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Lack of Judicial Justice: The Practice of Polish Courts in Misdemeanor Cases

Sprawiedliwość sądowa, której nie ma: Praktyka polskich sądów w sprawach o wykroczenia

Abstract

This article describes the results of a case-file study conducted by a research team examining the practices of Polish courts in misdemeanor cases. In 1997, the Constitution of the Republic of Poland required the legislature to refer cases involving prohibited acts causing minor social harm to the courts for adjudication, which was intended to guarantee citizens the right to a fair trial (Article 45, paragraph 1) and to implement human rights protections crucial to Poland's accession to European institutions.

The study was based on an analysis of randomly selected case files provided by 43 district courts throughout the Republic of Poland. A total of 464 case files involving misdemeanors and fiscal offenses were obtained for analysis; in these cases, a motion for punishment (or an indictment, or another document initiating proceedings) was filed with the court in 2019.

The research provided a description of the practices of the common courts in misdemeanor cases, which clearly contradict the fundamental principles of the constitutional framework.

Courts in Poland are clearly abusing the institution of the so-called penal order—that is, judgments finding guilt—which almost always occur contrary to the literal wording of the provisions stating that a penal order may be issued only when the guilt and circumstances of the act are beyond doubt.

Such judgments are rendered in closed session and, in the overwhelming majority of cases, become final due to the failure to file objections within the prescribed time limit.

This practice stems from the burden placed on criminal courts by such “minor” cases and the desire to adjudicate them quickly and without undue delay. This violates citizens’ constitutional guarantees and often results in the issuance of unjust rulings.

Keywords: sociology of law, misdemeanors, penal order, trial, justice, fair trial

Streszczenie

Niniejszy artykuł opisuje wyniki badania aktowego przeprowadzonego przez zespół badawczy, który analizował praktykę polskich sądów w sprawach o wykroczenia. W 1997 r. Konstytucja Rzeczypospolitej Polskiej zobowiązała ustawodawcę do przekazania sądom do rozstrzygania spraw dotyczących czynów zabronionych wywołujących niewielką szkodliwość społeczną, co miało na celu zagwarantowanie obywatelom prawa do sprawiedliwego rozpatrzenia sprawy (art. 45 ust. 1) oraz wdrożenie ochrony praw człowieka, kluczowej w akcesji Polski do europejskich organizacji międzynarodowych.

Badanie oparto na analizie losowo wybranych akt spraw udostępnionych przez 43 sądy rejonowe na terenie całej Rzeczypospolitej Polskiej. Do analizy pozyskano łącznie 464 akta spraw dotyczących wykroczeń i przestępstw skarbowych; w sprawach tych wniosek o ukaranie (lub akt oskarżenia, bądź inny dokument wszczynający postępowanie) został wniesiony do sądu w 2019 r.

Badanie pozwoliło na opisanie praktyk sądów powszechnych w sprawach o wykroczenia, które pozostają w wyraźnej sprzeczności z fundamentalnymi zasadami ram konstytucyjnych. Sądy w Polsce w sposób jednoznaczny nadużywają instytucji tzw. wyroku nakazowego – czyli orzeczeń uznających winę – które w zdecydowanej większości przypadkach zapadają wbrew dosłownemu brzmieniu przepisów, stanowiącym że wyrok nakazowy może zostać wydany tylko wówczas, gdy wina i okoliczności czynu nie budzą wątpliwości.

Orzeczenia takie zapadają na posiedzeniu niejawnym i w zdecydowanej większości przypadków stają się prawomocne z powodu niezłożenia sprzeciwu w przewidzianym terminie. Praktyka ta wynika z obciążenia sądów karnych takimi „drobniejszymi”

sprawami oraz z chęci ich szybkiego rozpoznania. Prowadzi to do naruszenia konstytucyjnych gwarancji obywatelskich i często skutkuje wydawaniem niesprawiedliwych rozstrzygnięć.

Słowa kluczowe: socjologia prawa, wykroczenia, wyrok nakazowy, proces, sprawiedliwość, sprawiedliwy proces

Hearing Cases Involving Misdemeanors and Fiscal Offenses—Preliminary Issues

The distinction in the Polish legal system between misdemeanors—that is, acts prohibited by the legislature that cause social harm of less than negligible magnitude—and felonies has led to efforts to find ways to hold their perpetrators accountable. Throughout Polish history, various legal frameworks have been sought to ensure the efficient and fair determination of liability for the commission of misdemeanors. During the period of the Polish People's Republic, the legislature entrusted the adjudication of such cases to the so-called Misdemeanor Boards attached to district courts. The structure and method of selecting board members were regulated by the Act of May 20, 1971, on the Structure of Misdemeanor Boards¹. The panels adjudicated misdemeanor cases, unless a specific provision entrusted the adjudication of such cases to another authority (Article 1). They operated within district courts and were established and dissolved by regulation of the Minister of Justice (Article 2 § 1). A panel consisted of the panel chair, one or two vice chairs, and the remaining panel members (Article 5). Members were elected for a four-year term by the municipal councils whose territories fell within the board's jurisdiction, from among candidates residing or employed within the municipality (Article 6, §§ 1 and 3). The intent of the legislature at the time was for board members to be selected from among representatives of the local community, rather than professional lawyers. Pursuant to Article 7, § 1 of the Act, Polish citizens enjoying full public rights who were at least 24 years of age and of *good civic standing* were eligible to become members. Article 7, § 2 of the Act explicitly stated:

¹ Journal of Laws 1971, No. 12, Item 118, as amended.

“Judges, lay jurors, prosecutors, practicing attorneys, attorney trainees, and soldiers on active military duty, as well as officers of the Police, the State Protection Office, and the Prison Service, and municipal (city) guards, shall not be elected as members of the college.”

Candidates for membership on the board—pursuant to Article 9, § 1 of the Act—could be nominated to municipal councils by: presidents of provincial courts, provincial prosecutors, district labor inspectors, associations, organizations, and labor unions registered in accordance with the law, as well as at least 25 citizens with the right to vote, residing or employed in the given area, by July 31 of the last year of the term of office, in accordance with the procedure to be specified by the President of the Republic of Poland by regulation. The position of a council member was subject to dismissal. The municipal council could remove a member of the panel in the event of: unjustified failure to perform the duties of a panel member or gross negligence in performing them; “conduct that grossly undermines the dignity of the panel or a gross violation of the dignity of a panel member”; as well as in the event of an inability to perform the duties of a panel member. In practice, the misdemeanor panels attached to district courts operated until October 17, 2001. On that date, the Act of August 24, 2001, came into force — the Code of Procedure in Misdemeanor Cases² — which entrusted district courts with adjudicating so-called misdemeanor cases (Article 9 § 1).

The transfer of jurisdiction over misdemeanor cases to the common courts did not result solely from the will of the legislature, but was the result of fulfilling a constitutional requirement. Pursuant to Article 237 of the Constitution of the Republic of Poland, adopted on April 2, 1997³, it was decided to abolish the misdemeanor panels operating at district courts. In accordance with the wording of this provision, which is included among the transitional and final provisions of the Constitution: “For a period of four years from the date the Constitution enters into force, cases involving misdemeanors shall be adjudicated by misdemeanor panels attached to district courts, provided that the court shall rule on sentences of detention” (paragraph 1). Pursuant to paragraph 2 of this article, appeals against the rulings of these panels are reserved for the jurisdiction of the courts. During the discussions on the draft Constitution,

² Journal of Laws 2001, No. 106, item 1148, as amended.

³ Journal of Laws 1997, No. 78, item 483.

the decision to entrust the adjudication of so-called “minor” cases to the ordinary courts was motivated by the need to ensure the parties’ right to a trial. As noted in the literature,

“the existence of misdemeanor tribunals—despite what one might assume to be their considerable efficiency and speed in adjudicating cases—was inconsistent with the standards set forth in the Constitution of the Republic of Poland for a democratic state governed by the rule of law that protects human rights, inter alia, through independent courts. Maintaining these panels would violate the right to a fair trial (Article 45 of the Constitution of the Republic of Poland) and would restrict the right to a defense at all stages of proceedings (Article 42(2) of the Constitution of the Republic of Poland)”⁴.

The constitutional standard regarding the right to a *fair* trial was established by Article 45(1) of the Constitution, which states: “Everyone has the right to a fair and public hearing of their case without undue delay by a competent, independent, impartial, and autonomous court.” The framers of the Constitution therefore decided that all cases in which a person accused of a misdemeanor faces liability resembling criminal liability would be entrusted to courts that were independent of both the executive and legislative branches. This was linked to the constitutional principle set forth in Article 10(1) of the Constitution, according to which the system of government of the Republic of Poland is based on the separation and balance of legislative, executive, and judicial powers. Hence, the administration of justice is entrusted to the Supreme Court, the common courts, the administrative courts, and the military courts (Article 175(1)). Pursuant to Article 177 of the Constitution, common courts administer justice in all cases, except for those reserved by law for the jurisdiction of other courts. Hence the guarantees regarding the independence and irremovability of judges, which are regulated in detail in Articles 178–181.

