

**THE POLISH LEGAL MODEL OF COLLECTIVE SUBJECTS'
LIABILITY CREATED BY THE STATUTE OF THE 28TH OF OCTOBER
2002 ON LIABILITY OF COLLECTIVE SUBJECTS FOR THE ACTS
FORBIDDEN UNDER A PENALTY (SELECTED ASPECTS)**

Piotr Chrzczonowicz

*Chair of Criminal Law and Criminal Policy, Faculty of Law and Administration, Nicholas
Copernicus University, Torun (Poland) pch@umk.pl*

Szymon Krajnik

*Chair of Criminal Law and Criminology, Faculty of Law and Administration, Nicholas
Copernicus University, Torun (Poland) krajnik@doktorant.umk.pl*

SUMMARY

The Authors deal with the issue of liability of collective subjects in Poland in the light of the provisions of the Statute of the 28th of October 2002 on Liability of Collective Subjects for the Acts Forbidden under a Penalty (Journal of Laws of the Republic of Poland of the 27th of November 2002 No 197, item 1661 with subsequent amendments). They analyze and consider the principles and legal features of the above mentioned liability trying to determine its character. Is it criminal liability or not? In their opinion (presented among some other opinions found in Polish professional legal literature) the liability of collective subjects is quasi-criminal. The Authors also present the catalogue of possible sanctions threatening to collective subjects for breach the law within the scope indicated by the statute. In addition, the Authors want to approximate the scale of analyzed liability by showing a number of cases in which collective subjects were sentenced by courts to penalties.

Keywords: *Acts Forbidden under a Penalty, liability, collective subjects.*

1. Introductory remarks

An introduction to the post-communist Polish legal system a complex of substantive and procedural regulations concerning a *quasi-criminal* type of liability of collective bodies, i.e. the liability which is, in brief, borne by a collective body in case of criminal conduct that occurred in the context of the activity of such collective body, took place by putting into enforcement the provisions of the Statute of the 28th of October 2002 on Liability of Collective Subjects for the Acts Forbidden under a Penalty (hereinafter: SLCS)¹. The above mentioned liability appeared itself as a new, additional quality nearby another possible kinds of liability of collective bodies (subjects) – the administrative liability and the civil one. The background and the reasons of necessity for creation legal instruments useful in fighting with crime related to collective subjects (especially legal persons like commercial corporations) were motivated by the Polish international

¹ Journal of Laws of the Republic of Poland of the 27th of November 2002 No 197, item 1661 with subsequent amendments. The aforementioned statute entered into force on the 27th of November 2003.

commitments (particularly involving the fulfillment formal conditions of the future accession of Poland to the structures of the European Union)² as well as the need of modern and effective legal institution to prevent and struggle with the criminal activity mainly economic and organized³. Obviously, these motives are in immediate mutual relations and are able to be regarded as ‘a common denominator’ of legislative steps in the matter of shaping legal models of collective subjects’ liability in case of offences in other countries accepting and complying with appropriate international standards and duties as well as facing problems of economic and organized crime.

In the SLCS it can be differ three parts or sections. The first one (Articles 1 – 16) concerns the substantive law, the second one (Articles 21 – 43) concerns the procedural issues and the third one (Articles 44 – 48) comprises either provisions regulating amendments to other statutes in force or temporal issues. The new statute was widely discussed. In professional statements (chiefly expressed by specialists in legal literature) there were pointed out many defects, shortcomings and problems of the practical application of new law⁴. Critical opinions and observations inspired to undertake the proper activity in order to amend the statute by removing its deficiencies. The statute on liability of collective subjects was amended 17 times until now. It’s necessary to add that the most symptomatic amendments in the area of statute regulations were caused in consequence of the judgment of the Polish Constitutional Tribunal of the 3rd of November 2004 (K 18/03)⁵.

