000378_2015_Uz_2015-10-08_001) (dostęp: 15.1.2018).

⁶¹ Wyrok Sądu Okręgowego w Gliwicach z dnia 6 czerwca 2014 r., sygn. akt VI Ka 189/14, [http://orzeczenia.ms.gov.pl/content/\\$N/151515000003006_VI_Ka_000189_2014_Uz_2014-06-06_001](http://orzeczenia.ms.gov.pl/content/$N/151515000003006_VI_Ka_000189_2014_Uz_2014-06-06_001) (dostęp: 15.1.2018) oraz wyrok Sądu Okręgowego w Gliwicach z dnia 6 czerwca 2014 r., sygn. akt VI Ka 229/14, [http://orzeczenia.ms.gov.pl/content/\\$N/151515000003006_VI_Ka_000229_2014_Uz_2014-06-06_001](http://orzeczenia.ms.gov.pl/content/$N/151515000003006_VI_Ka_000229_2014_Uz_2014-06-06_001) (dostęp: 15.1.2018) oraz

wyrok Sądu Okręgowego w Toruniu z dnia 14 sierpnia 2014 r., sygn. akt IX Ka 282/14, [http://orzeczenia.ms.gov.pl/content/\\$N/151025000004506_IX_Ka_000282_2014_Uz_2014-08-14_001](http://orzeczenia.ms.gov.pl/content/$N/151025000004506_IX_Ka_000282_2014_Uz_2014-08-14_001) (dostęp: 15.1.2018) oraz wyrok Sądu Apelacyjnego w Białymstoku z dnia 30 października 2014 r., sygn. akt II AKa 214/14, [http://orzeczenia.ms.gov.pl/content/\\$N/150500000001006_II_AKa_000214_2014_Uz_2014-10-30_001](http://orzeczenia.ms.gov.pl/content/$N/150500000001006_II_AKa_000214_2014_Uz_2014-10-30_001) (dostęp: 15.1.2018).

⁶² Wyrok Sądu Apelacyjnego w Szczecinie z dnia 4 października 2012 r., sygn. akt II AKa 64/12, [http://orzeczenia.ms.gov.pl/content/\\$N/155500000001006_II_AKa_000064_2012_Uz_2012-10-04_001](http://orzeczenia.ms.gov.pl/content/$N/155500000001006_II_AKa_000064_2012_Uz_2012-10-04_001) (dostęp: 15.1.2018).

⁶³ Wyrok Sądu Apelacyjnego w Gdańsku z dnia 21 stycznia 2015 r., sygn. akt II AKa 446/14, [http://orzeczenia.ms.gov.pl/content/\\$N/151000000001006_II_AKa_000446_2014_Uz_2015-01-21_002](http://orzeczenia.ms.gov.pl/content/$N/151000000001006_II_AKa_000446_2014_Uz_2015-01-21_002) (dostęp: 15.1.2018).

transfer funds from the credit obtained. In this place, the bank account number previously set up by a third party on the basis of forged documents was entered. The aim of the perpetrator's action was to get a mortgage credit to the detriment of the bank.

In one of the judgments⁶⁴, submitted documents were applications for budgetary subsidies for a non-public school. They were submitted on forms in which the perpetrator testified untruth about the actual number of pupils receiving education in this institution.

In the judgments examined almost always, the amounts of financing appeared in the Polish currency. Only in two analyzed judgments, amounts were also recorded in Swiss francs and both concerned credits granted by the bank.

The amount of funding was very different. The lowest amount of PLN 228.00 concerned extortion of EU funds on the basis of a counterfeit VAT invoice, while the highest single amount amounted to PLN 2,000,000.00 and it was a non-revolving revolving credit.

In more than half of the cases, the financing amounts ranged from PLN 1,000.00 to PLN 100,000.00. Only in four cases, these amounts amounted to less than PLN 1,000.00. And they related to the swindling: a credit for purchases in the installment system, funds from the European Social Fund based on a fake VAT invoice, a single area payment and a supplementary area payment. In six cases, amounts exceeded PLN 1 million. These were cases of swindling: working capital credit, non-revolving working capital credit, company current account credit, mortgage credits. In each of these cases, the institution providing the credit was a bank.

