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**Abuse of trust in the conduct of people's matters of property in commercial companies  
under Article 296 of the Criminal Code**

This dissertation discusses criminal and civil liability in individual commercial companies. The dissertation aims to examine the area of the Commercial Companies Code and the Criminal Code on the grounds of economic abuse. Examined are, among other things, the legislation in the above branches of law, the judicature. The dissertation also draws on research applying the dogmatic and historical method as well as, to some extent, the legal and comparative method. File research was also utilised. The historical outline of the crime of abuse of trust as a prelude to the currently applicable Article 296 of the Penal Code was analysed. Article 585 of the Commercial Companies Code and the circumstances of its repeal were analysed. Also, the files of a case that was pending in the Criminal Court in Warsaw at the time of the legislation were investigated. A comparative legal analysis was carried out after the amendment of the Commercial Companies Code and the Criminal Code for the crime of abuse of trust. *De lege ferenda* conclusions were made on the basis of the dogmatic and formal analysis.

The discussion on the abuse of trust in the conduct of other people's business activities seeks to dispel doubts regarding the currently applicable legal provisions in juxtaposition with today's market situation.

This dissertation is structured in eight chapters. The first covers a historical outline, the history of abuse of trust in Polish criminal law on the basis of the Criminal Code of 1932 and 1969, the Commercial Code of 1934, and presents Article 585 of the Commercial Companies Code, its repeal and amendments to the Criminal Code. The second chapter focuses on the subject of abuse of trust in commercial companies, the third on the subject of the crime of abuse of trust in commercial companies, the fourth on the subject side, and the fifth on the subject side of the crime of abuse of trust in commercial companies. The sixth chapter addresses the issue of concurrence of criminal acts with other criminal acts of abuse of trust, the seventh

chapter covers the circumstances excluding criminal liability, while the eighth chapter presents examples of abuse of trust.

The following issues shall be discussed in the individual sub-chapters: damage to assets and frustration of debt recovery - fraudulent bankruptcy (art. 303 and 303 of the Penal Code), failure to keep records of an unincorporated business entity and dishonest record-keeping (art. 303 § 2 of the Penal Code), forgery, counterfeiting of documents and using them as authentic (Art. 270 of the Penal Code), abuse of power by a public official and active and passive corruption (Arts. 231, 228, 229 of the Penal Code), misappropriation of movable property, theft (Arts. 278 and 284 of the Penal Code). In addition, managerial corruption under Article 296a and the influence of the European Union on the origins of this legal provision are outlined.

Capital companies were presented including persons authorised to act on behalf of the principal as well as the resulting criminal liability. The subject of conflicts of interest, economic risk and the circumstances excluding the perpetrator's guilt is addressed. The offence of harmless mismanagement under Article 296 § 1a of the Penal Code is described.

*De lege ferenda* proposals concerning Article 585 of the Commercial Companies Code and Article 296 of the Penal Code are presented.

The dissertation further includes various issues concerning abuses in commercial companies, based, inter alia, on Article 58, Article 83 of the Civil Code - ostensibility of a legal act in order to bypass the law, Article 869 of the Civil Code - termination of a share in a civil partnership due to abuse of the law. In addition, the interest of the company is separately assessed versus the interest of the shareholder and the principle of non-competition in terms of Article 56 § 1 of the Commercial Companies Code is addressed.

The dissertation attempts to prove that the repeal of Article 585 of the Code of Commercial Companies and the amendment of the Criminal Code fails to secure proper economic trading. For an agile manager, the current legal conditions provide a favourable environment for committing a criminal act while avoiding punishment. Economic risk, active contrition, reparation of damage may fully exonerate the offender of abuse of trust from criminal liability.

The amendment of the Commercial Companies Code and the Criminal Code can be contemplated on two levels. In terms of properly securing the interests of the mandator and punishing the offender. It was pointed out that the trust of a trading participant in an

entrepreneur is reflected in economic performance. Consideration was given to the essence of trust in business trading, as well as to decency.

The concluding part of the dissertation discusses the abuse of administrative authorities based, inter alia, on the example of the company Amber Gold.

The dissertation examines issues concerning criminal law, the issue of abuse of trust in the conduct of other people's matters of property. Due to the fact that the provisions of the Penal Code correspond with the provisions of commercial companies law and civil law, the dissertation is to a large extent focused on civil issues. A necessary introductory element is to acquaint the reader with the principles of liability under the Commercial Companies Code.

24.08.2023r.

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