2. The meaning of a collective subject

According to the general definition expressed in Section 1 of the Article 2 of the SLCS, the term ‘collective subject’ means a legal person or an organisational entity without legal personality which the other regulations admit the legal capacity, excluding the State Treasury, territorial self government units and its unions. Among the legal

² The proper international commitments in the above mentioned area could be found in e.g. Recommendation No R (88) 18 of the Council of Europe (Committee of Ministers to Member States) concerning Liability of Enterprises Having Legal Personality for Offences Committed in the Exercise of Their Activities (adopted by the Committee of Ministers on 20 October 1988), Convention of 26 July 1995 on the protection of the European Communities’ Financial Interests (OJ C 316, 27/11/1995), Protocol of 27 September 1996 to the Convention on the Protection of Community Financial Interests (OJ C 313, 23/10/1996), Second Protocol of 19 June 1997 to the Convention on the protection of the European Communities’ financial interests (OJ C 221, 19/07/1997), OECD Convention of 17 December 1997 on combating bribery of foreign public officials in international business transactions (91999JHA10097), Council of Europe Convention on Cybercrime, 23 November 2001, United Nations Convention against Transnational Organized Crime adopted by General Assembly resolution 55/25 of 15 November 2000, International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999.

³ See J. Garstka, *Charakterystyka ustawy z dnia 28 października 2002 roku o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary (A Characterization of the Statute on the 28th of October 2002 on Liability of Collective Subjects for the Acts Forbidden under a Penalty)*, in: A. Adamski (ed.), *Przestępczość gospodarcza z perspektywy Polski i Unii Europejskiej. Materiały konferencji międzynarodowej, Mikołajki, 26 – 28 września 2002 (Economic Crime in Polish and European Union Perspectives. Proceedings of the International Conference, Mikołajki, 26 – 28 September 2002)*, Torun 2003, pp. 575-577.

⁴ See e.g. M. Filar (ed.), Z. Kwaśniewski, D. Kala, *Komentarz do ustawy o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary (Commentary on the Statute on Liability of Collective Subjects for the Acts Forbidden under a Penalty)*, Torun 2006, pp. 27-28.

⁵ See collection of judgments of the Constitutional Tribunal of the Republic of Poland: OTK-A 2004, No 10, item 103.

persons⁶ might be indicated, in particular, companies of commercial law (limited liability company, joint-stock company), trade unions, political parties, cooperatives, foundations and registered associations. The organisational entities without the legal personality which however the other regulations admit the legal capacity are commercial partnerships⁷ (registered partnership, professional partnership, limited partnership, limited joint-stock partnership) and capital companies in organization, in other words - limited liability company and joint-stock company *in statu nascendi*⁸.

Within the Polish legal doctrine there were a lot of voices and opinions devoted to relevant status of civil partnership. The prevailing view doesn't assent to the civil partnership as a collective subject because of its legal character. On the grounds of the Civil Code, the civil partnership is merely a legal relationship of partners, based on their contract⁹.

Naturally, it is justified that the State Treasury, territorial self government units and its unions, cannot be liable under the provisions of the SLCS. Otherwise, the State would punish itself, what is, of course, unacceptable. Such regulation would also violate the principles of *nemo iudex idoneus in causa sua* and *nemo se ipse accusare tenetur*. On the other hand, such regulation might be conflicted with the constitutional principle of equality before the law¹⁰. It needs to be emphasized, however, that it's possible to call to the liability a commercial company with participation (shares) of the State Treasury, territorial self government units and its unions. It doesn't matter what is the amount of such shares. In the aforementioned example the liable subject would be a company, not the shareholders – the State Treasury or territorial self government units or its unions.

The above mentioned situation is only one of the particular examples in Section 2 of the Article 2 of the SLCS. The given enumeration doesn't carry in new types of collective subject but it just states precisely the general definition from the Section 1 of the Article 1 of the SLCS. Besides of a commercial company with shares of the State Treasury, territorial self government units and its unions, other collective subjects in the meaning of the SLCS are also following ones: a capital company in organisation (*in statu nascendi*), a subject which was held for disposal (a company in liquidation)¹¹, an

6 The definition of a legal person is established in the Article 33 of the Polish Civil Code of the 23th of April 1964 (Journal of Laws of the Republic of Poland No 16, item 93 with subsequent amendments): 'Legal persons are the State Treasury and organisational entities which the particular regulations admit a legal personality'.

