

**Abstract of doctoral dissertation**

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**Title of doctoral dissertation: Criminal liability vs. construction of partnership in process of formation**

The matter under consideration undertaken in the doctoral dissertation is the issue of criminal liability in the phase of the existence of a partnership in the process of formation. The aim of the doctoral dissertation is to present the problem of criminal liability of a partnership in the post-contractual stage and before the entry in the National Court Register under criminal law, the Code of Commercial Companies, the Penal and Fiscal Code and the Act on the Liability of Collective Entities for Acts Prohibited Under Penalty.

These fundamental consideration for the doctoral dissertation were preceded by the analysis of the problem of criminal liability against the background of other types of repressive liability. The research is also focused on a partnership - especially its legal capacity against the background of historical, comparative and constructional nature, which is important from the point of view of criminal liability.

The analysis of the issue of criminal liability against the background of other types of repressive liability is discussed in Chapter I. In this Chapter is presented, among others, the concept of legal liability, repressive liability and criminal liability with the division into its types. The rules of criminal liability on the grounds of the Constitution of the Republic of Poland are also discussed.

The historical overview is presented in Chapter II. In this Chapter, particular attention is paid to changes in the Commercial Code and the Code of Commercial Companies in the scope of the moment of establishing partnership.

Provisions regarding partnerships in process of formation as well as its name are not settled in The Code of Commercial Companies; there is therefore a fundamental difference between partnerships and companies in this respect. The above state of affairs was assessed in the doctrine as leaving the open problem of partnerships in process of formation by the Code of Commercial Companies, for several reasons, namely: due to the generally shorter and less complicated process of forming partnerships due to the lack of legislative models, as well as

established direction of judicature in OECD countries, indicating to the need for legislative intervention in this field<sup>1</sup>.

In Chapter III are discussed the basic concepts related to the functioning partnership as well as companies, such as: an organizational unit, acting as a legal subject, legal ability, capacity to perform acts in law and their legal equivalents as well as legal entity with limited legal capacity. These concepts appear in subsequent chapters of the doctoral dissertation and constitute the foundations for the analysis of the legal structure of the partnership in the process of formation.

In Chapter IV is presented a comparative legal analysis of the functioning of partnerships and companies in German law, with particular emphasis on the partnership and company in the process of formation. In order to consider the admissibility of the existence and legal structure of a partnership in process of formation, it was on purpose to discuss what the partnership and company is, how it is formed, i.e. what stages it must take to adopt its destined form and whether the Code of Commercial Companies allows for the appearance of partnerships in the process of formation in the aspect of the *numerus clausus* principle of partnership and companies, i.e. a closed list of partnerships and companies, and the resulting from its prohibition on the formation of partnerships and companies not explicitly provided for applicable regulations. The consideration in this regard are carried out in Chapter V of the doctoral dissertation.

Subsequently, the essence of a companies in the process of formation is presented (Chapter VI), i.e. stages of the company's establishment, standards regulating the existence and functioning of the company in the process of formation and the legal nature of the company in the process of formation. Special attention is paid to the legal nature of the joint stock company before the process of formation.

Following the above consideration in Chapter VII, the issue regarding the admissibility of the existence and legal structure of a partnership in the process of formation is resolved. Firstly, it is established whether, despite the lack of general provisions in the Code of Commercial Companies regarding partnerships in the process of formation, as well as the name of the partnership in the process of formation itself, this entity can be distincted, and if so, whether the partnership in the process of formation is a new type of partnership or is it a constitutional form of a commercial company, i.e. what is the legal shape of the partnership in individual periods of its existence / phases of creation, operation and termination. Secondly, it

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<sup>1</sup> S.Soltysiński, *Code of Commercial Companies (basic principles)*, „Państwo i Prawo” 2000, number 11, page 18.

was analyzed whether the partnership in the process of formation is an obligation relationship or an organizational unit, whether it can be granted legal ability or it can act as a legal subject.

Fundamental to the content of the doctoral dissertation consideration in the scope of criminal and economic liability in the phase of the existence of a partnership in the process of formation are presented in Chapter VIII. This Chapter brings up the issues of liability under the Criminal Code, the Code of Commercial Companies and the concurrence of criminal offenses and concurrence of provisions.

The penal and fiscal liability of a partnership in the process of formation is presented in Chapter IX, and liability under the Act on the Liability of Collective Entities for Acts Prohibited Under Penalty in Chapter X. In these Chapters is examined the issue whether the partnerships in the process of formation are the entities subject to liability provided for in the Penal and Fiscal Code (ie. Article 9 § 3 and Article 24 § 1) and in the Act on the Liability of Collective Entities for Acts Prohibited Under Penalty. In these Chapters also is presented the issue of the liability of representatives of a civil law partnership and liability of the civil law partnership itself against the background of the Penal And Fiscal Code and the Act on the Liability of Collective Entities for Acts Prohibited Under Penalty.

All the deliberations allow to finish the doctoral dissertation on formulating de lege ferenda conclusions.

Momena Jaido