The right to a trial, as defined in Article 45(1) of the Constitution of the Republic of Poland, clearly has a twofold dimension. On the one hand, it encompasses substantive guarantees of the right to a trial in the

⁴ M. Bartoszewicz, *Komentarz do art. 237 Konstytucji RP*, [in:] M. Haczkowska (ed.), *Komentarz do Konstytucji RP*, LEX/el 2014, no. 1.

form of a fair, public, and prompt (not protracted) hearing of a case. On the other hand, this right must be implemented by properly structured institutions, namely courts with jurisdiction defined by law and characterized by the essential qualities of independence, impartiality, and autonomy. In light of these constitutional provisions, the resolution of legal disputes by a body other than a court does not constitute the administration of justice. The latter, in fact, may be administered only by a public authority possessing the specific characteristics defined in Chapter VIII of the Constitution⁵. The misdemeanor tribunals that existed prior to the adoption of the Polish Constitution did not meet these requirements⁶. The entry into force of the 1997 Constitution sealed their abolition, though this decision was fraught with significant logistical difficulties. This was highlighted, for example, by expert circles participating in the work of the Constitutional Commission of the National Assembly, which raised this issue at a meeting of one of its standing subcommittees⁷. The key challenge in this regard was the volume of cases being processed.

This circumstance formed the basis for Article 237 of the Constitution of the Republic of Poland, which provided for a four-year transitional period during which misdemeanor tribunals could continue to adjudicate cases under the new Constitution, allowing the common courts time to prepare organizationally to hear the numerous misdemeanor cases. It was not until 2001 that misdemeanor cases came under the jurisdiction of municipal courts and, subsequently, the misdemeanor divisions of district courts. Regardless of the four-year adjustment period, however, adjudicating a vast number of minor cases within the formal rigors of court proceedings must pose a tremendous challenge.

The transfer of jurisdiction over liability in misdemeanor cases to the common courts necessitated an organizational division within the district court structures to streamline proceedings in such cases as much as possible. From October 1, 2001⁸ to January 1, 2010, so-called municipal courts operated within the district courts. They were established upon the entry into force of the Act of July 27, 2001—Law on the System of

⁵ See the judgment of the Constitutional Tribunal of May 12, 2011, case no. P 38/08, OTK-A 2011, No. 4, item 33.

⁶ M. Laskowska, note III. 1, on Art. 237, [in:] M. Safjan, L. Bosek (eds.), *The Constitution of the Republic of Poland*, Vol. II. *Commentary on Arts. 87–243*, Warsaw 2016.

⁷ See Bulletin of the Constitutional Committee of the National Assembly, 1995, No. 11, pp. 376–377.

⁸ In fact, due to the issuance of a regulation by the Minister of Justice governing in detail the structure and jurisdiction of municipal courts, effective October 15, 2001.

Common Courts⁹. The detailed scope of jurisdiction and organization of the municipal courts was defined by the Regulation of the Minister of Justice of September 26, 2001, on the establishment of municipal courts¹⁰, issued after the Act had already entered into force, which was amended numerous times until its repeal on January 1, 2010.

On January 1, 2010, the Regulation of the Minister of Justice dated December 18, 2009, on the abolition of municipal courts came into effect¹¹. From that point on, all cases involving misdemeanors and fiscal offenses were heard by the criminal divisions of the respective district courts. In addition to the aforementioned cases, these divisions primarily heard cases involving crimes and fiscal crimes, which were reserved for their jurisdiction under the provisions of the Act of June 6, 1997—the Code of Criminal Procedure¹²—as well as the Fiscal Criminal Code. The decision to abolish municipal courts was met with criticism from parts of the legal community. As pointed out, for example, by the then National Council of the Judiciary,

“the policy of abolishing small organizational units and merging judicial divisions would lead to chaos, resulting in a deterioration of the efficiency of proceedings. Solutions of this type will adversely affect the functioning of the courts, resulting in the creation of enormous divisions within large courts—divisions that are difficult to manage and supervise—where cases from various areas of substantive law will be handled functionally. The consolidation of cases falling under the

⁹ Journal of Laws 2001, No. 98, item 1070, as amended. Pursuant to Article 13 § 1 of the Act—Law on the Organization of Common Courts:

“§ 1 Municipal courts may be established within a district court, either at its seat or outside its seat, as divisions or branch offices of district courts.

§ 2. Municipal courts are entrusted with hearing cases:

- 1) misdemeanor cases in the first instance,
- 2) cases involving fiscal misdemeanors and fiscal offenses punishable by a fine of up to 360 daily rates or punishable by restriction of liberty or imprisonment for up to 2 years,
- 3) crimes prosecuted by private indictment, with the exception of cases heard with the participation of lay judges,
- 4) other crimes subject to simplified proceedings,
- 5) civil cases subject to simplified proceedings and concerning court deposits and forfeiture of property.

§ 3. Municipal courts are established and abolished by the Minister of Justice by regulation. The regulation establishing a municipal court shall specify its seat, its jurisdiction within the boundaries of the district court’s jurisdiction, and the scope of cases referred to the municipal court for adjudication from among those listed in § 2. The establishment and abolition of municipal courts shall be guided by the volume of cases filed with the courts and considerations of the cost-effectiveness of court proceedings.”

¹⁰ Journal of Laws 2001, No. 106, Item 1160, as amended.

¹¹ Journal of Laws 2009, No. 221, item 1745, as amended.

¹² Journal of Laws 2021, item 534, consolidated text, as amended.

jurisdiction of the departments being abolished (municipal courts) will cause the overall productivity of adjudicating judges to decline, as it will prevent the proper organization of work and, in fact, eliminate the ability to manage the department, effective control, and the proper exercise of supervisory functions. The assertion contained in the explanatory memorandum of the draft—that the professional experience of visiting judges is wasted during inspections of divisions handling cases of low complexity—seems to imply that inspections in this category of cases should be discontinued”¹³.

Currently, proceedings concerning liability for misdemeanors and tax offenses are heard by the criminal divisions of district courts. According to official data obtained from the Ministry of Justice¹⁴, in 2017, the criminal divisions of 321 district courts throughout Poland were staffed by 2,339 judges¹⁵. This means that, on average, there are 10.12 judges per district court handling cases involving crimes and fiscal crimes, as well as misdemeanors and fiscal misdemeanors. Of course, the number of judges in each court varies, and the caseload of individual judges’ divisions is uneven. According to information obtained from the Ministry of Justice in 2018¹⁶, only 7 district courts have established criminal divisions that deal exclusively with cases involving misdemeanors and fiscal offenses.

Importantly, the annual number of proceedings involving misdemeanors and tax offenses is so high that it places a significant burden on the chambers of judges in the criminal divisions of courts, who hear not only cases of this nature. Thus, in 2014, 590,854 proceedings were initiated; in 2015, 576,169 proceedings; in 2016, 453,666 proceedings; and in 2017, 417,875 proceedings. It follows that, on average, each judge hearing cases in the criminal division handled between 179.44 and 252.51 new cases involving misdemeanors and fiscal offenses¹⁷.

Despite this significant burden on judges resulting from the need to hear cases involving misdemeanors and fiscal offenses, the average duration of proceedings—from the moment they are initiated in the jurisdictional phase until the judgment becomes final—is extremely short. In

¹³ Opinion of the National Council of the Judiciary (KRS) dated November 19, 2009 (KRS No. 020-80/1-09).

¹⁴ Response from the Ministry of Justice dated May 30, 2018, to a request for public information, ref. no.: BM-II-082-477/18 (in the author’s possession).

¹⁵ The data also includes so-called vacancies.

¹⁶ *Ibid.*

¹⁷ *Ibid.* Of course, this average does not account for the uneven caseloads of individual judges’ divisions.

2014, it was 2.7 months; in 2015, 2.9 months; in 2016, 2.9 months; and in 2017, 2.7 months. An analysis of the above data, as well as an observation of the practice of adjudicating cases involving misdemeanors and fiscal offenses, indicated that district courts readily utilize the institution of penal orders, as regulated in Articles 93 and 94 of the Act of August 24, 2001 – Code of Procedure in Misdemeanor Cases¹⁸, as well as Articles 171 and 172 and Articles 500–507 of the Act of September 10, 1999 – Fiscal Penal Code¹⁹ in conjunction with Article 113 § 1 of the Code of Criminal Procedure (KPK).

Research—Process and Methods

In 2021, a joint research team was established comprising staff from the University of Warsaw and Collegium Intermarium University in Warsaw, under the direction of Prof. Aleksander Stępkowski and coordinator Dr. Bartosz Lewandowski. The research was conducted in collaboration with the Institute of Justice, and the team itself consisted of 8 members. The purpose of the case file analysis conducted in collaboration with the Institute of Justice was not only to examine the practices of district courts in cases involving misdemeanors and fiscal offenses, with particular emphasis on the practice of utilizing penal orders, but also to address the question of the practical effects of transferring the adjudication of cases involving prohibited acts of negligible or minor social harm to the exclusive jurisdiction of the common courts. The hypothesis posited was as follows: the current practice of adjudicating cases involving misdemeanors and fiscal offenses—contrary to the intentions of the framers of the Constitution and the legislature—does not guarantee the party, i.e., the accused or defendant, the right to a trial within the meaning of Article 45(1) of the Constitution of the Republic of Poland.

The study was based on an analysis of randomly selected case files made available by 43 district courts throughout the Republic of Poland, which were provided at the request of the Institute of Justice. A total of 464 case files involving misdemeanor and fiscal offense cases were obtained for analysis; in these cases, a motion for punishment (or an

¹⁸ Journal of Laws of 2021, item 457, consolidated text, as amended.