In the judgments under review, in highly over half of the cases, the courts of the first instance applied, along with the penalty of imprisonment, a measure related to subjecting the perpetrator to a trial in the form of conditional suspension of the execution of the sentence according to the content of Article 69 § 1 of Polish Penal Code. The trial periods that occurred in the judgments analyzed were 2, 3, 4 or 5 years.

In the judgments examined, the courts of first instance, in most cases, along with the penalty of imprisonment also imposed a fine. The highest fine was imposed on 200 daily rates, while the amount of one daily rate was set at PLN 500. The lowest fine was imposed on the level of 10 daily rates, while the amount of one daily rate was set at PLN 10, ie at the minimum rate.

Only in one of the judgments⁶⁵ the court of first instance conditionally discontinued the proceedings for a period of one year based on Article 66 § 1 and 3 of Polish Penal Code and Article 67 § 1 of Polish Penal Code. The court stated that the guilt and social harmfulness of the accused's act is not significant, and the circumstances of his committing are not in doubt. The court adjudicated against the accused a cash benefit to the Victims' Assistance Fund and

⁶⁴ Wyrok Sądu Apelacyjnego w Gdańsku z dnia 6 października 2015 r., sygn. akt II AKa 212/15, [http://orzeczenia.ms.gov.pl/details/\\$N/15100000001006_II_AKa_000212_2015_Uz_2015-10-06_003](http://orzeczenia.ms.gov.pl/details/$N/15100000001006_II_AKa_000212_2015_Uz_2015-10-06_003) (dostęp: 15.1.2018).

⁶⁵ Wyrok Sądu Okręgowego w Toruniu z dnia 14 sierpnia 2014 r., sygn. akt IX Ka 282/14, [http://orzeczenia.ms.gov.pl/content/\\$N/151025000004506_IX_Ka_000282_2014_Uz_2014-08-14_001](http://orzeczenia.ms.gov.pl/content/$N/151025000004506_IX_Ka_000282_2014_Uz_2014-08-14_001) (dostęp: 15.1.2018).

Post-penitentiary Assistance in the amount of PLN 1,000. This was the only case among the analyzed judgments when the cash benefit was awarded.

The obligation to repair the damage occurred in the judgments examined in the form of payment of a specified sum of money to the injured institution as a result of an offense committed by the perpetrator or perpetrators. More or less in half of the judgments analyzed, such a measure was applied. Of this, more than half was imposed on the payment of the entire amount of money that was previously subject to extortion. In the remaining part, the obligation to repair the damage was imposed in the amount of the part of the sum of the extorted money. In many cases, if there were several accused persons for the same offense, the accused were charged with remedying the damage in solidarity manner.

In the judgments examined, both at the stage of prosecution and sentences in the first instance, a cumulative qualification was observed, i.e. on the basis of Article 297 § 1 of Polish Penal Code in relation or in conjunction with the following articles:

- Article 286 § 1 of Polish Penal Code (fraud),
- Article 270 § 1 of Polish Penal Code (falsification of a document),
- Article 294 § 1 of Polish Penal Code in conjunction with Article 286 § 1 of Polish Penal Code.

Article 286 § 1 of the Polish Penal Code appeared in addition to Article 297 § 1 of the Polish Penal Code in as many as 53 judgments, and additionally Article 294 § 1 of the Polish Penal Code in 21 judgments.

In the judgments examined, in addition to the above-mentioned provisions, other articles from the substantive criminal code section were also noticed, although they did not occur frequently:

- a. Article 270 § 2 of Polish Penal Code - in one judgment. It is a material falsification consisting in filling in a blank, signed with someone else's signature, contrary to the will of the signed person and its damage, or using such a document.
- b. Article 271 § 1 of Polish Penal Code - in 2 judgments. The whole is called intellectual falsification. The behavior of a public official or other person authorized to issue a document, which testifies untruth in it about the circumstances of legal significance.
- c. Article 271 § 3 of Polish Penal Code - in one judgment. The type is qualified in relation to the recipe indicated above.
- d. Article 273 of Polish Penal Code - in 2 judgments. It applies to the use of documents confirming untruth.