7 Article 8, Section 1 of the Polish Commercial Partnerships and Companies Code of the 15th of September 2000 (Journal of Laws of the Republic of Poland No 94, item 1037 with subsequent amendments).

8 Article 11, Section 1 of the Polish Commercial Partnerships and Companies Code.

9 See M. Filar, *Odpowiedzialność podmiotów zbiorowych za czyny zabronione pod groźbą kary (Liability of Collective Subjects for the Acts Forbidden under a Penalty)* [in:] A. Marek (ed.), *System prawa karnego. Zagadnienia ogólne (System of Criminal Law. General Issues)*, vol. 1, Warsaw 2010, p. 429; M. Filar (ed.), Z. Kwaśniewski, D. Kala, *Komentarz do ustawy... (Commentary on the Statute...)*, Torun 2006, p. 45; B. Namysłowska-Gabrysiak, *Ustawa o odpowiedzialności podmiotów zbiorowych za czyny zagrożone pod groźbą kary. Komentarz (The Statute on Liability of Collective Subjects for the Acts Forbidden under a Penalty. The Commentary)*, Zakamycze 2004, pp. 88-91; P. Piątek, *Definicja legalna podmiotu zbiorowego podlegającego odpowiedzialności za czyny zabronione pod groźbą kary (The Legal Definition of Collective Subjects in the Meaning of the Statute on Liability of Collective Subjects for the Acts Forbidden under a Penalty)*, 'Palestra' 2008, No 1-2, p. 30-31.

10 The mentioned principle is stated in the Article 32 of the Constitution of the Republic of Poland on the 2nd of April 1997 (Journal of Laws of the Republic of Poland No 78, item 483 with subsequent correction and amendments). See B. Namysłowska-Gabrysiak, *op. cit.*, p. 95.

11 As an example of organisational entities which the other regulations admit the legal capacity according to regulations of the Polish Commercial Partnerships and Companies Code (Article 274 Section 3 and Article 461 Section 3 due to limited liability company in liquidation and joint-stock company in liquidation).

entrepreneur which is not a natural person and a foreign organisational entity (branch or agency).

One of the key issues omitted in the SLCS is the problem of the liability of collective subjects in a duration of the transformation or the division of the company. In the face of legal loophole, regarding the principle *nullum crimen sine lege*, the new subject might avoid its liability. The Polish doctrine of law aims to enforce the regulation in this field¹².

3. A character and principles of the liability of collective bodies in Poland

The idea of bearing the liability by collective entities (not only legal persons but also such collective entities which don't have legal personality) for offences has a great number of adherents in all over the world. Although theoretical discussions referring to the issue of possibility of incurring the criminal liability by collective subjects don't bring entirely satisfying results to the majority of the participants of such discussions, the one point in the field of the problem of collective subjects' liability is undoubtedly – there is a common consent that there should exist legal solutions foreseeing trouble measures (repressive or preventive) to those collective subjects which activity is bound to the commission of offences. Disputes are focused more on the detailed conditions and prerequisites of the liability of collective subjects in case of crime in their economic, social or even political activity and they don't rely upon contestation of the fact of such liability¹³. But sometimes there appears some theoretical doubts and controversies in the context of clear classification of the above indicated liability.

The common feature of different kinds of liability under the law (or, in other words, various liabilities, e.g. administrative, civil or criminal) concerning either natural persons or legal persons and other bodies without legal personality is that all these subjects are touched by the consequences determined by law because their conducts are considered as harmful or dangerous to the values protected and guaranteed by the legal system. However, the simplified mechanism of bearing the liability (braking law and negative, even severe effects of it) doesn't present automatically the concrete type of legal liability. Each liability has its own specific character; it is composed of a set of particular elements which lets to identify its nature. For instance, a theoretical model of the liability of a criminal nature needs to carry out four basic conditions:

1) the subject of the liability must be a perpetrator of the act (or omission of the act) i.e. the external behavior which is the expression of the personality of the subject;

2) such behavior must be the breach of legal provision; it means that the conduct under analysis must fulfill the characteristic elements (attributes) of the description of the type of an offence which is presented by the proper (statutory) legal provision (*nullum crimen sine lege*);

3) the behavior of the subject of liability must be an imputed act; the guilt is indispensable element (principle of culpability);

4) the legal consequence of the perpetrated conduct must be sentencing (imposing) of a measure of the criminal law reaction (especially a penalty) which includes

¹² See B. Nita, *Model odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary (The Model of the Liability of Collective Subjects for the Acts Forbidden under a Penalty)*, 'Państwo i Prawo' 2003, No 6, p. 16; B. Namysłowska-Gabrysiak, *op. cit.*, p. 94.