¹⁹ Journal of Laws of 2021, item 408, consolidated text, as amended.

indictment or other document resulting in the initiation of proceedings) was filed with the court in 2019. Case files were obtained from the following District Courts²⁰: Bielsko-Biała (14), Braniewo (9), Choroszcz (14), Wrocław-Śródmieście (23), Kielce (41), Konin (12), Mysłowice (7), Płock (12), Poznań-Grunwald and Jeżyce (41), Poznań Nowe Miasto and Wilda (34), Sanok (4), Sieradz (5), Środa Wielkopolska (1), Brzozów (6), Ciechanów (10), Drawsko Pomorskie (5), Głódów (13), Goleniów (7), Grodzisk Mazowiecki (9), Kętrzyn (7), Krasnystaw (6), Łęczycza (2), Nowe Miasto Lubawskie (3), Nowy Targ (11), Oborniki (4), Olsztyn (2), Opole Lubelskie (9), Pabianice (7), Radzyń Podlaski (7), Rawa Mazowiecka (5), Ropczyce (5), Sandomierz (9), Sanok (5), Szczecin-Centrum (7), Słupca (3), Środa Wielkopolska (7), Tarnobrzeg (9), Toruń (29), Wieliczka (8), Wysokie Mazowieckie (6), Zakopane (6), Włocławek (18), Wołomin (12).

All case files were obtained for the analysis that the presidents of district courts (or, respectively, the chairs of criminal divisions or other authorized judges) registered by means of an appropriate order as cases with the reference number *W*. This therefore primarily concerns proceedings in cases involving misdemeanors, for which liability is primarily provided for by the Act of May 20, 1971—the Code of Misdemeanors (Journal of Laws of 2021, item 2008, consolidated text)²¹, as well as fiscal offenses, for which the legislature has comprehensively regulated liability in the Act of September 10, 1999—the Fiscal Penal Code (Journal of Laws of 2021, item 408, consolidated text)²². However, the case files concerned a number of offenses also regulated in so-called non-Code statutes²³.

²⁰ The number of case files from a given court is indicated in parentheses.

²¹ Hereinafter referred to as “KW”.

²² Hereinafter referred to as “KKS”.

²³ The breakdown of cases by legal classification is as follows: Article 43(1) of the Act on Sobriety Education—2 cases; Article 86 § 2 and Article 87 § 1 of the Code of Administrative Offenses—1; Article 43(1), paragraph 1, of the Act on Sobriety Education and the Prevention of Alcoholism and Article 145 of the Code of Minor Offenses—1; Article 334, § 3, of the Code of Criminal Procedure—1; Article 43(1) of the Act on the Prevention of Alcoholism and Article 145 of the Code of Minor Offenses—1; Article 57 § 1 of the Code of Misdemeanors (KKS) – 1; Article 86 § 1 and 4 in conjunction with Article 63 § 2 and 7 in conjunction with Article 54 § 1 and 3 in conjunction with Article 7 § 1 of the Code of Misdemeanors (KKS) – 1; Article 87, § 1a and 4 of the Code of Misdemeanors (KW) – 1; Article 92, § 1 of the Code of Misdemeanors (KW) – 1; Article 92, § 1 of the Code of Misdemeanors (KW), Article 95 of the Code of Misdemeanors (KW), and Article 97 of the Code of Misdemeanors (KW) – 1; Article 94 § 1 of the Code of Misdemeanors (KW) – 1; Article 96 § 3 of the Code of Misdemeanors (KW) – 1; Article 97 of the Code of Misdemeanors (KW) in conjunction with Article 16(2) – 1; Article 98(1)(6) of the Act on the Social Insurance System – 1; Article 1 § 2 of the Code of Administrative Offenses (KW) – 1; Article 10(2) in conjunction with Article 5(1)(36) of the Act on Maintaining Cleanliness and Order in Municipalities – 2; Article 106 of the Code of Administrative Offenses (KW) – 2; Article 107 of the Code of Administrative Offenses

(KW) – 3; Article 11 § 1 of the Code of Administrative Offenses and Article 119 § 1 of the Code of Administrative Offenses – 2; Article 114(1) of the Act on Competition and Consumer Protection – 1; Article 119 of the Code of Administrative Offenses – 6; Article 119 § 1 of the Code of Administrative Offenses – 56; Article 119 § 1 of the Code of Administrative Offenses in conjunction with Article 9 § 1 of the Code of Administrative Offenses – 1; Article 119 § 1 of the Code of Administrative Offenses and Article 94 § 1 of the Code of Administrative Offenses – 1; Article 119 § 1 of the Code of Administrative Offenses and Article 141 of the Code of Administrative Offenses – 1; Article 120 of the Labor Code – 1; Article 120 § 1 of the Labor Code – 1; Article 120, paragraphs 10 and 11, of the Act of April 20, 2004, on Employment Promotion and Labor Market Institutions – 1; Article 120, paragraph 2, of the Act on Employment Promotion and Labor Market Institutions – 1; Article 121 § 1 of the Labor Code – 3; Article 121 § 2 of the Labor Code – 5; Article 121 § 2 of the Labor Code and Article 65 §§ 1 and 2 of the Labor Code – 1; Article 123 § 1 of the Labor Code – 1; Article 124 of the Code of Administrative Offenses (KW) – 3; Article 124, § 1 of the Code of Administrative Offenses (KW) – 4; Article 124, § 1 of the Code of Administrative Offenses (KW) and Article 51, § 2 of the Code of Administrative Offenses (KW) – 1; Article 126, § 1 of the Code of Administrative Offenses (KW) – 1; Article 134 of the Code of Administrative Offenses (KW) in conjunction with Article 119, § 1 of the Code of Administrative Offenses (KW) – 1; Article 140 of the Code of Administrative Offenses – 8; Article 141 of the Code of Administrative Offenses – 2; Article 141 of the Code of Administrative Offenses and Article 145 of the Code of Administrative Offenses – 1; Article 141 of the Code of Administrative Offenses, Article 145 of the Code of Administrative Offenses, and Article 43(1) in conjunction with Article 14 of the Act on Sobriety Education – 1; Article 141 of the Code of Administrative Offenses and Article 145 of the Code of Administrative Offenses – 1; Article 141 of the Code of Administrative Offenses, Article 43(1), paragraph 1, of the Act on Sobriety Education, and Article 90 of the Code of Administrative Offenses – 1; Article 141 of the Code of Administrative Offenses and Article 43 of the Act on Sobriety Education – 1; Article 144 of the Code of Administrative Offenses, Article 141 of the Code of Administrative Offenses, Article 145 of the Code of Administrative Offenses, and Article 140 of the Code of Administrative Offenses – 1; Article 145 of the Code of Administrative Offenses (KW) – 2; Article 145 of the Code of Administrative Offenses (KW) and Article 141 of the Code of Administrative Offenses (KW) – 1; Article 145 of the Code of Administrative Offenses (KW) and Article 43(1), paragraph 1, of the Act on Sobriety Education – 1; Article 155, § 4, of the Code of Criminal Offenses (KKS) – 1; Article 180 in conjunction with Article 76 of the Waste Act – 1; Article 180a in conjunction with Article 76 of the Waste Act – 1; Article 19 of the Code of Administrative Offenses (KW) – 1; Article 191 in conjunction with Article 155 of the Act of December 14, 2012, on Waste – 1; Article 209 § 1 of the Code of Administrative Offenses (KW) in conjunction with Article 34 § 1 and 2 of the Criminal Code (KK) and Article 35 § 1 of the Criminal Code (KK) – 1; Article 23(1) of the Act of May 12, 2016, on Counteracting the Threats of Sex Crimes – 1; Article 282 § 1(1) of the Code of Criminal Procedure in conjunction with Article 94(5) of the Code of Criminal Procedure, Article 85 § 2 of the Code of Criminal Procedure, Article 283 § 2(7) of the Code of Criminal Procedure in conjunction with Article 207 § 2(3) of the Code of Criminal Procedure, Article 122(1)(1) of the Act on the Promotion of Employment in conjunction with Article 46 of the Social Insurance System Act, Article 281, point 5 of the Labor Code in conjunction with Article 149, § 1 of the Labor Code, § 6(1) of the Regulation of the Minister of Family Affairs on Employee Documentation, and Article 289, § 1 of the Labor Code in conjunction with Article 229, § 4 of the Labor Code – 1; Article 32(1)(3) of the Act – 1; Article 33(1)(8), (10), and (12) of the Act on the System of Identification and Registration of Animals – 1; Article 33(1)(12) of the Act of April 2, 2014, on the Animal Identification and Registration System – 1; Article 43a(1) of the Act on Sobriety Education – 1; Article 43(1)(1) of the Act on Sobriety Education – 2; Article Section 43(1), paragraph 1, of the Act on Sobriety Education and Section 65, § 2, of the Code of Administrative Offenses – 1; Section 43 of the Code of Administrative Offenses and Section 145 of the Code of Administrative Offenses – 1; Section 43, paragraph 1, of the Act on Sobriety Education – 1; Article 43(1) of the Act on Sobriety Education and Article 65 § 1 of the Code of Minor Offenses – 1; Article 43(1) in conjunction with Article 14(2a) of the Act on Sobriety Education and Article 145 of the Code of Minor Offenses – 1; Article 43 of the Act on Sobriety Education – 3; Article 43 of the Act on Sobriety Education and Article 65 § 1 of the Code of Administrative Offenses – 1; Article 43 of the Act on Sobriety Education and Article 140 of the Code of Administrative Offenses – 1; Article 43(1), paragraph 1, of the Act on Sobriety Education and Article 141 of the Code of Administrative Offenses – 1; Article 43(1), paragraph 1, of the Act on Sobriety Education and Article 65 § 1 of the Code of Administrative Offenses – 1; Article 431 of the Act on Sobriety Education and the Prevention of