- f. Article 275 § 1 of Polish Penal Code - in 4 judgments. It is about using a document stating the identity of another person, or his property rights, or stealing such a document or appropriation.
- g. Article 284 § 2 of Polish Penal Code - in one judgment. The provision penalizes the behavior of appropriating movable property.
- h. Article 303 § 1 of Polish Penal Code - in one judgment. Essentially, the provision aims to protect against destruction of business records.

First of all, it should be emphasized that the accusations of an deed under Article 297 § 2 of the Polish Penal Code occurred incidentally because only in two judgments which were examined. The first case⁶⁶ concerned a person holding the Bank's management function, which did not notify the Management Board of the existing, overdue borrower's debt. The second case⁶⁷ concerned obtaining monthly educational grants from the city budget allocated for the education of pupils. The accused was accused of having been the Director of two schools and a person authorized to represent and issue documents on behalf of the Society running these schools, and did not inform the employees of the Municipal Education Department about the actual number of students attending these schools. The court of first instance essentially shared the prosecutor's arguments while the court of appeal changed the judgment of the meriti court and acquitted the accused of the offense. He pointed out that an offense under Article 297 § 2 of the Polish Penal Code can only be committed intentionally. In the case in question, however, it has not been proven that the accused was aware that the situation could have an impact on the suspension or limitation of the amount of subsidies granted. The court further remarked that in the case of an act with Article 297 § 2 of the Polish Penal Code, i.e., the omission of the action indicated therein, it is not necessary for any damage to occur.

Conclusions

The conducted research showed that in more than half of the judgments examined there was a correction in the appeal instance. Some of the mistakes made by the courts of first instance were so simple that they could have been avoided. There were also problems with the proper classification of deeds in the field of Article 297 of Polish Penal Code. There have also been cases of unnecessary, excessive legal classification of the act, i.e. unnecessary automatic classification of the acts committed in conjunction with Article 286 § 1 of Polish Penal Code or Article 270 § 1 of Polish Penal Code. There were also problems with the correct interpretation of the terms contained in the provisions of Article 297 of Polish Penal Code.

⁶⁶ Wyrok Sądu Okręgowego w Gliwicach z dnia 2 października 2015 roku, sygn. akt VI Ka 471/15, [http://orzeczenia.ms.gov.pl/content/\\$N/151515000003006_VI_Ka_000471_2015_Uz_2015-10-02_001](http://orzeczenia.ms.gov.pl/content/$N/151515000003006_VI_Ka_000471_2015_Uz_2015-10-02_001) (dostęp: 15.1.2018).

⁶⁷ Wyrok Sądu Apelacyjnego w Gdańsku z dnia 6 października 2015 roku, sygn. akt II AKa 212/15, [http://orzeczenia.ms.gov.pl/details/\\$N/151000000001006_II_AKa_000212_2015_Uz_2015-10-06_003](http://orzeczenia.ms.gov.pl/details/$N/151000000001006_II_AKa_000212_2015_Uz_2015-10-06_003) (dostęp: 15.1.2018).

As can be seen from the examples presented, it seems that the construction of Article 297 of the Penal Code is neither clear nor clarified, and in practice there are numerous problems of interpretation.

The types of financial support that were observed were only: credit in various forms, a loan of various kinds and a grant. Other instruments that are listed in the Article 297 of Polish Penal Code, such as: surety, guarantee, letter of credit, subvention, confirmation by the bank of a liability arising from a surety or guarantee or a similar cash benefit for a specific business purpose, payment instrument or public contract they did not occur at all.

In practice, Article 297 § 1 of the Polish Penal Code is very often in convergence or in connection with other provisions of substantive criminal law, such as, for example: Article 286 § 1 of Polish Penal Code or Article 270 § 1 of Polish Penal Code. Only 20% of the defendants' judgments were convicted solely on the basis of Article 297 § 1 of Polish Penal Code. In some cases, the deeds suffered in Article 297 of the Polish Penal Code are usually only a part of the circumstances. But there are also cases of unnecessary automatic cumulative qualification.