¹³ See J. Garstka, *op. cit.*, p. 575.

axiologically coloured retributive element of condemnation on one side and pragmatically coloured element of prevention on the other (individual and general prevention)¹⁴.

If in the area of legal construction of a liability there is no set of the above outlined conditions (all these conditions linked together), the liability simply isn't of a criminal nature. Some vital questions appear here. Is a collective body able to create a behavior which could be appraised as a criminal behavior? Is a collective body (as the artificially created person participating in many sectors of human's life activity) capable of being guilty in a criminal law sense? Is it, moreover, capable to be conscious of punishment as well as to improvement in retributive and preventive dimensions?¹⁵ Positive answers to all these questions provide reasons to place the considerations on the liability of collective subjects in the wide – spread field of criminal law issues.

It has been already generally noted that the character of the liability of collective bodies in Poland is *quasi*-criminal. It's worthy to stress that some representatives of the Polish doctrine of criminal law express opinions that the liability of collective subjects on the grounds of the current regulations is the criminal liability¹⁶ or they call it - more prudently or cautiously and rather not synonymously - as 'the liability of a criminal nature'¹⁷. Among the views of scholars dealing with the dilemma of the liability of collective subjects for the acts forbidden by law under penalties it's also can be found that the mentioned here liability is a new model of liability *sui generis*, unknown in the Polish legal system before, which is not criminal but it has, no doubts, a repressive character¹⁸. Besides, there is stated the opinion (shared by the authors of this paper) that proposed form of the liability of a collective subject in case of commitment of an offence related to its activity is a *quasi*-criminal one¹⁹. It should be noted the Polish Constitutional Tribunal stated - in the reasons of its judgment held on the 3rd of November 2004 – that the model of the liability of collective subjects introduced to the Polish legal system by the statute on the 28th of October 2002 cannot be regarded as a model of criminal liability *sensu stricto*. The substantive basis of the liability of collective bodies isn't the completion of constituent statutory elements of a proper offence (also fiscal offence) by the subject of the liability itself. The Constitutional Tribunal stressed that this liability is of a secondary character.

¹⁴ See M. Filar, *Odpowiedzialność podmiotów zbiorowych... (Liability of Collective Subjects...)* [in:] A. Marek, *op. cit.*, p. 418.

¹⁵ Such questions and correlated answers containing weighty and cogent argumentation – see: *ibidem*, pp. 418-420.

¹⁶ See e.g. S. Waltoś, *Odpowiedzialność karna podmiotów zbiorowych – stary problem legislacyjny na nowo (Criminal Liability of Collective Subjects - an Old Legislative Problems Turns into a New One)* [in:] A. Łopatka, B. Kunicka-Michalska, S. Kiewlicz (eds.), *Prawo – Społeczeństwo - Jednostka. Księga jubileuszowa dedykowana Profesorowi Leszkowi Kubickiemu (Law – Society – Individual. Jubilee Book Dedicated to Professor Leszak Kubicki)*, Warsaw 2003, pp. 405-406; *idem*, *O odpowiedzialności karnej podmiotów zbiorowych (On Criminal Liability of Collective Subjects)*, 'Edukacja Prawnicza' 2003, No 12, p. 30.

¹⁷ See e.g. M. Filar, *Odpowiedzialność karna podmiotów zbiorowych... (Criminal Liability of Collective Subjects...)* [in:] A. Adamski (ed.), *op. cit.*, p. 601-602; *idem*, *Odpowiedzialność podmiotów zbiorowych... (Liability of Collective Subjects...)* [in:] A. Marek (ed.), *op. cit.*, p. 418, 425. See also B. Namysłowska-Gabrysiak, *Ustawa o odpowiedzialności podmiotów zbiorowych... (Statute on Liability of Collective Subjects...)*, p. 61.