Alcoholism – 1; Article 476, paragraph 1, of the Water Law – 1; Article 51 of the Code of Administrative Offenses (KW) – 1; Article 51 § 1 of the Code of Administrative Offenses (KW) – 8; Article 51 § 1 of the Code of Administrative Offenses (KW) in conjunction with Article 9 § 2 of the Code of Administrative Offenses (KW) – 2; Article 51 § 1 of the Code of Administrative Offenses (KW) and Article 13(1) of the Act on the Protection of Health from the Consequences of Tobacco Use – 1; Article 51 § 1 of the Code of Administrative Offenses and Article 65 § 1(1) of the Code of Administrative Offenses – 2; Article 51 § 2 of the Code of Administrative Offenses – 9; Article 51 § 2 of the Code of Administrative Offenses and Article 141 of the Code of Administrative Offenses – 1; Article 51, point 2, paragraph 7 of the Act of May 21, 1999, on Weapons and Ammunition – 1; Article 51, paragraph 1 of the Act on Weapons and Ammunition – 1; Article 51, paragraph 2, point 1 of the Act on Weapons and Ammunition – 1; Article 54(2)(7) of the Act on Weapons and Ammunition – 1; Article 56 § 4 of the Code of Criminal Procedure (KKS) – 1; Article 57 § 1 of the Code of Criminal Procedure (KKS) – 8; Article 57 § 1 of the Code of Criminal Procedure (KKS) in conjunction with Article 6 § 2 of the Code of Criminal Procedure (KKS) – 1; Article 63a of the Code of Misdemeanors (KW) – 1; Article 64 § 1 of the Code of Misdemeanors (KW), Article 10(2) of the Act on Maintaining Cleanliness, Article 97 of the Code of Misdemeanors (KW) in conjunction with Article 26(3) and Article 46 of the Road Traffic Act (PRD) – 1; Article 65 § 1 of the Code of Administrative Offenses (KKS) – 1; Article 65 §§ 1 and 4 of the Code of Administrative Offenses (KKS) – 1; Article 65 § 2 of the Code of Misdemeanors (KW) – 1; Article 65 § 2 of the Code of Misdemeanors (KW) and Article 145 of the Code of Misdemeanors (KW) – 1; Article 66 § 1 of the Code of Misdemeanors (KW) – 1; Article 66 § 1 of the Code of Misdemeanors (KW) and Article 51 § 1 of the Code of Misdemeanors (KW) – 1; Article 66 § 1(1) of the Code of Misdemeanors (KW) – 2; Article 69 § 4 of the Code of Criminal Procedure (KKS) in conjunction with Article 65 § 1 of the KKS in conjunction with Article 54 § 3 of the KKS in conjunction with Article 54 § 1 of the KKS in conjunction with Article 91 § 4 of the KKS in conjunction with Article 91 § 1 of the KKS in conjunction with Article 7 § 1 of the KKS – 3; Article 76 of the Code of Misdemeanors (KW) – 1; Article 77 of the Code of Criminal Offenses (KKS) – 1; Article 77 § 3 of the Code of Criminal Offenses (KKS) in conjunction with Article 6 of the Code of Criminal Offenses (KKS) – 5; Article 77 § 3 of the Code of Criminal Offenses (KKS) in conjunction with Article 6 § 2 of the Code of Criminal Offenses (KKS) – 1; Article 8 § 1 of the Code of Misdemeanors (KW) – 1; Article 82 § 3 of the Code of Misdemeanors (KW) – 1; Article 82 § 5 of the Code of Misdemeanors (KW) – 1; Article 82 § 6 of the Code of Misdemeanors (KW) – 1; Article 86 of the Code of Misdemeanors (KW) – 1; Article 86, § 1 and 4, in conjunction with Article 63, § 2 and 7, in conjunction with Article 54, § 1 and 3, in conjunction with Article 7, § 1 of the Code of Administrative Offenses (KKS) – 1; Article 86 § 1 of the Code of Misdemeanors (KW) – 25; Article 86 § 1 of the Code of Misdemeanors (KW) and Article 94 § 1 of the Code of Misdemeanors (KW) – 1; Article 86 § 1 of the Code of Misdemeanors (KW) in conjunction with Article 3(1) and Article 26(1) and (2) of the Road Traffic Act – 1; Article 86 § 1 of the Code of Misdemeanors (KW) in conjunction with Article 97 of the Code of Misdemeanors (KW) – 1; Article 86 § 1 of the Code of Misdemeanors (KW) and Article 94 of the Code of Misdemeanors (KW) – 1; Article 86 § 1 of the Code of Misdemeanors (KW) and Article 94 § 2 of the Code of Misdemeanors (KW) – 1; Article 86 § 2 of the Code of Minor Offenses – 3; Article 86 § 2 of the Code of Minor Offenses and Article 51 § 2 of the Code of Minor Offenses – 1; Article 86 § 2 of the Code of Minor Offenses and Article 65 § 2 of the Code of Minor Offenses – 1; Article 86 § 2 of the Code of Minor Offenses, Article 94 § 2 of the Code of Minor Offenses, and Article 97 of the Code of Minor Offenses – 1; Article 86 § 2 of the Code of Administrative Offenses, Article 87 § 1a of the Code of Administrative Offenses in conjunction with Article 97 of the Code of Administrative Offenses in conjunction with Article 26(3) of the Road Traffic Act – 1; Article 86 § 1 of the Code of Administrative Offenses (KW) – 2; Article 86 in conjunction with Article 77 of the Code of Administrative Offenses (KW) in conjunction with Article 9 § 1 of the Code of Administrative Offenses (KW) – 1; Article 87 of the Code of Administrative Offenses (KW) – 1; Article 87 § 1a of the Code of Administrative Offenses (KW) – 1; Article 87 § 1 of the Code of Administrative Offenses – 12; Article 87 § 1 of the Code of Administrative Offenses in conjunction with Article 45(1)(1) of the Road Traffic Act – 1; Article 87 § 1 of the Code of Administrative Offenses, Article 92 of the Code of Administrative Offenses in conjunction with Article 9 § 1 of the Code of Administrative Offenses – 1; Article 87 § 1 of the Code of Administrative Offenses, Article 92 § 1 in conjunction with § 21(1) of the Regulation of the Minister of Infrastructure on Traffic Signs and Signals – 1; Article 87 § 1 of the Code of Administrative Offenses (KW), Article 92a of the Code of Administrative Offenses (KW) in conjunction with Article 20(1) – 1; Article 87 § 1 of the Code of Administrative Offenses (KW) and Article 95 of the Code of Administrative Offenses

(KW) – 1; Article 87 § 1a of the Code of Administrative Offenses (KW) – 1; Article 87 § 1 and Article 97 in conjunction with Article 26(3)(3) of the Road Traffic Act – 1; Article 9 § 2 of the Code of Administrative Offenses (KW) – 1; Article 90 of the Code of Administrative Offenses (KW) – 4; Article 91 of the Code of Administrative Offenses (KW) – 1; Article 91, § 1 and 4 of the Code of Misdemeanors (KKS) in conjunction with Article 65, § 1 and 4 of the KKS in conjunction with Article 54, § 1 and 3 of the KKS in conjunction with Article 7, § 1 of the KKS – 1; Article 91 § 4 of the Code of Criminal Procedure (KKS) in conjunction with Article 91 § 1 of the KKS in conjunction with Article 65 § 1 of the KKS in conjunction with Article 54 § 3 of the KKS in conjunction with Article 94 § 1 of the KKS in conjunction with Article 7 § 1 of the KKS – 1; Article 92a of the Code of Misdemeanors (KW) – 9; Article 92a of the Code of Misdemeanors (KW) in conjunction with Article 20 of the Road Traffic Act (PRD) – 1; Article 92a of the Code of Misdemeanors (KW) and Article 95 of the Code of Misdemeanors (KW) – 1; Article 92a in conjunction with Article 20(1a) of the Road Traffic Act – 1; Article 92 of the Code of Misdemeanors (KW) – 1; Article 92 § 1 of the Code of Misdemeanors (KW) – 22; Article 92 § 1 of the Code of Misdemeanors (KW) in conjunction with Article 5(1) of the Road Traffic Act (PRD) – 1; Article 92 § 1 of the Code of Administrative Offenses in conjunction with Article 5(1) of the Road Traffic Act and § 53(1) of the Regulation of the Minister of Infrastructure and Internal Affairs of July 31, 2002, on traffic signs and signals – 1; Article 92 § 1 of the Code of Administrative Offenses (KW) in conjunction with the Regulation of the Minister of Infrastructure and Internal Affairs of July 31, 2002, on traffic signs and signals, Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 22(5) of the Road Traffic Act (PRD) and Article 92 § 1 of the Code of Administrative Offenses (KW) – 1; Article 92 § 1 of the Code of Administrative Offenses and Article 65 § 2 of the Code of Administrative Offenses – 1; Article 92 § 1 of the Code of Administrative Offenses and Article 96 § 3 of the Code of Administrative Offenses – 1; Article 92 § 1 of the Code of Administrative Offenses and Article 97 of the Code of Administrative Offenses – 1; Article 92 § 1 of the Code of Administrative Offenses (KW), Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 49(1)(1) of the Road Traffic Act (PRD) – 1; Article 92 § 1 of the Code of Administrative Offenses (KW), Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 39(1) of the Road Traffic Act in conjunction with Article 9 § 1 of the Code of Administrative Offenses (KW) – 1; Article 92 § 2 and Article 97 of the Code of Administrative Offenses (KW) – 1; Article 92 § 2 of the Code of Administrative Offenses (KW) – 1; Article 92 § 3 of the Code of Administrative Offenses (KW) – 1; Article 92 § 1 of the Code of Administrative Offenses (KW) – 1; Article 92, paragraphs 1 and 2, of the Road Transport Act – 1; Article 92 in conjunction with Article 20, paragraph 1a, of the Road Traffic Act – 1; Article 92a of the Code of Administrative Offenses (KW) – 3; Article 94 of the Code of Administrative Offenses (KW) and Article 92 of the Code of Administrative Offenses (KW) – 1; Article 94, paragraphs 1 and 2, Article 87, paragraph 1 of the Code of Administrative Offenses (KW), and Article 97 of the Code of Administrative Offenses (KW) – 1; Article 94 § 1 of the Code of Administrative Offenses (KW) – 8; Article 94 § 1 of the Code of Administrative Offenses (KW) and Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 9 § 1 of the Code of Administrative Offenses (KW) – 1; Article 94 § 1 of the Code of Administrative Offenses (KW) and Article 86 § 1 of the Code of Administrative Offenses (KW) – 1; Article 94, § 1 of the Code of Administrative Offenses and Article 94 of the Code of Administrative Offenses – 1; Article 94, § 1 of the Code of Administrative Offenses and Article 97 of the Code of Administrative Offenses in conjunction with Article 26 of the Road Traffic Act – 1; Article 94 § 1 of the Code of Administrative Offenses and Article 97 of the Code of Administrative Offenses in conjunction with Article 66 of the Road Traffic Act – 1; Article 96 of the Code of Administrative Offenses – 2; Article 96 of the Code of Administrative Offenses in conjunction with Article 78(4) and (5) – 1; Article 96 § 3 of the Code of Administrative Offenses (KW) – 25; Article 96 § 3 of the Code of Administrative Offenses (KW) in conjunction with Article 78(4) and (4) of the Road Traffic Act (PRD) – 1; Article 96 § 3 of the Code of Administrative Offenses (KW) in conjunction with Article 78(4) of the Road Traffic Act (PRD) – 1; Article 96 § 3 of the Code of Administrative Offenses (KW) – 1; Article 96, § 1 of the Code of Administrative Offenses (KW) – 1; Article 96, § 3 of the Code of Administrative Offenses (KW) – 1; Article 968 of the Code of Administrative Offenses (KW) – 1; Article 968, § 3 of the Code of Administrative Offenses (KW) – 1; Article 97 of the Code of Administrative Offenses (KW) – 15; Article 97 of the Code of Administrative Offenses (KW) and Article 86, § 1 of the Code of Administrative Offenses (KW) – 1; Article 97 of the Code of Administrative Offenses in conjunction with Article 23 of the Road Traffic Act – 1; Article 97 of the Code of Administrative Offenses in conjunction with Article 23 of the Road Traffic Act – 1; Article 97 of the Code of Administrative Offenses in conjunction with Article 23(1)