Considering the changing conditions of economic life and related to the continuous development of banking instruments and other forms of financial support and looking at the amendments to the discussed regulation from: 2004⁶⁸ (Results of investigations of selected court rulings. The amendment broadened the catalog of instruments as follows: credit, loan, surety, guarantee, letter of credit, subsidy, subvention, confirmation by the bank of a liability arising from a surety or guarantee or a similar cash payment for a specific business purpose, electronic payment instrument or public order), and 2013⁶⁹ (The change was of a technical nature. It resulted from the replacement of the term "electronic payment instrument" appearing in the repealed act on electronic payment instruments by the term "payment instrument"⁷⁰, which, however, does not constitute a substantive change, because the modified phrase retains the same conceptual scope.) introduced by the legislator in the scope of extending the catalog of financial instruments contained in this provision, it seems reasonable to postulate change enumerative enumeration in favor of a much more general and capacious formulations. Due to the fact that the credit crime is going to cyberspace, soon there will be a need for another amendment to the discussed provision.

⁶⁸ Ustawa z dnia 18 marca 2004 r. o zmianie ustawy - Kodeks karny, ustawy - Kodeks postępowania karnego oraz ustawy - Kodeks wykroczeń (Dz. U. z 2004 Nr 69 poz. 626).

⁶⁹ Ustawa z dnia 12 lipca 2013 r. o zmianie ustawy o usługach płatniczych oraz niektórych innych ustaw (Dz. U. z 2013 poz. 1036).

⁷⁰ Ustawa z dnia 12 lipca 2013 r. o zmianie ustawy o usługach płatniczych oraz niektórych innych ustaw (Dz. U. z 2013 poz. 1036).

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Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny (Dz. U. 2018 poz. 1025 – t.j. ze zm.).

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Ustawa z dnia 18 marca 2004 r. o zmianie ustawy - Kodeks karny, ustawy - Kodeks postępowania karnego oraz ustawy - Kodeks wykroczeń (Dz. U. z 2004 Nr 69 poz. 626).

Ustawa z dnia 26 stycznia 2007 r. o płatnościach w ramach systemów wsparcia bezpośredniego (Dz.U. 2007 nr 35 poz. 217).

Ustawa z dnia 12 lipca 2013 r. o zmianie ustawy o usługach płatniczych oraz niektórych innych ustaw (Dz. U. z 2013 poz. 1036).

Ustawa z dnia 5 lutego 2015 r. o płatnościach w ramach systemów wsparcia bezpośredniego (Dz.U. 2015 poz. 308 ze zm.).

ABSTRACT

Praktyka stosowania przepisu art. 297 k.k.

The aim of the publication is to present the results of research on the issue of the application of the provision of Article 297 of Polish Penal Code in practice and an attempt to evaluate them and an attempt to formulate conclusions.

The features characterizing the offense under Article 297 § 1 of Polish Penal Code, which reads as follows: who, in order to obtain for himself or someone else, from a bank or organizational unit conducting similar economic activity under the Act or from an authority or institution with public funds - credit, monetary loan, surety, guarantee, letter of credit, subsidy, subsidy, confirmation by the bank of a liability arising from a surety or a guarantee or similar cash payment for a specific business purpose, payment instrument or public contract, submit counterfeit, converted, attesting untruth or unreliable document or unreliable written statement regarding circumstances of significant importance in order to obtain the mentioned financial support, payment instrument or order, it is punishable by imprisonment up from 3 months to 5 years.

Discussed are also the indications of committing an act consisting in abandoning the notification in Article 297 § 2 of Polish Penal Code, worded as follows: who, in breach of a binding obligation, does not notify the relevant entity of the situation that may affect the cessation or limitation of the financial support referred to in § 1 or the public order or the possibility of further use of the electronic payment instrument.

Next, the methodology of the research was described in detail. The research was of an files nature and concerned final judgments issued by courts of second instance. The time period of researches was from 2012 to 2016. A purposeful selection was also made due to the legal qualification of the deed on the basis of which the conviction was handed down in the first instance, i.e. the offenses under Article 297 of Polish Penal Code. Then the results of the research were presented and an attempt was made to comment on the results obtained. The conclusions from the research indicated, among others, the cases of lack of correct understanding of the provision, confusion of concepts, unnecessary automatic cumulative classification of the deed, narrowing the use of the instruments mentioned in the provision to credits, loans and subsidies, and many more cases.

Słowa kluczowe: oszustwo kredytowe, polski kodeks karny, wyroki, orzecznictwo

Keywords: credit fraud, Polish Penal Code, judgements, case law