¹⁸ See e.g. J. Warylewski, *Prawo karne. Część ogólna (Criminal Law. General Part)*, 2nd edition, Warsaw 2005, pp. 182-183. See also B. Mik, *Charakter prawny odpowiedzialności podmiotów zbiorowych w świetle ustawy z dnia 28 października 2002 r. (A Legal Character of the Liability of Collective Subjects on the grounds of the Statute of the 28th of October 2002)*, 'Przegląd Sądowy' 2002, No 7 – 8, p. 67.

¹⁹ See M. Czyżak, *Karno-administracyjne, karnoskarbowe i quasi-karne formy odpowiedzialności podmiotów zbiorowych (Criminal-administrative, Criminal-fiscal and Quasi-criminal Forms of the Liability of Collective Subjects)*, 'Wojskowy Przegląd Prawniczy' 2004, No 1, p. 38.

There is lack of typical for criminal law requirement of breaching so called sanctioned norm by the subject of criminal liability, because the substantive basis of the liability of collective body is specified valid adjudication of the individual (natural person) made mention in the Article 3 of the statute, for committing the offence (also fiscal one) which is pointed out, among others, in the Article 16 of the statute. The Constitutional Tribunal expressed that the regulations of the statute describes the model of liability which character is repressive. It is betrayed by the statutory prerequisites of this liability as well as repressive aim and function of the penalties that threaten to collective subjects. It should be also added that 'criminal liability' isn't the statutory expression in the context of the liability of collective subjects. Such expression used by the legislator would oblige to direct application of corresponding provisions of the General Part of the Polish Criminal Code of the 6th of June 1997 considering its Article 116²⁰. It's worthy to remark that during parliamentary works on the governmental draft of the statute which, at the beginning, was titled 'On Criminal Liability of Collective Subjects', the expression 'criminal liability' was removed and replaced by another one of a similar but, in substance, not the same character and meaning: 'liability for acts forbidden under a penalty'. Perhaps the legislator's intention was to weaken the criminal character of the considered liability²¹. Not only this mentioned legislative operation but especially details of the legal construction of the liability of collective bodies proposed in the statute made that arose questions on the nature of this liability and disputes in this area among theorists and practitioners.

The Polish Constitutional Tribunal, regarding to the status of liability of collective subjects, remarked that - although the liability of collective subjects isn't a criminal liability *sensu stricto* (based on criminal code's regulations) - it may be (as the liability of undoubtedly repressive nature) regarded as a 'criminal liability *sensu largo*', i.e. legal category existing in the Polish Constitution of the 2nd of April 1997, in its Article 42²². The Constitutional Tribunal stressed that the range of application of the Article 42 covers not only criminal liability in its strict meaning but also other forms of legal liability connected with imposing penalties²³. The expression 'criminal liability' in the light of the Polish Constitution has autonomous meaning, independent of its meaning on the statutory level, located in the hierarchy of sources of law lower than the Constitution²⁴. Nowadays, a

²⁰ See reasons for the Polish Constitutional Tribunal's Judgment of the 3rd of November 2004.

²¹ See e.g. M. Filar, *Odpowiedzialność karna podmiotów zbiorowych... (Criminal Liability of Collective Subjects...)* [in:] A. Adamski (ed.), *op. cit.*, pp. 601-602; *idem*, *Odpowiedzialność podmiotów zbiorowych... (Liability of Collective Subjects...)* [in:] A. Marek (ed.), *op. cit.*, p. 425.