The working group proceeded to complete—based on the made-available case files—previously prepared questionnaires in order to analyze the procedural practices of the common courts in misdemeanor cases. The questionnaires, completed in writing and previously described by the respondents, were subsequently analyzed statistically, and the content of the questionnaires themselves was also compiled in electronic form.

The research team paid particular attention to the institution of penal orders, which may be issued in cases involving misdemeanors and fiscal

(3) of the Road Traffic Act – 1; Article 97 of the Code of Administrative Offenses in conjunction with Articles 47, 49, and 26 of the Road Traffic Act – 1; Article 97 of the Code of Administrative Offenses in conjunction with Article 49(2)(4) of the Road Traffic Act and Article 141 of the Code of Administrative Offenses – 1; Article 97 of the Code of Administrative Offenses in conjunction with Article 11(1) of the Road Traffic Act and Article 141 of the Code of Administrative Offenses – 1; Article 97 of the Code of Administrative Offenses in conjunction with Article 16(2) of the Road Traffic Act – 1; Article 97 of the Code of Administrative Offenses in conjunction with Article 17(2) of the Road Traffic Act and Article 87(1) of the Code of Administrative Offenses – 1; Article 97 of the Code of Administrative Offenses in conjunction with Article 19(1) of the Road Traffic Act – 1; Article 97 of the Code of Administrative Offenses in conjunction with Article 23(1)(2) of the Road Traffic Act – 1; Article 97 of the Code of Administrative Offenses in conjunction with Article 23(1)(2) of the Road Traffic Act – 2; Article 97 of the Code of Administrative Offenses in conjunction with Article 23(1)(3) of the Road Traffic Act – 1; Article 97 of the Code of Administrative Offenses in conjunction with Article 26(3)(3) of the Road Traffic Act and Article 97 of the Code of Administrative Offenses in conjunction with Article 47(2) of the Road Traffic Act – 1; Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 26(3)(3) of the PRD Act – 1; Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 33(5) of the PRD Act – 1; Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 39(1) of the PRD Act – 1; Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 45(2)(1) of the PRD and Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 81(1) and (5) of the PRD-1; Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 47(2) of the PRD-1; Article 97 of the Code of Administrative Offenses in conjunction with Article 49(1)(1) of the Road Traffic Act – 2; Article 97 of the Code of Administrative Offenses in conjunction with Article 49(2)(4) of the Road Traffic Act – 1; Article 97 of the Code of Administrative Offenses in conjunction with Article 49(2)(4) of the Road Traffic Regulations – 1; Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 49(1)(9) of the Road Traffic Act (PRD) – 1; Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 78(2) of the Road Traffic Regulations (PRO) – 1; Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 49(1)(2) of the Act of June 20, 1997 – 1; Article 97 of the Code of Administrative Offenses (KW) in conjunction with Article 49(1)(1) and Article 60(2) of the Road Traffic Act (PRD) – 1; Article 97 of the Code of Administrative Offenses (KW) and Article 94 § 1 of the Code of Administrative Offenses (KW) – 1; Article 97 § 1 of the Code of Administrative Offenses in conjunction with Article 26(3)(3) of the Act of June 20, 1997, on Road Traffic – 1; Article 98 of the Code of Administrative Offenses – 4; Article 98 of the Code of Administrative Offenses and Article 97 of the Code of Administrative Offenses – 1; Article 98 of the Code of Administrative Offenses in conjunction with Article 23 of the Road Traffic Act and Article 94 § 1 of the Code of Administrative Offenses and Article 86 § 1 of the Code of Administrative Offenses – 1; Article 98, point 1, paragraph 1 of the Social Insurance System Act – 2; Article 98, paragraph 1, point 1a of the Social Insurance System Act in conjunction with Article 46, paragraph 1, and Article 47, paragraph 1, point of the Social Insurance System Act, Article 193(3) of the Act on Health Care Benefits in conjunction with Article 46(1) and Article 47 of the Act, and Article 3 of the Social Insurance System Act; Article 98(1)(1a) and (3) in conjunction with Article 32 of the Social Insurance System Act – 1; Article 98 of the Social Insurance System Act – 1; Article 114 of the Act on the Office of Competition and Consumer Protection – 1; Article 57 of the Code of Administrative Offenses – 1; Article 106d, § 2 of the Code of Administrative Offenses – 1; no data available – 6

offenses and are regulated by Articles 93 and 94 of the Code of Criminal Procedure (KPW)²⁴ as well as Articles 172 and 48 of the Fiscal Offenses Code (KKS). This institution effectively serves to expedite the adjudication of cases filed with the court.

Research Findings and Discussion

An analysis of the available case files revealed that the Police were the entities initiating proceedings for misdemeanors and fiscal offenses in the vast majority of cases, filing motions for punishment in 344 instances (74.14%), while the Municipal Police did so in 14.66% of cases (68). In 45 proceedings (9.70%), the entity initiating the proceedings during the jurisdictional phase was another authority (e.g., a Border Guard post, the Social Insurance Institution [ZUS], the Tax Office, the General Inspectorate of Public Transport, a Forest District Office, or a veterinary inspector). Due to missing parts of the questionnaires, data is unavailable for 7 proceedings (1.51%). These data are illustrated in the chart below.

²⁴ Article 93.

“§ 1. At a hearing, the court may issue a penal order in misdemeanor cases where it is sufficient to impose a reprimand, a fine, or a restriction of liberty. The court renders its decision without the participation of the parties.

§ 2. A ruling in summary proceedings may be issued if the circumstances of the act and the defendant’s guilt are beyond doubt. When issuing a penal order, the court deems the evidence attached to the motion for punishment to have been disclosed.

§ 3. A penal order may also impose a penal measure.

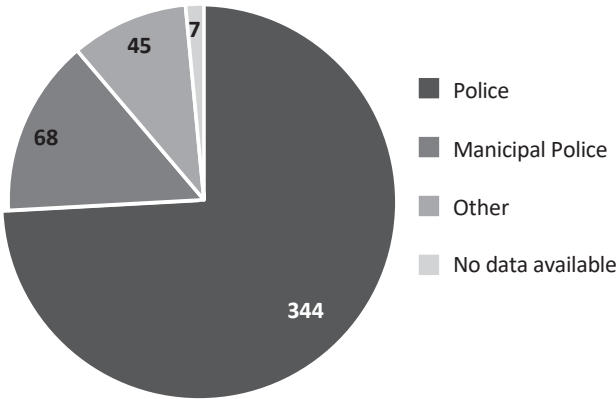
§ 4. Summary proceedings are not permissible if the circumstances specified in Article 21 § 1 apply. Art. 94.

§ 1. The provisions of Articles 504 and 505—excluding the second sentence—as well as Article 506, §§ 1–3, 5, and 6 of the Code of Criminal Procedure shall apply *mutatis mutandis* to a penal order.

§ 2. An appeal may be filed against an order denying an objection.

§ 3. A penal order against which no objection has been filed or for which the objection has been withdrawn becomes final.”

Entity Filing a Motion for Punishment/Indictment



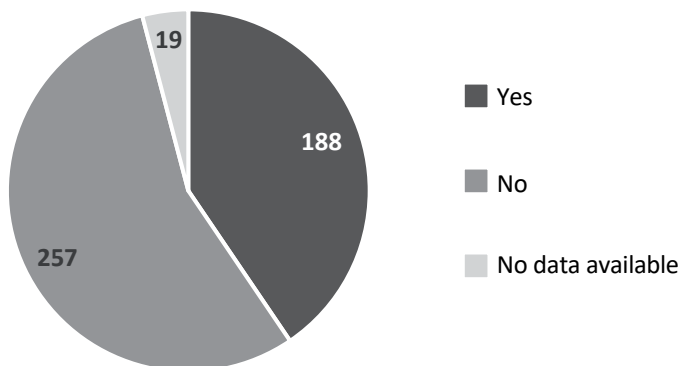
An analysis of case files revealed that, in the course of criminal proceedings, victims as defined in Article 25, § 1 or 2 of the Code of Criminal Procedure were not identified in the majority of cases. This was the case in 55.39% of cases (257), while in 40.52% of cases such victims were identified (188). It should be noted that in 166 cases there was one victim, in 11 cases there were two victims, in 3 cases there were three victims, in 3 proceedings there were four victims, in 2 cases there were 5 victims, and in only 1 case were there seven victims. In total, therefore, 238 victims—both individuals and entities—were identified across all cases. There is no data on victims in 19 cases (4.09%).

Despite the identification of as many as 238 victims, in the vast majority of cases, the victims did not exercise their rights and did not join the public prosecutor as auxiliary prosecutors. This occurred in only 8 proceedings, representing 3.36% of all victims. This means that in 93.10% of the proceedings (432), no auxiliary prosecutor appeared as a party at all. Data is missing for 24 case files (5.17%).

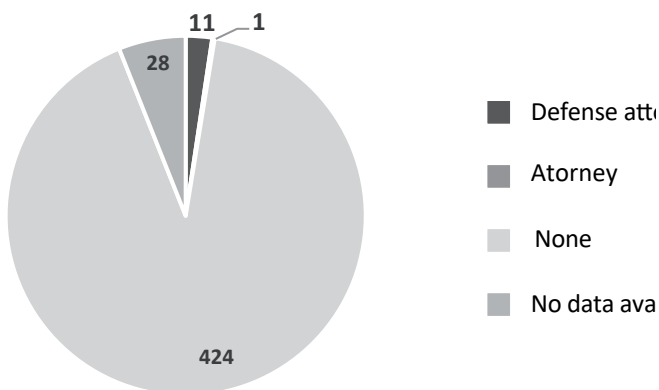
Data obtained from the analyzed case files show that the parties to the proceedings rarely sought the assistance of professional lawyers—attorneys and defense counsel. In only one case did a party appoint an attorney for the auxiliary prosecutor (0.22%). A defense attorney appeared in 11 cases, accounting for only 2.37% of all analyzed cases. In as many as 91.38% of the proceedings (424), the party appeared in court without a professional legal representative. Data could not be obtained for 6.03% of the cases (28).

The data are illustrated in the charts below.

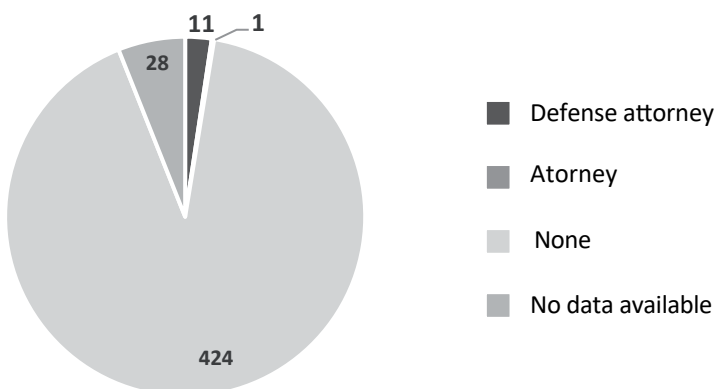
Has the victim been identified within the meaning of Article 25, paragraph 1 or 2, of the Code of Criminal Procedure?



Has a private prosecutor joined the case?



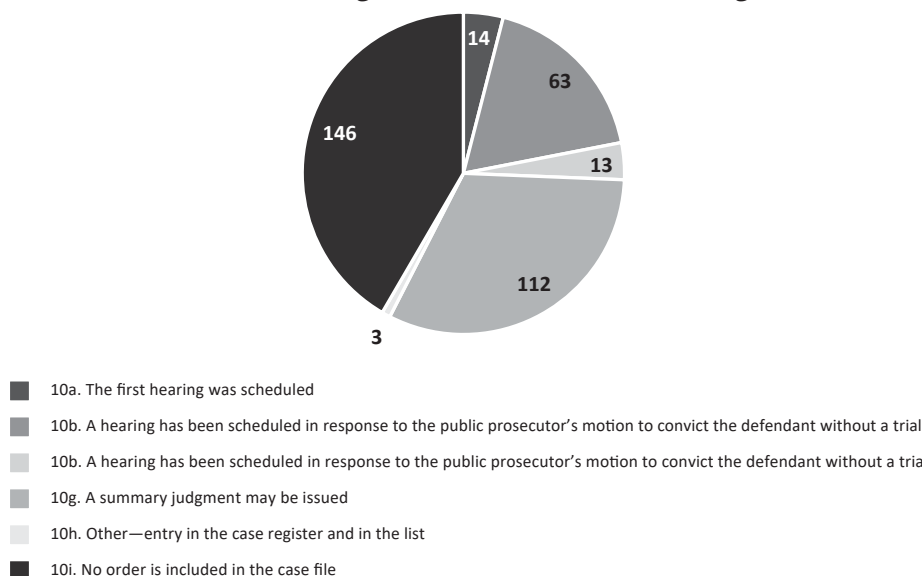
Litigation Representatives



As shown by the data collected during the study, court presidents (or other authorized judges) relatively rarely make use of the procedure for returning the document initiating proceedings (a motion for punishment or an indictment) due to identified formal deficiencies (e.g., Article 59 § 1 of the Code of Criminal Procedure). This occurred in only 0.43% of cases (2). A ruling refusing to initiate proceedings due to obstacles to the adjudication of the case specified in Article 5 § 1 of the Code of Criminal Procedure occurred in 2 cases (0.43%). This means that during the preliminary review of the document initiating the trial phase before the court, substantive (e.g., lack of elements of a misdemeanor) or formal obstacles to hearing the case are occasionally identified.

A statistical analysis of court orders issued immediately after the initiation of proceedings in misdemeanor cases, or the commencement of the jurisdictional phase of hearing cases involving fiscal misdemeanors, yields interesting results. According to the data obtained, an order scheduling the first hearing was issued in only 14 cases (3.02% of all cases analyzed). In 63 cases, a motion by the public prosecutor for a conviction without a hearing (e.g., Article 60 § 1(1) of the Code of Criminal Procedure) was submitted to the hearing due to an agreement with the accused, accounting for 13.58% of cases. In only 2.80% of the proceedings did the defendant or his or her defense counsel decide to file a motion to refer the case to a hearing without scheduling a trial, with the aim of securing a conviction pursuant to Article 60 § 1(2) of the Code of Criminal Procedure (13). What is particularly interesting is that in as many as 31.47% of cases, no preliminary order was issued at all to schedule a hearing or trial (146). Only in 112 proceedings (24.14%) was a hearing scheduled due to the perceived possibility of issuing a penal order in the case. This is significant because—as will become clear later—the number of penal orders is considerably higher. This indicates that courts decide to schedule hearings by separate order to consider issuing a penal order only in some cases. The data above is illustrated by the chart below:

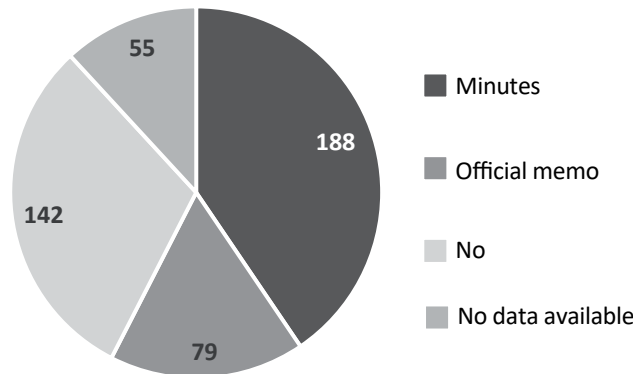
Actions Following the Initiation of Proceedings



Moving on to the most important issue from the perspective of this study, it should be emphasized that in as many as 93.97% of cases, the courts issued penal orders (436). The court did not issue such a judgment in 28 cases (6.03%). In only 4 cases—i.e., 0.91% of all penal orders—did the courts modify the legal classification of the act alleged in the indictment or the motion for punishment. It can therefore be assumed that the courts generally considered the legal classification adopted by the prosecutor to be correct. Unfortunately, in the case of 110 questionnaires, the respondents did not note whether the courts modified the legal classification or left it unchanged from the document initiating the proceedings (23.71%).

A completely different practice regarding the written documentation of the proceedings during which a penal order was issued is particularly noteworthy. Thus, in 30.60% of cases, the courts did not document the proceedings at all, neither in the form of a note nor in the form of a protocol (142). In 188 proceedings, the courts prepared minutes of the proceedings (40.52%), while in 79 cases (17.03%) they prepared an official note. There is no data on this subject in the questionnaires concerning 55 cases (11.85%).

Was the sequence of events documented in writing?