²² The full text of the Article 42 of the Constitution of the Republic of Poland is as follows: '1. Only a person who has committed an act prohibited by a statute in force at the moment of commission thereof, and which is subject to a penalty, shall be held criminally responsible. This principle shall not prevent punishment of any act which, at the moment of its commission, constituted an offence within the meaning of international law. 2. Anyone against whom criminal proceedings have been brought shall have the right to defence at all stages of such proceedings. He may, in particular, choose counsel or avail himself – in accordance with principles specified by statute – of counsel appointed by the court. 3. Everyone shall be presumed innocent of a charge until his guilt is determined by a final judgment of a court.' (For this English translation see E. Gierach, P. Chybalski (eds.), *Polish Constitutional Law. The Constitution and Selected Statutory Materials*, Chancellery of the Sejm, Warsaw 2009, p. 28)

²³ Reasons for the Polish Constitutional Tribunal's Judgment of the 3rd of November 2004. See also Judgment of the Constitutional Tribunal of the Republic of Poland on 8 July 2003 (P 10/02), collection of judgments of the Constitutional Tribunal of the Republic of Poland: OTK ZU No 6/A/2003, item 62.

²⁴ See more B. Nita, *Model odpowiedzialności... (The Model of the Liability...)*, pp. 17 and further.

statement that collective bodies bear criminal liability *sensu largo* finds its sympathizers in the doctrine of Polish criminal law²⁵.

The liability of collective subjects has a secondary (derivative) character. The ground for setting the legal mechanism of the SLCS is a criminal conduct²⁶ of the individual (natural person) bringing (also potentially) material or immaterial profits for the benefit of the collective subject. Moreover such offence must be stated by one of the valid adjudications (*res iudicata*) – convicting judgment, judgment of conditional discontinuance of criminal proceedings or proceedings in case of a fiscal offence, the court order allowing the accused person to voluntary submission of a penalty²⁷, judgment of discontinuance of legal proceedings because of the circumstances eliminating punishment in case of a natural person. The subjective scope of the primary criminal liability includes three categories of individuals²⁸:

- a natural person acting on behalf of or in the interest of the collective subject as a result of her/his powers or duties of representation, making decisions on behalf of the collective subject, executing supervision or during the excess of these powers or infringement of these duties (e.g. a member of a board);
- an individual who is permitted to act as a result of the excess of powers or infringement of duties of the aforementioned natural person;
- an individual acting on behalf of or in the interest of the collective subject with assent of the aforementioned natural person or with her/his knowledge (an attorney²⁹).

As important as the external element of *quasi-criminal* liability (*actus reus*) is a specific kind of guilt. Naturally there is no *mens rea* in traditional, classical criminal law meaning. The *quasi-guilty* mind of collective subject was regulated similar to civil conception as a guilt in selection (*culpa in eligendo*³⁰) or a guilt of supervision (*culpa in custodiendo*³¹). The Polish legal doctrine considers that it's possible to act with a special kind of intent – *dolus eventualis*³². In this situation a perpetrator agrees to improper selection or supervision, e.g. because of reduction of costs³³. Both forms of guilt merely refers to the individuals belonging to already presented second and third category of persons who have committed an offence mentioned in the scope Article 16 of the SLCS. The problem arises when the liability of collective subject appears in conjunction with the offence of a natural person acting on behalf of or in the interest of the collective subject as a result of her/his powers or duties of representation, making decisions on behalf of the

²⁵ See e.g. D. Habrat, *Materialnoprawne aspekty odpowiedzialności podmiotów zbiorowych w polskim prawie karnym* (Substantive Law Aspects of the Liability of Collective Subjects in Polish Criminal Law), Torun 2008, p. 106.

²⁶ The huge enough list of relevant crimes, generally related to business and finance, are mentioned in the Article 16 of the SLCS.

²⁷ This judicial decision is a special kind of criminal measure stated in the Article 17 of the Polish Criminal Fiscal Code on the 10th of September 1999 (Journal of Laws of the Republic of Poland No 83, item 931 with subsequent amendments).

²⁸ See Article 3 of the SLCS.

²⁹ M. Filar, *Odpowiedzialność podmiotów zbiorowych... (Liability of Collective Subjects...)* [in:] A. Marek (ed.), *op. cit.*, p. 432.

³⁰ See Article 429 of the Polish Civil Code.

³¹ See Article 427 of the Polish Civil Code.

³² On this form of guilt see Sz. Krajnik, *Przesłanki odpowiedzialności w prawie karnym (The Legal Prerequisites of the Liability in Criminal Law)*, Torun 2010, pp. 82-87.