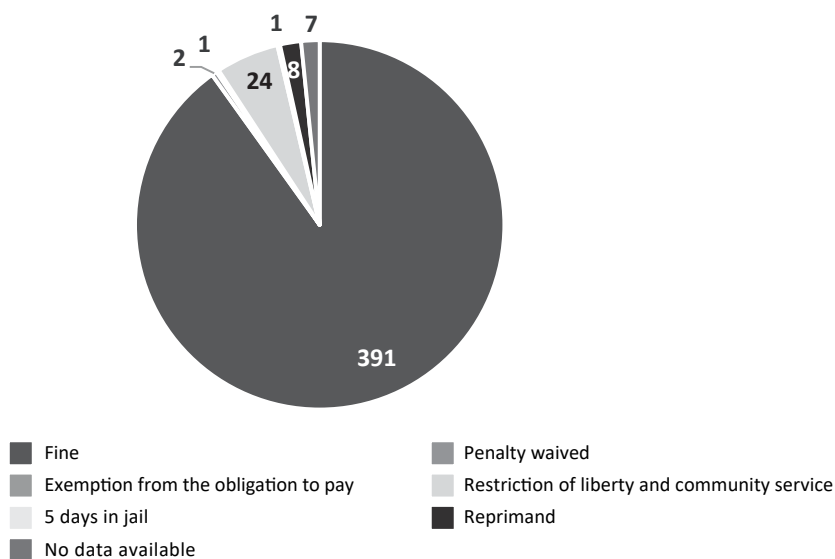
An analysis of 464 cases indicates that the by far most frequently imposed penalty was a fine, which was imposed in 391 cases, accounting for 84.27% of all cases analyzed. The high proportion of fines indicates that financial sanctions predominated in the analyzed data. Among the fines imposed, the most common were those in the range of 400–500 PLN—82 cases (20.97%). Slightly fewer fines were in the range of 250–300 PLN, imposed in 79 cases (20.20%). Fines in the range of 150–200 PLN occurred in 71 cases (18.16%), while fines of up to 100 PLN were imposed in 93 cases (23.79%). There were 47 fines in the 600–1,000 zł range (12.02%). Higher fines were significantly less common: 8 cases (2.05%) were recorded in the 1,100–1,500 zł range, in the 2,000–4,000 zł range—9 cases (2.30%), and fines in the 5,000–7,000 zł range—2 cases (0.51%).

The second most common form of criminal sanction, in terms of the number of cases, was restriction of liberty combined with the obligation to perform community service. This type of sentence was imposed in 14 cases, accounting for 3.02% of all cases. Within this category, community service was set at 20 hours in 6 cases, at 30 hours in another 6 cases, and at 40 hours in 1 case. In one case, restriction of liberty was imposed for a period of 6 days.

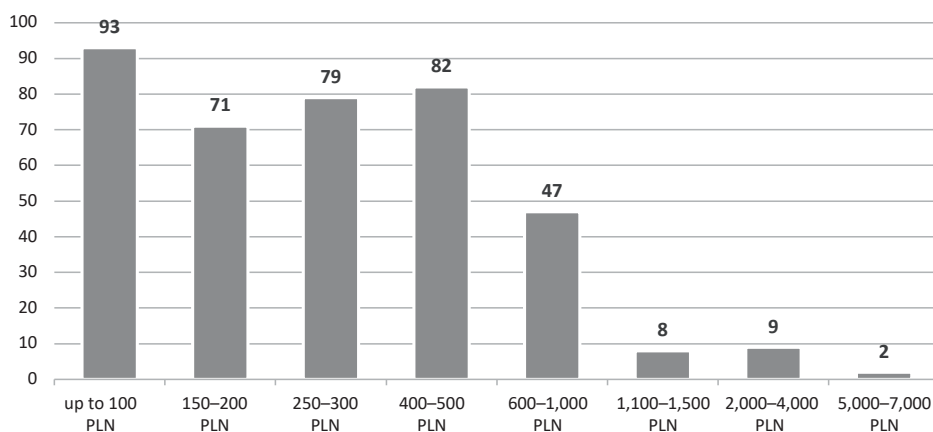
In addition, community service was imposed in 10 cases, with 20 hours in 5 cases, 30 hours in 2 cases, and 40 hours in 3 cases. Courts relatively rarely resorted to other forms of disposition. A waiver of punishment was applied in 2 cases (0.43%), while in 1 case (0.22%) the obligation to pay was waived. A 5-day detention sentence was imposed in 1 case, accounting for 0.22% of the cases analyzed. Another 8 cases resulted

in a reprimand as a response to the offense committed, accounting for 1.72% of the total. In 7 cases (1.51%), no data was recorded regarding the type of penalty imposed, which prevents their inclusion in a detailed analysis of the structure of sanctions.

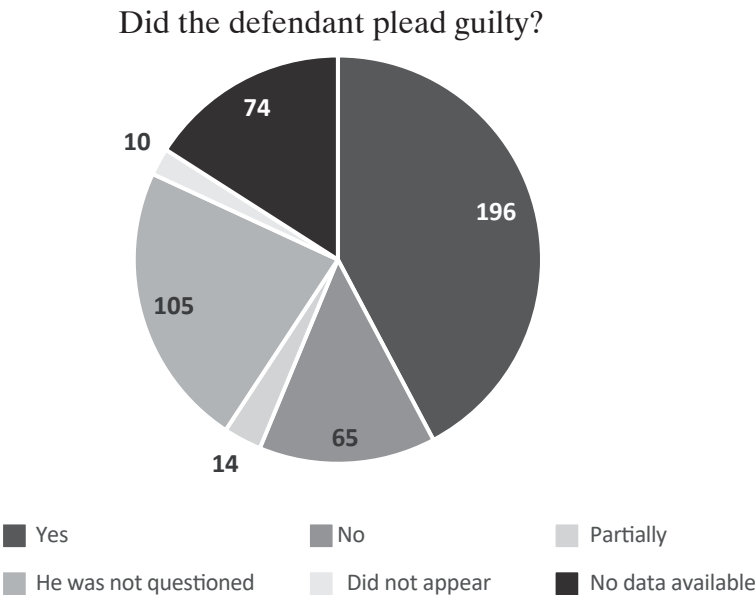
Penal order – Penalty



Fine, PLN



An analysis of the relationship between a penal order and the attitude of the accused (defendant) during proceedings in misdemeanor cases is particularly interesting. This is especially significant in light of the conditions under which a penal order may be issued—namely, that the circumstances of the act and the defendant’s guilt must be beyond any doubt to the adjudicating court. Data on whether the suspect pleaded guilty indicate varied approaches to the alleged offense during the proceedings. Of the 464 cases analyzed, the defendant pleaded guilty in 196 cases (42.24%). This is the largest category, accounting for more than two-fifths of all cases. In 65 cases (14.01%), the defendant did not plead guilty, while in 14 cases (3.02%), the plea was partial, meaning that the defendant admitted only to part of the circumstances or the act alleged against him. A significant group consisted of cases in which the defendant was not questioned. This applied to 105 cases, or 22.63% of the total cases examined. Another 10 cases (2.16%) involved individuals who failed to appear for procedural proceedings. In these cases, the defendant’s failure to participate in person made it impossible to obtain his or her direct statement regarding the alleged act. In 74 cases (15.95%), there was insufficient data to determine whether the defendant had pleaded guilty. This category therefore constitutes a significant portion of the entire dataset and should be taken into account when interpreting the results.



At the same time, in this context, the practice of issuing penal orders while taking into account the attitude of the accused and their stance toward the alleged offense is particularly interesting:

In how many cases did the district court issue a penal order even though the accused:	did not admit to committing the act	60	13.76%
	did not fully admit to committing the act	69	15.83%
	Was not questioned/did not appear for questioning	114	26.15%
	No data	193	44.27%

Out of a total of 436 penal orders issued, only in 33 cases did the parties (i.e., the defendant, the accused, or the defense counsel, or the public prosecutor) file an objection seeking to overturn the penal order, which amounts to 7.57% of the appeals filed. In 7 cases, the objection was filed by the accused (defendant), and in 10 by the defense counsel (meaning that in only 1 case where defense counsel was present was no objection filed). No objections were filed by the public prosecutor. There is no data regarding the authorship of 16 objections.

In 92.43% of cases, the penal orders became final. Objections were filed against judgments imposing the following penalties:

Objection to a penal order	Yes, including in cases involving the following penalties:	33	7.11%
	<i>a fine of 100 PLN</i>	3	9.09%
	<i>fine of 200–500 zł</i>	19	57.58%
	<i>fine of 600–1,000 PLN</i>	8	24.24%
	<i>Fine over 1,000 PLN</i>	1	3.03%
	<i>restriction of liberty and community service</i>	1	3.03%
	<i>reprimand</i>	1	3.03%
	No	461	99.35%

Upon receipt of an objection—which occurred in 33 of the cases analyzed—the same district court, albeit with a different panel of judges, issued an order to dismiss the proceedings in 5 cases due to identified procedural grounds for dismissal. This accounts for 15.15% of all cases in which the parties disagreed with the ruling of the penal order. In 15 cases (45.45%), the presiding judge decided to set a hearing date for a substantive review of the case. Unfortunately, there is no data available regarding the remaining 13 proceedings.

Moving on to the analysis of rulings issued in cases following a hearing, we must begin with a methodological issue. The data obtained during the file review provides an incomplete picture due to the fact that some of the analyzed proceedings had not been concluded by the time the questionnaires were completed. Hence the discrepancy with the proceedings previously mentioned at , in which the courts found no grounds to issue a penal order (28), as well as those that should have been heard at a trial due to the failure to issue a ruling to dismiss the case after an objection was filed (and thus we are referring to between 15 and 28 additional cases).

A review of the case files revealed that in 6 proceedings, following a hearing, the courts issued acquittals, which accounts for between 10.71% and 18.18% of all analyzed cases heard at a hearing. If we consider only those proceedings in which an objection was filed, the percentage of acquittals ranges from 21.43% to as high as 40.00% of all cases in which the parties disagreed with the content of the penal order.