³³ See M. Filar, *Odpowiedzialność podmiotów zbiorowych... (Liability of Collective Subjects...)* [in:] A. Marek (ed.), *op. cit.*, p. 440.

collective subject, executing supervision or during the excess of these powers or infringement of these duties. According to the judgment of the Supreme Court of the Republic of Poland on the 5th of May 2009 (IV KK 427/08), the collective subject in the above situation cannot be called to the liability because of the lack of guilt requirement in relation to the collective bodies (the provisions of the SLCS don't foresee so called 'guilt in organisation')³⁴.

It is also worth noting that the *quasi*-criminal liability of a collective subject (or the lack of it) doesn't exclude the civil liability for damage or administrative liability of aforesaid subject or even individual legal liability of the forbidden conduct's perpetrator.

4. The system of sanctions

The principal penalty which is foreseen towards the liable collective subject is the pecuniary penalty from 1000 PLN to 20 000 000 PLN, but not exceeding 10% of total annual revenue reached in the financial year when a natural person's offence being a prerequisite for further liability of a collective subject was committed. The court shall also decree forfeiture of *instrumenta sceleris*, *producta sceleris*, *fructa sceleris* or their equivalences. The forfeiture cannot be decreed if aforementioned objects or profits shall be returned to the entitled subject. Furthermore there might be rendered another measures:

- a ban on promotion and advertisement of conducting activity, making or selling products or rendering services;
- a ban on benefiting from different forms of financial aid of the public funding;
- a ban on benefiting from aid of international organisations of which member is the Republic of Poland;
- a ban on competition for public procurement;
- a ban on specified activity (basic or incidental);
- making a sentence publicly known.

Courts adjudge the bans settled on the list above over a period from 1 to 5 years. The ban of specified activity shall not be imposed if such decision would bring about bankruptcy or liquidation of the a collective subject or the necessary redundancy. During deciding by the sentence on legal sanctions the court shall take into consideration particularly the scale of incorrectness of selection or supervision (*quasi*-guilt), the scale of achieved or possible benefits, consequences of punishment for the society (general prevention), consequences of punishment for the collective subject and its financial situation (individual prevention).

5. Practical dimension of the SLCS and conclusions

In Poland, in spite of pretty large interest of the legal doctrine on the SLCS, practical enforcement in this matter has been disproportionately lower. Since the came into force of the SLCS on November 2003 up to the 12th of March 2008 there were merely 60 prosecution's motions against the collective subjects filed before courts. Only 22 of them brought the case to the final decision, but only 10 elicited rendering of judgments containing statements on the liability of collective subjects³⁵.

The petty number of cases is caused, as it seems, in particular by the secondary character of the liability of collective subjects and relevant difficulties to the matter in

³⁴ See collection of adjudications of the Supreme Court of the Republic of Poland (Criminal and Military Division): OSNKW 2009, No 7, item 57.

³⁵ B. Nita, *Postępowanie karne przeciwko podmiotom zbiorowym (The Criminal Proceedings Against the Collective Subjects)*, Sopot 2008, p. 427.

hand. Furthermore it seems that the model created by the SLCS cannot be a useful device in shaping a mainstream of the criminal policy.

The character of the liability of collective subjects in Poland is *quasi*-criminal for the sake of repressive sanctions which involve the mentioned group of subjects. However, it should be noted that the major elements conditioning the collective subject's liability are of objective nature. This remark refers not only to natural person's offence (providing or being able to provide material or immaterial benefits for concrete collective subject) ascertained by the proper valid court adjudications, but it also concerns the collective subject's liability prerequisite of *mens rea*, i.e. *culpa in eligendo* or *culpa in custodiendo* in accordance with the civil law conception of guilt. This regulation of guilt is definitely more objective than the picture of guilt presented in the traditional sense, commonly accepted by the statutory solutions and the doctrine of criminal law.

In spite of insignificant number of judgments which appeared on the grounds of the SLCS, the liability of collective subjects is an interesting issue breaking down the ancient, roman law rule *societas delinquere non potest*. In contemporary societies standing face to face with new challenges traditional forms of liability in the field of uprising problems not always seems to be sufficient enough or simply are insufficient.