In one case, after scheduling a hearing, the court dismissed the proceedings pursuant to Article 5, § 1, point 2 of the Code of Criminal Procedure, that is, on the grounds that the act did not constitute a misdemeanor or that the law provides that the perpetrator did not commit a misdemeanor.

The statistics regarding convictions handed down after a case was heard at trial are as follows:

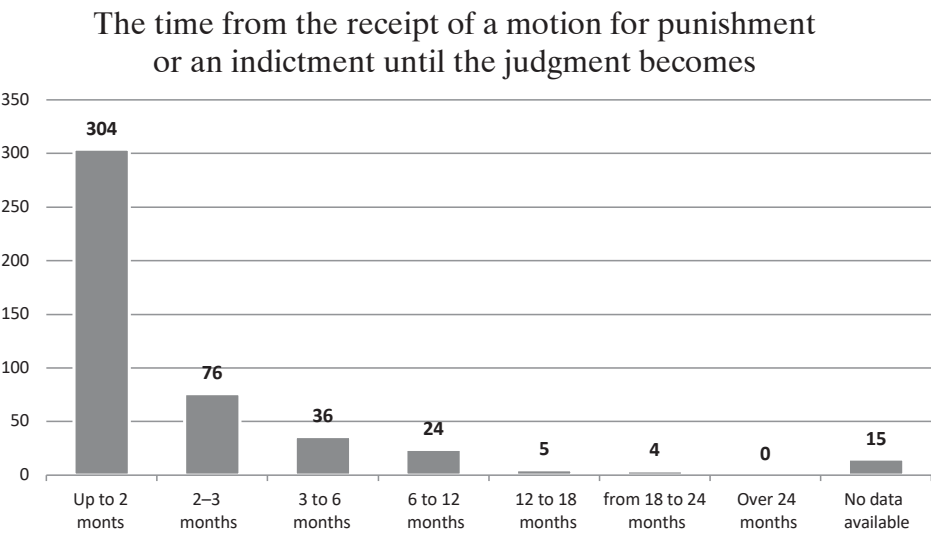
Conviction following a trial	Total	35	7.54%
	Changes to charges	0	0.00%
	Applies to all charges	27	77.14%
	Does not apply to all charges	1	2.86%
	Penalty:	35	100.00%
	<i>a fine of 100 PLN</i>	<i>5</i>	<i>14.29%</i>
	<i>fine of 200–500 zł</i>	<i>13</i>	<i>37.14%</i>
	<i>fine of 600–1,000 PLN</i>	<i>9</i>	<i>25.71%</i>
	<i>Fine over 1,000 PLN</i>	<i>4</i>	<i>11.43%</i>
	<i>detention</i>	<i>1</i>	<i>2.86%</i>
	<i>reprimand</i>	<i>3</i>	<i>8.57%</i>

The analysis also included a comparison of final judgments rendered after a substantive hearing of the case with the original penal orders. As a result of appeals (33 cases), in 6 cases the court issued an acquittal, in 5 cases the court left the penalty unchanged, in 5 cases it reduced the fine, in 4 cases, it increased the fine; in 2 cases, it waived the driving ban while increasing the fine; in 1 case, it converted the restriction of liberty into a fine; and in 2 cases, the court converted the fine into a reprimand.

The relationship between the use of legal assistance from a professional defense attorney and the final outcome of the legally binding judgment—taking into account the previously issued penal order—was also analyzed. Among the 464 court cases analyzed, the services of a professional defense attorney were used in 11 cases, and in 10 cases, an objection to the penal order was filed. As a result of the appeals, the court issued an acquittal in 3 cases, reduced the sentence in 3 cases, left the sentence unchanged in 2 cases, 1 case is pending, and there is no data available for 1 case.

The statistics on the time taken to adjudicate cases—from the initiation of the jurisdictional phase of the proceedings until their final resolution—are particularly noteworthy. An analysis of the time elapsed from the receipt of a motion for punishment or an indictment until the judgment became final indicates that the majority of the analyzed proceedings were concluded relatively quickly. Of the 464 cases, as many as

304 proceedings—i.e., 65.52%—were concluded with a final judgment within 2 months of the receipt of a motion for punishment or an indictment. Another group consisted of cases in which proceedings lasted between 2 and 3 months. This applied to 76 cases, or 16.38% of all cases analyzed. This means that, in total, 380 cases were conclusively resolved within 3 months, accounting for 81.90% of the entire sample. Proceedings lasting between 3 and 6 months were recorded in 36 cases (7.76%). In 24 cases (5.17%), the time from the filing of the case to the final judgment ranged from 6 to 12 months. Proceedings lasting longer than one year were significantly less common. Five cases (1.08%) fell within the 12- to 18-month range, while 4 cases (0.86%) lasted between 18 and 24 months. In the analyzed sample, there were no cases in which the period from the filing of a motion for punishment or an indictment until the judgment became final exceeded 24 months. In 15 cases (3.23%), however, there was insufficient data to determine the duration of the proceedings.



Conclusions

Based on the data from the conducted research, the following conclusions can be drawn regarding the practice of common courts in

adjudicating cases involving misdemeanors and fiscal offenses, taking into account the use of penal orders.

The research reveals a clear abuse of the penal order institution by the common courts. Once the jurisdictional phase has begun, the courts issue penal orders in the overwhelming majority of cases, often without the required grounds for doing so—namely, that the circumstances of the act and guilt are beyond doubt. Courts quite often disregard the position of the accused (defendant), who either did not admit guilt during the investigative proceedings (preliminary proceedings) or refused to accept a fine in summary proceedings, which should raise doubts regarding the circumstances of the offense. In practice, therefore, the general courts impose penalties for misdemeanors without properly considering the evidence. Consequently, in over 80% of such cases, the duration of proceedings from the start of the jurisdictional phase until their final resolution is 3 months.

In the vast majority of cases, penal orders become final because the parties (primarily the accused or defendants) fail to file a valid objection. Having a professional defense attorney—as statistics show—increases the likelihood of filing an objection in a case, which may result from information about the party's legal situation provided by a professional, as well as from being informed about their actual rights and possible arguments that can be used during the proceedings.

Furthermore, it sometimes happens that, upon receiving an objection, the general courts analyze the evidence gathered in the case more thoroughly, as well as the arguments presented in the objection, and as a result, this leads to the issuance of a ruling to dismiss the proceedings before the trial, despite a prior ruling establishing the accused's (the accused).

Indeed, a genuine and thorough examination of cases involving misdemeanors and fiscal offenses takes place only during ordinary proceedings, after the trial has begun. It is evident that district courts issue acquittals more frequently after hearing a case at trial than in criminal proceedings, where the rate of acquittals ranges between 1 and 2 percent. This means that successfully filing an objection significantly increases the likelihood of proving one's case before the court during the evidentiary proceedings. The involvement of a defense attorney enhances the effectiveness of such actions.

Documentation practices vary considerably. Approximately one-third of courts issue penal orders without documenting this type of proceeding, on the grounds that the hearing on this matter takes place without the parties' participation and is informal. Some courts prepare a transcript or an official note of the proceedings.

This widespread practice of ordinary courts using penal orders in cases involving misdemeanors and fiscal offenses renders the right to a trial decidedly illusory. Although the original rationale for transferring cases involving prohibited acts that are not criminal offenses to the jurisdiction of the courts was the need to comply with the standards set forth in Article 45(1) of the Constitution of the Republic of Poland, practice shows that the courts do not meet this requirement. The actual right to a thorough, comprehensive, and fair hearing of the case is realized only after a party has successfully filed an objection to a penal order and provided the accused (the defendant and their defense counsel) takes an active stance. The widespread issuance of penal orders by courts also violates the accused's right to a defense. In particular, when a party accused of committing a criminal offense does not have the assistance of a professional attorney, that party has a lesser chance of successfully challenging a penal order issued without their participation.

Finally, while the reasons why common courts make extensive use of penal orders while being reluctant to hear cases at trial remain outside the scope of the research conducted. One might venture to suggest that this is related to: 1) the heavy caseload of judges' chambers and the perception of courts handling misdemeanor and tax misdemeanor cases as *trivial*; 2) the necessity for the same judges from criminal divisions to hear cases involving misdemeanors and tax misdemeanors, as well as cases involving felonies (including very serious ones); 3) the objective impossibility of hearing all misdemeanor or fiscal misdemeanor cases filed with the court due to their volume and limited session capacity; 4) the psychological belief on the part of the judge that a party who will be sentenced to a relatively minor and inconsequential penalty by a penal order will not be interested in filing an objection and engaging in a time-consuming and costly trial under ordinary proceedings.

Bibliography

Bartoszewicz M., *Commentary on Article 237 of the Constitution of the Republic of Poland*, [in:] M. Haczkowska (ed.), *Commentary on the Constitution of the Republic of Poland*, LEX/el 2014.

Bulletin of the Constitutional Committee of the National Assembly, 1995, No. 11.

Judgment of the Constitutional Tribunal of May 12, 2011, case no. P 38/08, OTK-A 2011, No. 4, item 33.

Laskowska M., *note III. 1, on Art. 237*, [in:] M. Safjan, L. Bosek (eds.), *The Constitution of the Republic of Poland, Vol. II. Commentary on Arts. 87–243*, Warsaw 2016.

Opinion of the National Council of the Judiciary (KRS) of November 19, 2009, No. KRS 020-80/1-09.

Response of the Ministry of Justice of May 30, 2018, to a request for public information, Ref. No. BM-II-082-477/18.

